

Course Code / Course Name	LAA 3043 CIVIL AND CRIMINAL PROCEDURE IN SYARIAH COURT	
Status / Level	MAJOR / DEGREE	
Credit Hours	3 CREDIT HOURS LECTURES: 2 HOURS X 14 sessions TUTORIALS : 1 HOUR X 14 sessions	
Methodology	LECTURES AND TUTORIALS / DISCUSSIONS	
Evaluation	<u>Coursework</u> [a] Assignment / Presentation 10% [b] Participation 10% [c] Mid semester examination 20%	40% 60%
Lecturers	Zulkifli bin Hasan (1 Lecture + 3 Tutorial = 5 hours) LL.B (Hons) (UIAM), LL.B (S) (UIAM), MCL (UIAM) Advocate and Solicitor (Malaya) Norfadhillah Mohamad Ali (1 Lecture+ 2 Tutorial = 4 hours) LL.B (Hons) (UIAM), MCL (UIAM) Abd Hamid Abd Murad (4 Tutorial= 4 hours) LL.B (Hons) (UIAM), MCL (UIAM) Advocate and Solicitor (Malaya) Muhammad Nizam Awang @ Ali (4 Tutorial=4 hours) LL.B (Hons) (UKM), LLM (UKM)	
Objectives	The main objectives of this course are: - <ol style="list-style-type: none"> 1) To make students familiar with the necessary knowledge of Islamic procedure. 2) To give students an overview of the current application of the procedural law in syariah court. 3) To equip and educate students with knowledge on the syariah procedural legislation in Malaysia either on the civil and criminal procedure in the Syariah Courts in 	

	<p>Malaysia; and</p> <p>4) To introduce to the students the basic skills in drafting documents such as statement of claim, statement of defense, pleadings and etc.</p>
Course Synopsis	<p>This course will enable the students to understand and appreciate the civil and criminal procedure in the Syariah Courts in Malaysia. This course is divided into two parts. Part one deal with syariah civil procedure and part two discusses of the syariah criminal procedure.</p> <p>This course commences discussions of the applicable procedure in the Syariah Courts in Malaysia as embodied in the Syariah procedure legislation. The main statute will be referred to are Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003, Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003, Syariah Civil Procedure Code (Federal Territories) Act 1997 and other syariah state enactments and Syariah Criminal Procedure Code (Federal Territories) 1997 and other syariah state enactments. Other state enactments may be referred to as and when it is necessary.</p> <p>The aspects that will be covered in civil procedure include explanation on the parties to an action; the appointment, functions and duties of a Peguam Syarie, the explanation on the pleadings, subpoenas and affidavits; procedure of service of documents and the process of discovery and inspection; the process of sulh and the process of hearing and judgments.</p> <p>In criminal procedure, the students will be taught the nature of charge and its ingredients, the process of arrest and the criminal trial; aspects of bail; the criminal trial and appeal and sentencing in criminal procedure.</p>
General References	<p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003.</p> <p>Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003.</p> <p>Syariah Civil Procedure Code (Federal Territories) Act 1997 and other syariah state enactments.</p> <p>Syariah Criminal Procedure Code (Federal Territories) 1997 and other syariah state enactments.</p>

	<p>Syariah Courts (Criminal Jurisdiction) Act 1965 Revised 1988.</p> <p>Muslim Courts (Criminal Jurisdiction) Amendment 1998</p> <p>Federal Constitution of Malaysia 1957</p> <p>Administration of Islamic law (FT) Act 1993.</p> <p>Ahmad Ibrahim & Ahilemah Joned. <i>The Malaysian Legal System</i>, Dewan Bahasa dan Pustaka, Kuala Lumpur, 1995.</p> <p>Farid Sufian Shuaib, Tajul Aris Ahmad Bustami and Mohd Hisham Mohd Kamal. <i>Administration of Islamic Law in Malaysia</i>. Malayan Law Journal. 2001</p> <p>Hamid Sultan bin Abu Backer. <i>Janab's Key To Civil Procedure in Malaysia</i>. Janab (M) Sdn. Bhd.</p> <p>The Mejelle, (An English Translation of Majallah Al-Ahkam Adliya, Pakistan: Law Publishing Company).</p> <p>Sheikh Ghazali. 2000. <i>Sulh Dalam Perundangan Islam</i>, Jurnal Undang IKIM, Vol. 4.</p> <p>Dr. Hashim Mehat, <i>Prosedur Jenayah di Mahkamah Syariah</i>. Isu Undang-undang dan Syariah.</p> <p>Daud Muhammad, <i>Prosedur Jenayah Mahkamah Syariah</i>. Jurnal Hukum.</p> <p>Mahmud Saedon. 2000. <i>An Introduction To Islamic Law of Evidence</i>. Kuala Lumpur: The Open Press.</p> <p>Baharudeen Abu Bakar, <i>Amalan Undang-undang Dalam Mahkamah Syariah</i>' in Abdul Monir Yaacob (ed), <i>Undang-undang Keterangan dan Prosedur di Mahkamah</i>, 1995, IKIM, Kuala Lumpur.</p> <p><i>Manual Kerja Sulh</i>, Jabatan Kehakiman Syariah Malaysia.</p> <p>Ahmad Ibrahim, <i>Al Ahkam (PENGhakiman dan Kepeguaman)</i>, Dewan Bahasa dan Pustaka, 1997, Kuala Lumpur.</p>
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WEEK	TOPIC	REFERENCES
<p>Week 1</p>	<p>General overview of the course.</p> <p>Concept of justice in Islam, principles of <i>Al-Qada'</i> and <i>Al-Da'wa</i>.</p> <p>Element of justice in the Syariah Procedure Code:-</p> <ul style="list-style-type: none"> (a) By giving proper representation to the parties in litigations (ss34-38) (b) The case can be heard by impartial hearing. (ss119-129). (c) Seeking the truth and do justice (ss127) (d) Adherence to Islamic law and prevent injustice (ss209) <p>Jurisdiction of Syariah Court: -</p> <p>Civil- marriage, divorce, custody and guardianship, maintenance of children, matrimonial properties, alimony, Laws of succession, Probate and Administration – relating to distribution, Trust Deed – in respect of gift inter-vivos.</p> <p>Criminal jurisdiction- Limited and confined to offences in respect of: polygamous marriage, close proximity, indecent dressing and behavior, violation of the "pillars of Islam", not fasting during <i>Ramadhan</i>, not attending Friday prayers, desertion by either spouse and apostasy.</p>	<p>Mahmud Saedon. 2000. <i>An Introduction To Islamic Law of Evidence</i>. Kuala Lumpur: The Open Press.</p> <p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003.</p> <p>Article 121 (1A), Schedule 9 of the Federal Constitution of Malaysia 1957</p> <p>Administration of Islamic law (Selangor) Enactment 1989.</p> <p>Syariah Courts (Criminal Jurisdiction) Act 1965 Revised 1988.</p> <p>Muslim Courts (Criminal Jurisdiction) Amendment 1998.</p>

<p><u>Week 2</u></p>	<p><u>Syariah Civil Procedure</u></p> <p>Interpretation</p> <p>1) Documents Used In Syariah Court ss 3 – 6</p> <p>(i) Documents must be printed on good quality paper.</p> <p>(i) Document must be in Bahasa Malaysia. (S 232 of the Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003).</p> <p>(ii) Document must comply with the rules.</p> <p>2) Summons</p> <p>a. Form of summons (s 8)</p> <p>b. Copies of summons (s 9)</p> <p>c. Issue and service (s 10)</p> <p>d. Time of service (s 11)</p> <p>e. Lost of summons (s 12)</p> <p>Applications (ss13-ss15)</p> <p>(a) Form of application.</p> <p>(b) Application of ss9,10,11 and 12.</p> <p>(c) Application of divorce.</p> <p>3) Parties to an action/proceeding</p> <p>General</p> <p>f. Definition of parties (s 17)</p> <p>g. Joinder of parties (s18)</p> <p>h. Change of parties (s 19)</p> <p>i. Misjoinder or non-joinder of parties (s20).</p> <p>j. Amendment and service (s 21)</p> <p>k. Abatement of action (s 22)</p> <p>l. Devolution of interest (s23)</p>	<p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003.</p> <p>Selangor Syariah Civil Procedure Code Enactment 1991.</p> <p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003.</p> <p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p> <p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p>
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<u>Week 3</u>	<p>4) Parties to an action/proceeding Person Under Disability.</p> <ul style="list-style-type: none"> m. Person under disability (s 24) n. Consent on behalf of Person under Disability (s25) o. General provisions as to disability (s26) p. Irregular proceedings (s27) q. Removal of guardian ad litem (s 28). r. Minor plaintiff attaining majority (s29) s. Minor defendant attaining majority s30.) <p>5) Peguam Syarie</p> <ul style="list-style-type: none"> (a) Definition of Peguam Syarie. (b) Requirements to become Peguam Syarie. He must have a valid license and have knowledge on Syariah Laws. (d) Wakalah Peguam Syarie (s 34) (e) Service on Peguam Syarie (s35) (f) Change of Peguam Syarie (s 36) (g) Discharge of Peguam Syarie (s 37) (h) Discharge on application of Peguam Syarie (s38) (i) Death (s39) 	<p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p> <p>Peguam Syarie Rules 1991 (Selangor)</p> <p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p>
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<p><u>Week 4</u></p>	<p>6) Service Service Within Jurisdiction a. Address for service (s 40) b. Mode of service (s 41) c. Non-acceptance (s 42) d. Service on Peguam Syarie (s 43) e. Service at address for service (s 44) f. Day of appearance (s45) g. Place and time of service (s 46) h. Special cases (s47) i. Substituted Service (s48) j. Proof of service (s 49) k. Variation of Orders (s 50) l. Issue of warrant in lieu of or in addition to summons. Service out of Jurisdiction (ss 52 – 55)</p> <p>6) Interpleader (a) Entitlement to relief by way of interpleader (s 56) (b) Claim to goods (s 57) (c) Mode of application (s 58) (d) Service of summons (s 59) (e) Power of court hearing summons (s 60) (f) Other powers (s 61) (g) Trial interpleader issue. (s 62)</p>	<p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p> <p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p>
<p><u>Week 5</u></p>	<p>6) Pleadings (a) Statement of Claim (s 63) (b) Defendant to serve defence (s64) (c) Form of defence (s65). (d) Counterclaim (s66). (e) Defence to Counterclaim (s 67) (f) Defence to tender (s68). (g) Reply (s69) (h) Refusal to accept pleading and amendment (s70). (i) Particulars (s71).</p>	<p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p>

<p><u>Week 6</u></p>	<p>8) Discovery and Inspection of Documents Objectives of discovery. -to know and to ascertain the nature of the case -in order to support his own case -in order to narrow the points in issue - to avoid proving admitted facts</p> <p>(a) Discovery of documents and facts (s85) (b) Inspection of documents (s86). (c) Privileged communication and privileged documents (s 87). (d) No appeal against the order (s 88)</p> <p>9) Settlement, Withdrawal and Discontinuance. (a) Settlement of action (s 94) (b) Withdrawal of claim (s 95) (c) Effect of withdrawal on future proceedings (s 96). (d) Stay (s 97) (e) Withdrawal of defence (s 98) (f) Sulh (s 99)</p>	<p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p> <p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p> <p>Surah Al-Hujurat:9-10</p> <p><i>”Manual Kerja Sulh, Jabatan Kehakiman Shariah Malaysia.</i></p> <p><u>Semek bt Mamat v Zubaidah Bt Yassin</u></p>
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<p><u>Week 7</u></p>	<p>10) Subpoenas Types of subpoena. Subpoenas Ad Testificandum Subpoenas duces tecum Request for subpoena (s 102) (a) Numbers of person (s103) (b) Subpoena to produce documents (s 104) (c) Subpoena to produce documents (s104) (d) Amendment (s 105) (e) Service (s 106) (f) Duration (s 107) (g) Court records (s108) (h) Attendance of prisoner as witness or party (s 109). (i) Tender of expenses (s 110). (j) Affidavit of service of subpoena (s 111).</p> <p>11) Affidavit (a) Making of affidavit (s112) (b) Form of affidavit (s 113) (c) Copy of documents shall be annexed to the affidavit (s 114) (d) Rejection of affidavit (s 115) (e) Amendment (s 116) (f) Filing of affidavit (s 117) (g) Cross-examination of affidavit (s 118)</p>	<p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p> <p>Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003</p>
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<p><u>Week 9</u></p>	<p><u>Syariah Criminal Procedure</u></p> <p>1) Interpretation (s 2)</p> <p>General Provisions of Criminal Courts</p> <p>(a) Courts (s 4)</p> <p>(b) Courts to be open (s 5)</p> <p>(c) Exclusion of public in certain cases (s6).</p> <p>(d) Criminal jurisdiction of judge (s7)</p> <p>(e) Public to assist judge and Religious Enforcement Officer (s8-9)</p> <p>2) Arrest</p> <p>(a) How made (s10)</p> <p>(b) Search of place entered by person sought to be arrested (s 11)</p> <p>(c) Search of persons in place searched under warrant (s 12).</p> <p>(d) Power to break open any place for purposes of liberation (s 13).</p> <p>(e) No unnecessary restraint and mode of searching a person (s 14).</p> <p>(f) Search of person arrested (s 15)</p> <p>(g) Power to seize offensive weapons (s 16)</p> <p>(h) Search of persons for name and address (s17)</p> <p>(i) Arrest without warrant (s 18)</p> <p>(j) Refusal to give name and residence (s 19)</p> <p>(k) Persons arrested by Pegawai Masjid how to be dealt with (s20)</p> <p>(l) Pursuits of offenders (s21).</p> <p>(m) How person arrested to be dealt with and detention for more than 24 hours (s 22).</p> <p>(n) Release of person arrested (s 23).</p> <p>(o) Offence committed in the presence of judge (s 24).</p> <p>(p) Arrest by or in the presence of judge (s25)</p> <p>(q) Power to pursue and re-arrest (s 26)</p>	<p>Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003</p> <p>Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003</p>
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<u>Week</u> <u>13</u>	<p>9) Judgment</p> <p>(a) Mode of delivering judgment (s 118)</p> <p>(b) Judgment to be explained to accused (s119)</p> <p>(c) Filing of judgment (s 120)</p> <p>Sentences</p> <p>(d) Provision as to execution of sentences of imprisonment (s121)</p> <p>(e) Provision as to sentences of fine (s 122)</p> <p>(f) Suspension of sentencing (s123)</p> <p>(g) Warrant : by whom issuable (s 124)</p> <p>(h) Sentence of whipping (s 125)</p> <p>(i) Time of executing sentence of whipping (s126)</p> <p>(j) Commencement of sentencing (s127)</p> <p>(k) Youthful offenders and first offenders (ss 128-129)</p> <p>(l) Bond and its conditions (s 130)</p> <p>(m) Return of warrant (s 131)</p> <p>10) Appeal</p> <p>(a) Appeals to the Syariah High Court (ss 136 – 151)</p> <p>(b) Appeals to the Syariah Appeal Court (ss 152- 167)</p>	<p>Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003</p> <p>Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003</p> <p>Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003</p>
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<p><u>Week</u> <u>14</u></p>	<p>11) Revision (a) Power to revise (s 168) (b) Power to order further inquiry (s 169) (c) Power on revision (s 170) (d) Hearing of parties on revision (s 171) (e) Orders on revision (172)</p> <p>12) Bail (a) When person can be released on bail (s 185) (b) Amount of bond (s186) (c) Bond to be executed (s187) (d) When person to be released (s 188) (e) When warrant of arrest may be issued against person bailed (s 189) (f) Sureties may apply to have bond of discharge (s 190) (g) Appeal (s 191)</p>	<p>Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003</p> <p>Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003</p>
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