



# **SYARIAH COURT CIVIL PROCEDURE**

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# INTRODUCTION

- What is affidavit?
- Sworn written Statement to support a case in the court either in civil or criminal proceedings.
- This written statement must be sworn before authorized personnel i:e Judge, registrar , Commissioner for oaths.
- It is considered as an evidence in the court proceedings.

# CHAPTER 3- SS112-118

- **S 112-Making of affidavit**
- **Shall be sworn**
- **In Selangor-Before any syariah judge or Registrar.**
- **In Malaysia-Before syariah judge or registrar**
- **Outside Malaysia- officer of Malaysian embassy or high commission or consulate or permanent mission.**

# Section 113

- **Form of Affidavit**
- **Shall be in form MS 26**
- **The court may accept an affidavit even though there is irregularity.**
- **Requirements:**
- **Title of the action**
- **Deponent's name address and occupation**
- **Numbered paragraph**
- **Indorsed by the authorized person.**

## SECTION 114

- **Copy of document shall be annexed to the affidavit.**
- **Shall be annexed as an exhibit.**
- **An exhibit shall be identified by a certificate of the person before whom the affidavit is sworn.**
- **Certificate in form MS27.**

# SECTION 115

- **Rejection of Affidavit.**
- **The court may in its discretion reject any affidavit the content of which can not be easily read or understood**
- **Or there is any interlineations, alteration or erasure or defect.**

# SECTION 116

- **Amendment**
- **If it has been filed, can not be amended except for the purpose of correcting any defect of form or clerical mistake.**
- **Amendment- by way of corrective affidavit and shall be filed before the trial.**



## SECTION 117

- **Filing of affidavit.**
- **It can not be filed after the trial has begun except with leave of the court.**
- **No appeal against the refusal of the court to grant leave except in an appeal against the decision of the case as a whole.**

## SECTION 118

- **Cross Examination**
- **Any party desiring to contest the fact deposed to in an affidavit may serve on the party who filed the affidavit notice of intention to cross examine the deponent.**
- **If the deponent is not produced for cross examination the Court shall reject or disregard the affidavit.**
- **The court may accept in special circumstances.**

# HEARING

## PART XV-S119-129

- **Two types of hearing:-**
- **I) Open Court-**
- **II) In camera.-**
- **Trial to settle dispute between the parties in any court of action or process of achieving justice.**

# Section 119

- **Hearing in court.**
- **All proceedings begun by way of summons shall be heard and determined in open court**
- **All proceedings begun by way of application shall be heard and determined in chambers.**

## Section 120

- **May appear in person or through his peguam syarie**
- **Person under disability-GAL**

# Section 121

- **Absence of parties**
- **Neither party appears-dismiss**
- **Dt does not appear-hear and determine the action in his absence**
- **Pt does not appear-dismiss the action determine and hear the counter claim.**
- **Pt or Dt to take on oath or Istizhar**
- **More than one Pt or dt. –hear the action and determine the action against the parties absent.**

# Section 122

- Counterclaims
- Stay, withdrawal, striking out or dismissal of the Pt's claim shall not prevent the hearing and determination of a counterclaim.

# Section 123

- Mutual claims
- Where judgment is given for sums of money on both claims and counterclaim, the court may set the one off against the other and give judgment for the balance only but without prejudice to the power of the court to make such order as to cost as it thinks just.



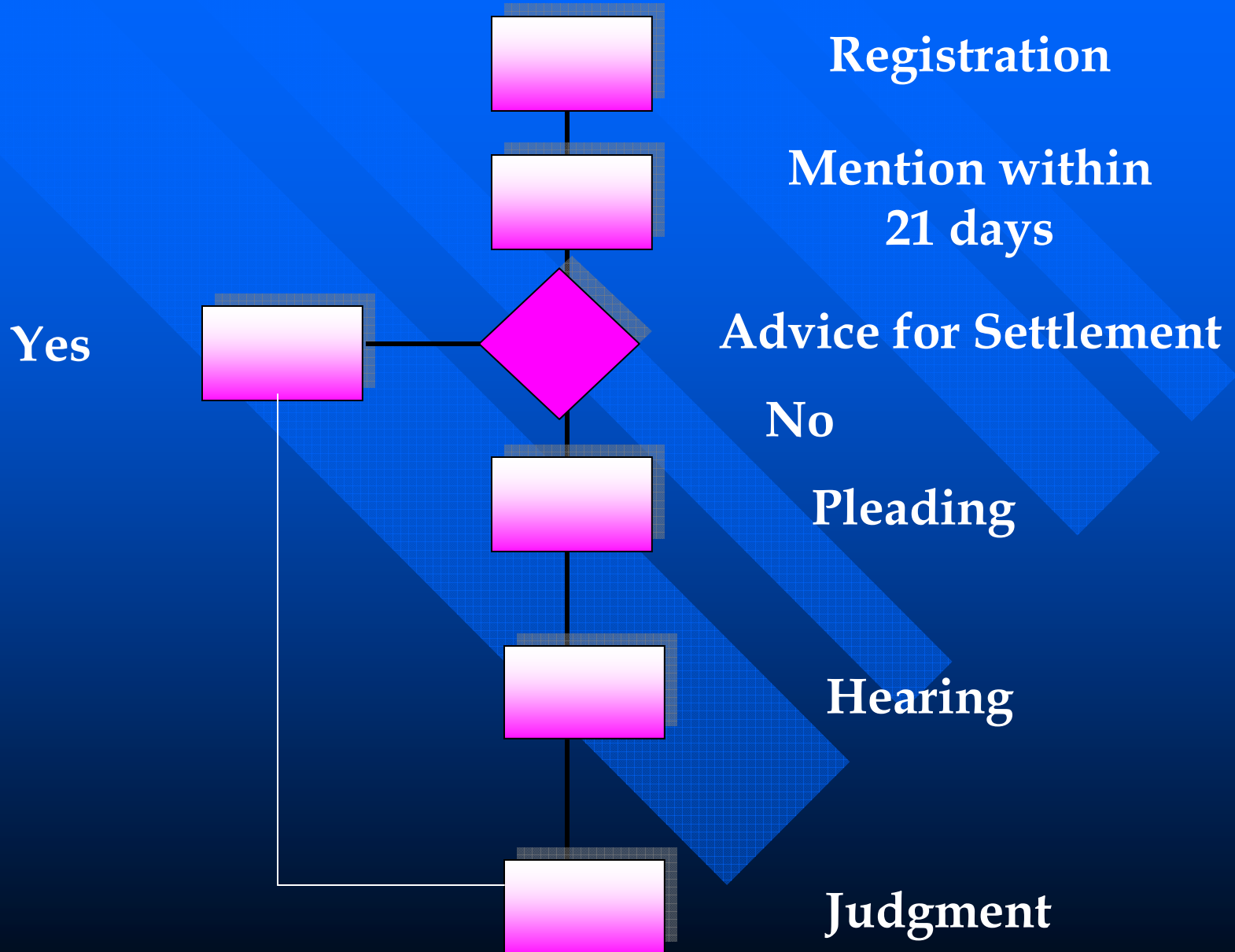
# Section 124

- Notes of evidence
- The court shall record the evidence given
- So far as desirable
- Of the submissions of law made
- Any objections to evidence
- Record such remarks on the demeanor of witnesses and other material matters.

# Section 125

- Documents or exhibits
- Shall be marked
- Shall be retained during the pendency of the proceedings.
- Documents or exhibits tendered but rejected shall also be marked.

# Flow Chart For Civil Cases



## Section 126

- Plaintiff opening his case and each party may begin calling evidence open his case or the judge may give directions as to the party begin.
- After Pt adduced evidence the judge shall call upon the Dt to adduce evidence or to submit there is no case to answer
- (a) If Dt elects to adduce evidence the Judge shall record the evidence and to make a submission closing his case.

## Cont...

■ (b) Where the Dt submits that there is no case to answer the Judge shall

I). Shall record the defendant's submission

II). Order the Dt to take an oath denying the Pt's claim.

If the Dt refuses the judge shall dismiss the Dt's case and allows the Pt's claim.

■ B4 the court allows the Pt's claim the court shall:\_(I) hear and record the Pt's submission in closing his case

■ (ii) order the Pt to take an oath admitting the truth of his claim. If he refuses-dismiss his case.

# Section 127

- Power of Court
- In the interest of justice the court may at any stage of the proceedings call any party to adduce evidence and may inspect any place or thing.

## Section 128

- Trial not concluded
- When the judge has commenced the trial and unable for any reason to conclude the trial another judge may with consent of all parties continue the trial and give judgment.
- If there is no consent-new hearing.

## Section 129

- Adjourning- The Court may adjourn or transfer any trial and may impose any condition.

# Learning Outcome

- Students should understand clearly the procedures on affidavit and hearing.
- Affidavit is very important in order to support the case in court and we must comply with all the requirements of affidavit as stipulated in the enactment.
- It is also important for the students to make sure that they understand precisely the process of hearing in the syariah court and its flow.



# Thank You



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