



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

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

Final Examination Question Paper

Course Code : LS5305

Course Name : Civil Procedure of The Shariah Court

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

Time : 3 hours

Reference(s) allowed:

Syariah Courts Civil Procedure Order, 2005

Instructions:

1. Answer only **two (2)** questions and **Question 1** is compulsory.
2. All answers, wherever relevant, must be supported by statutory provisions and case law.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ ..

QUESTION 1 (30 Marks)

Dayang Jihan Binti Daud, bearing National Identity card number: 01-111000 (Y), address No. 1, Spg. 202, Kg. Siring Jalan, Negara Brunei Darussalam.

Awang Johan Bin Samad, bearing National Identity card number: 01-111001 (K) address No. 2, Spg. 212, Kg. Tengah Jalan, Negara Brunei Darussalam.

Dayang Jihan and Awang Johan were married on 23rd February, 2011 at Dewan Atas Kayangan, Hotel Mewahwah. They registered their marriage in the Syariah Court. The couple had no children. Their marriage, however, ended in divorce on 1st March, 2021 since Awang Johan married another woman whilst still married to Dayang Jihan. The dissolution of their marriage was registered in the Syariah Court bearing registration Number: BM/44/2021. Since the divorce, no order has been issued relating to the maintenance of Dayang Jihan's *iddah*. She moved out and lived with her older siblings for the rest of her life after the dissolution of marriage whilst Awang Johan lived with his new family in the house.

Dayang Jihan's sister asked her to seek advice from a Syar'ie Lawyer in order to take legal action against Awang Johan who has not provided any *muta'ah* maintenance either in the form of money or residence to the plaintiff since the dissolution of their marriage.

The reason Dayang Jihan wants to commence her summon against Awang Johan is that during their 10 years of marriage, Awang Johan has neglected his role as a husband in terms of providing her with maintenance. According to Dayang Jihan, Awang Johan prefers to use her salary for his own benefit. In addition, Dayang Jihan sought the *muta'ah* maintenance because she has not waived the right to claim the *muta'ah* and it is a guaranteed right in terms of Islamic law. The payment of *muta'ah* is for her survival after the divorce and she claims a sum of BND70,000.00 as a very reasonable payment given the long duration of their marriage, the sacrifices and responsibilities she has performed as a wife.

- (a) Assuming that Dayang Jihan binti Daud has appointed you as her Syarie Lawyer, to commence a legal action against Awang Johan for *muta'ah* maintenance under section 57 of the Islamic Family Law Act (Cap. 217) to the Syariah Court.

Advise Dayang binti Daud on how to commence the proceeding in accordance with the forms stipulated in the Syariah Courts Civil (Mal) Procedure Order, 2005.

(20 marks)

- (b) What is the process of validity for the purpose of service after Dayang binti Jihan and her representative has filed the summon case to the Registrar of the Syariah Court?

(10 marks)

QUESTION 2 (30 Marks)

In the case of Dayang Rosalinda against Awang Rosdi over an application for divorce. The registrar has set the date of appearance for hearing the case before Hakim Syarie of the Syariah Court.

- a) Explain the procedure of hearing before the judge of the Syariah Court according to Syariah Courts Civil Procedure Order, 2005?

(15 marks)

- b) The plaintiff, however, does not want to pursue her case before the Syariah court. Are there any forms that the plaintiff could use in order not to pursue the case?

(15 marks)

QUESTION 3 (30 Marks)

In a case of custody (*hadanah*) claim involving children between Dayang Tipah and Awang Tunj, several witnesses were listed by Dayang Tipah to testify in the Syariah Court.

a) Explain the procedure that Dayang Tipah needs to follow in terms of calling her witnesses?

(15 marks)

b) One of the witnesses named Awang Banner, is a brother to Dayang Tipah, who is currently serving a prison sentence at the Maraburong Prison. Discuss the procedure that Dayang Tipah needs to follow in order to produce her brother as a witness from Maraburong Prison to the Syariah Court?

(15 marks)

بالتوفيق والنجاح