



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 : LB5301**  
**Course Name : Civil Procedure I**  
**Course Level : Bachelor's Degree**  
**Time : 3 hours**

**Reference(s) allowed:**  
**RULES OF THE SUPREME COURT, CHAPTER 5**

**Instructions:**

1. Answer **ALL** questions in **part I** and any **two** questions in **part II**.
2. All answers, wherever relevant, must be supported by statutory provisions and case law.

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## PART I

### QUESTION 1 (15 Marks)

In a civil suit commenced by the Plaintiff against the Defendant, the action will begin with a Writ and Statement of Claim.

- (a) Clarify what is a writ and a Statement of Claim. (8 Marks)
- (b) For the Defendant, the Defendant will file the Defence. Clarify what is Defence. (4 Marks)
- (c) The Plaintiff will then file a Reply to the Defence. Clarify what is the Reply to Defence. (3 Marks)

### QUESTION 2 (15 Marks)

John is the owner of a beach hotel resort and has entered into an agreement with William, who is an art dealer to purchase an original painting of a well-known artist costing \$500,000.00. John has made payment of \$100,000.00 to William as a deposit for the painting.

A few months later, William delivered the original painting to John and John paid the balance of the price of the painting to William and John displayed the painting at his beach hotel resort. Two months later, John discovered that the painting was not the original painting but a fake one. John is seeking your advice to sue William.

Advise John on the following:

- (a) The principle of Cause of Action in a Civil Suit. (5 Marks)
- (b) The basic element to be proved in the breach of contract are contract formation, performance, breach, and damage. Clarify each of the elements. (10 Marks)

## PART II

### **QUESTION 3 (15 Marks)**

Charles has sued Michael in respect of the sale of a property for a sum of \$200,000.00 which Michael has refused to pay.

Charles has issued the Writ of Summons and Statement of Claim in 2010. Charles has also taken out Summons for Directions in 2010 and in the Summons for Directions parties has agreed to prepare lists of documents and to be served against each other and inspections to be allowed within one month of the service. In the order for direction, the hearing must be set within 6 months from the date of the Order of Directions. However, five years have passed, Charles has not filed Notice of Intention to prosecute.

Advise Michael on his legal rights to strike out the Suit for Want of prosecution under the Rules of the Supreme Court with reference to decided cases.

### **QUESTION 4 (15 Marks)**

Tan is a contractor and has entered into an agreement with Bong to complete a two-story house at the Gadong area for the contract sum of \$300,000.00. Tan has completed the house in accordance with the building contract agreement. Tan has received part payment of the construction cost in the sum of \$200,000.00 leaving a balance of \$100,000.00 due to Tan.

Bong informed Tan that he will pay the balance within one month after the completion of the house. However, Bong has failed to pay Tan and Tan have instruction you to issue Writ of Summons and Statement of Claim for the payment of the balance of \$100,000.00. Tan informed you that Bong has no defence at all. Upon issuing the Writ of Summons and Statement of Claim against Bong regarding the claim.

- (a) Advise Tan on a course of action to be taken for Summary Judgment and what is the procedure to be adopted and the requirements to be satisfied for the Summary Judgment.

(10 Marks)

- (b) Also advise Tan in the event that Bong has a counterclaim against him.

(5 Marks)

**QUESTION 5 (15 Marks)**

In civil litigation, pleadings of the action must be carefully completed setting out the claims of the Plaintiff against the Defendant.

Discuss the following:

- (a) The meaning of Pleadings (3 Marks)
- (b) The importance of Pleadings in a suit (5 Marks)
- (c) Parties are bound by pleadings (4 Marks)
- (d) What is close of Pleadings? (3 Marks)

**QUESTION 6 (15 Marks)**

The Rules allow parties to amend subject to the rules, the originating process, pleading, etc. in the action. Generally the court may at any stage allow either party to alter or amend their pleadings in such manner and on such terms as to costs or otherwise as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy before the parties.

Based on the above principles and with reference to decided cases, clarify the following:

- (a) The object of amendments. (3 Marks)
- (b) Amendment with leave of the Court. (8 Marks)
- (c) Amendment without leave of the Court. (4 Marks)