Course Code / Course Name	LAA 3043 CIVIL AND CRIMINAL PROCEDURE IN S COURT	YARIAH	
Status / Level	MAJOR / DEGREE		
Credit Hours	3 CREDIT HOURS LECTURES: 2 HOURS X 14 sessions TUTORIALS : 1 HOUR X 14 sessions	LECTURES: 2 HOURS X 14 sessions	
Methodology	LECTURES AND TUTORIALS / DISCUSSION	٧S	
Evaluation	Coursework[a] Assignment / Presentation10%[b] Participation10%[c] Mid semester examination20%Final Examination10%	40% 60%	
Lecturers	LL.B (Hons) (UIAM), LL.B (S) (UIAM), MCL (Advocate and Solicitor (Malaya) Norfadhillah Mohamad Ali (1 Lecture+ 2 Tutoria LL.B (Hons) (UIAM), MCL (UIAM) Abd Hamid Abd Murad (4 Tutorial= 4 hours) LL.B (Hons) (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)	
Objectives	 The main objectives of this course are: - To make students familiar with the necessary knowledge of Islamic procedure. To give students an overview of the current application of the procedural law in syariah court. 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 		

	 Malaysia; and 4) To introduce to the students the basic skills in drafting documents such as statement of claim, statement of defense, pleadings and etc. 		
Course Synopsis	nopsis This course will enable the students to understand and appreci the civil and criminal procedure in the Syariah Courts Malaysia. This course is divided into two parts. Part one deal w syariah civil procedure and part two discusses of the syari criminal procedure.		
	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.		
	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.		
	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.		
General References	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.		
	Syariah Criminal Procedure Code (Federal Territories) 1997 and other syariah state enactments.		

Syariah Courts (Criminal Jurisdiction) Act 1965 Revised 1988.
Muslim Courts (Criminal Jurisdiction) Amendment 1998
Federal Constitution of Malaysia 1957
Administration of Islamic law (FT) Act 1993.
Ahmad Ibrahim & Ahilemah Joned. <i>The Malaysian Legal System</i> , Dewan Bahasa dan Pustaka, Kuala Lumpur, 1995.
Farid Sufian Shuaib, Tajul Aris Ahmad Bustami and Mohd Hisham Mohd Kamal. <i>Administration of Islamic Law in</i> <i>Malaysia</i> . Malayan Law Journal. 2001
Hamid Sultan bin Abu Backer. <i>Janab's Key To Civil Procedure in Malaysia</i> . Janab (M) Sdn. Bhd.
The Mejelle, (An English Translation of Majallah Al-Ahkam Adliya, Pakistan: Law Publishing Company).
Sheikh Ghazali. 2000. Sulh Dalam Perundangan Islam, Jurnal Undang IKIM, Vol. 4.
Dr. Hashim Mehat, <i>Prosedur Jenayah di Mahkamah Syariah</i> . Isu Undang-undang dan Syariah.
Daud Muhammad, Prosedur Jenayah Mahkamah Syariah. Jurnal Hukum.
Mahmud Saedon. 2000. An Introduction To Islamic Law of Evidence. Kuala Lumpur: The Open Press.
Baharudeen Abu Bakar, Amalan Undang-undang Dalam Mahkamah Shariah' in Abdul Monir Yaacob (ed), Undang- undang Keterangan dan Prosedur di Mahkamah, 1995, IKIM, Kuala Lumpur.
Manual Kerja Sulh, Jabatan Kehakiman Shariah Malaysia.
Ahmad Ibrahim, <i>Al Ahkam (Penghakiman dan Kepeguaman)</i> , Dewan Bahasa dan Pustaka, 1997, Kuala Lumpur.

WEEK	ΤΟΡΙΟ	REFERENCES
Week 1	General overview of the course.	
	Concept of justice in Islam, principles of <i>Al-Qada</i> ' and <i>Al-Da'wa</i> .	Mahmud Saedon. 2000. An Introduction To Islamic Law of Evidence. Kuala Lumpur: The Open Press.
	 Element of justice in the Syariah Procedure Code:- (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) 	Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003.
	Jurisdiction of Syariah Court: - 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.	Article 121 (1A), Schedule 9 of the Federal Constitution of Malaysia 1957 Administration of Islamic law (Selangor) Enactment 1989.
	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.	Syariah Courts (Criminal Jurisdiction) Act 1965 Revised 1988. Muslim Courts (Criminal Jurisdiction) Amendment 1998.

Week 2	Syariah Civil Procedure	
	Interpretation	Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003.
	 Documents Used In Syariah Court ss 3 -6) (i) Documents must be printed on good quality paper. (i) Document must be in Bahasa Malaysia. (S 232 of the Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003). (ii) Document must comply with the rules. 	Selangor Syariah Civil Procedure Code Enactment 1991.
	 2) Summons a. Form of summons (s 8) b. Copies of summons (s 9) c. Issue and service (s 10) d. Time of service (s 11) e. Lost of summons (s 12) 	Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003.
	Applications (ss13-ss15)(a)Form of application.(b)Application of ss9,10,11 and 12.(c)Application of divorce.	Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003
	 3) Parties to an action/proceeding General Definition of parties (s 17) Joinder of parties (s18) Change of parties (s19) Misjoinder or non-joinder of parties (s20). Amendment and service (s 21) Abatement of action (s 22) Devolution of interest (s23) 	Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003

Week 3	 4) Parties to an action/proceeding Person Under Disability. 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.) 	Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003
	 5) Peguam Syarie (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 (s 35) (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) 	Peguam Syarie Rules 1991 (Selangor) Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003

Week 4	6) Service	
week 4	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)	Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003
	 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) 	
	 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) 	Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003
Week 5	 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). 	Selangor Syariah Civil Procedure Code Enactment (Amendment) 2003

Week 6	8) Disco	overy and Inspection of Documents	
		ctives of discovery.	
		to ascertain the nature of the case	Selangor Syariah Civil
	-in order to s	upport his own case	Procedure Code
		arrow the points in issue	Enactment
		oving admitted facts	(Amendment) 2003
	(a) Discovery of documents and facts		
		(\$85)	
	(b)	Inspection of documents (s86).	
	(c)	Privileged communication and	
		privileged documents (s 87).	
	(d)	No appeal against the order (s 88)	
	,	ement, Withdrawal and	
	Disco	Selangor Syariah Civil	
	(a)	Settlement of action (s 94)	Procedure Code
	(b)	Withdrawal of claim (s 95)	Enactment
	(c)	Effect of withdrawal on future $\frac{1}{2}$	(Amendment) 2003
		proceedings (s 96).	
	(d)	Stay (s 97)	
	(e)	Withdrawal of defence (s 98)	0 1 1 1 1 2 0 10
	(f)	Sulh (s 99)	Surah Al-Hujurat:9-10
			"Manual Kerja Sulh,
			Jabatan Kehakiman
			Shariah Malaysia.
			-
			Semek bt Mamat v
			Zubaidah Bt Yassin

<u>Week 7</u>	10)	Subpo		
		• 1	of subpoena.	
		Subpo	enas Ad Testificandum	
		Subpo	enas duces tecum	
		Reque	est for subpoena (s 102)	
		(a)	Numbers of person (s103)	Selangor Syariah Civil
		(b)	Subpoena to produce documents (s 104)	Procedure Code Enactment
		(a)	·	(Amendment) 2003
		(c)	Subpoena to produce documents (s104)	(Amendment) 2005
		(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	
		U	111).	
	11)	Affida	avit	
		(a)	Making of affidavit (s112)	Selangor Syariah Civil
		(b)	Form of affidavit (s 113)	Procedure Code
		(c)	Copy of documents shall be	Enactment
			annexed to the affidavit (s 114)	(Amendment) 2003
		(d)	Rejection of affidavit (s 115)	Ň Ź
		(e)	Amendment (s 116)	
		(f)	Filing of affidavit (s 117)	
		(g)	Cross-examination of affidavit (s	
		10/	118)	
			,	

Week 8	12)	Hearing	Selangor Syariah Civil
		(a) Hearing in court (s119)	Procedure Code
		(b) Appearance (s 120)	Enactment
		(c) Absence of parties (s 121)	(Amendment) 2003
		(d) Counterclaims (s 122)	
		(e) Mutual claims (s 123)	
		(f) Notes of evidence (s 124)	
		(g) Documents or exhibit (s 125)	
		(h) Order of speeches (s 126)	
		(i) Power of court (s 127)	
		(j) Trial not concluded (s 128)	
		(k) Adjournment (s 129)	
	13)	Judgments and Orders	
		(a) Judgment (s130)	
		(b) Consent judgment (s 131)	Selangor Syariah Civil
		(c) Terms of judgment or order to be	Procedure Code
		sttled by Court (s132)	Enactment
		(d) Instalments (s134)	(Amendment) 2003
		(e) Order for instalments (s135)	
		(f) Judgment etc requiring act to be	
		done: time for doing it (s 136).	
		(g) Date of judgment (s 137).	
		(h) Judgment on movable property (s	
		138).	
		<i>`</i>	
		Appeals	Selangor Syariah Civil
		Notice of appeal (s139)	Procedure Code
		Grounds of appeal (s141)	Enactment
		Stay of execution pending appeal (s 144)	(Amendment) 2003

	byai		minal Procedure	
<u>Week 9</u>	1)	Inter	rpretation (s 2)	Selangor Syariah Criminal Procedure Code
		Gene	eral Provisions of Criminal Courts	Enactment
		(a)	Courts (s 4)	(Amendment) 2003
		(b)	Courts to be open (s 5)	``´´´
		(c)	Exclusion of public in certain	
		~ /	cases (s6).	
		(d)	Criminal jurisdiction of judge (s7)	
		(e)	Public to assist judge and	
		~ /	Religious Enforcement Officer	
			(\$8-9)	
	2)	Arre	st	Selangor Syariah Criminal
		(a)	How made (s10)	Procedure Code
		(b)	Search of place entered by person	Enactment
			sought to be arrested (s 11)	(Amendment) 2003
		(c)	Search of persons in place	
			searched under warrant (s 12).	
		(d)	Power to break open any place for	
			purposes of liberation (s 13).	
		(e)	No unnecessary restraint and mode	
			of searching a person (s 14).	
		(f)	Search of person arrested (s 15)	
		(g)	Power to seize offensive weapons	
		(8)	(s 16)	
		(h)	Search of persons for name and	
			address (s17)	
		(i)	Arrest without warrant (s 18)	
		(j)	Refusal to give name and	
		0/	residence (s 19)	
		(k)	Persons arrested by Pegawai	
			Masjid how to be dealt with (s20)	
		(1)	Pursuits of offenders (s21).	
		(n)	How person arrested to be dealt	
		(111)	with and detention for more than	
			24 hours (s 22).	
		(n)	Release of person arrested (s 23).	
		(0)	Offence committed in the presence	
			of judge (s 24).	
		(p)	Arrest by or in the presence of	
		(b)	judge (s25)	
		(a)	Power to pursue and re-arrest (s	
		(q)	26)	
			20)	

<u>Week</u> <u>10</u>	3)	Sumn (a) (b) (c) (d)	nons Forms of summons and service (s 28) How served (s 29) Procedure when personal service cannot be effected (s 30) Proof of service (s 31)	Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003
	4)	Warr	ant of Arrest	
		(a) (b) (c) (d) (e) (f)	Form of warrant of arrest (s 32) Court may direct by indorsement on warrant security to be taken(s 33) To whom directed (s 34) Notification of substance of warrant. (s 35) Person arrested (s36) Procedure of arrest of person against whom warrant is issued (s 37).	Selangor Syariah Criminal Procedure Code Enactment (Amendment) 2003

Week	5)	Sear	ch Warrant	
<u>11</u>		(a)	When search warrant can be issued	Selangor Syariah Criminal
		(h)	(s 44)	Procedure Code
		(b)	Power to restrict search warrant (s 45)	Enactment (Amendment) 2003
		(c)	Judge may issue warrant	(Amendment) 2003
		(0)	authorizing search for evidence of	
			offence (s46).	
		(d)	Form of search warrant (s 47)	
		(e)	Search of persons wrongfully confined (s 48).	
		(f)	Persons in charge of closed places to allow search (s 49)	
		(g)	Judge issuing search warrant may attend at its execution (s50)	
		(h)	Judge may direct search in his presence (s51)	
		(i)	List of items in search warrant to	
			be made and signed (s 52)	
		(j)	Occupant to be search (s53)	
	6)		mation to Religious Enforcement	
	Offic	ar (a)	Information (s 54)	
		(a) (b)	Procedure where offence is	Selangor Syariah Criminal
		(0)	suspected (s 55)	Procedure Code
		(c)	Admission of certified copy of	Enactment
			information as evidence (s56)	(Amendment) 2003
		(d)	Procedure where seizable offence suspected (s 57)	
		(e)	Power to require attendance of witnesses.	
		(f)	Examination of witnesses by REO. (s 58)	
		(g)	Statement of REO not to be admitted in evidence (s 60)	
		(h)	No inducement to be offered (s 61)	
		(i)	Power to record statements and	
			confessions (s 62)	
		(j)	Search by REO (s 63)	
		(k)	REO may require bond of	
			appearance of complainant and witnesses. (s 64).	
		(1)	Diary of proceedings (s 65).	
		(n) (m)	Report of Religious Enforcement	
		(111)	Officer(s 66).	

Week	7)	Charg	ge	
12	Í	(a)	Form of Charge (s 78)	Selangor Syariah Criminal
		(b)	Particulars as to time and place	Procedure Code
			(\$79)	Enactment
		(c)	When manner committing offence	(Amendment) 2003
			must be stated (s 80)	
		(d)	Sense of words used in charge to	
			describe offence. (s 81)	
		(e)	Effect of errors (s 82)	
		(f)	Court may amend or add to change	
			(s 83)	
		(g)	When trial may proceed	
			immediately after amendment or	
		4 \	addition (s 84)	
		(h)	When new trial may be directed or	
			trial adjourned (s 85)	
		(i)	Stay of proceedings if prosecution	
			of offence in amended charge	
		(\cdot)	requires previous sanction (s 86)	
		(j)	Recall of witnesses when charge	
		$(\mathbf{l}_{\mathbf{r}})$	amended or added (s 87)	
		(k)	Separate charges for distinct offences (s88).	
		(1)	Three offences of same kind	
		(1)	within 12 months may be charges	
			together (s 89)	
		(m)	Trial for more than one offence (
		(III)	s90)	
		(n)	Where it is doubtful what offence	
			has been committed (s91)	
		(0)	When a person charged with one	
			offence can be convicted for	
			another (s 92)	
		(p)	Person charged with an offence	
			can be convicted of the attempt (s	
			93)	
		(q)	When offence proved is included	
			in offence charged (s 94)	
		(r)	When persons may be charged	
			jointly (s 95).	
	8)	Trial		
		(a)	Procedure during trial (s96)	
		(b)	Power of court to discharge	Selangor Syariah Criminal
			conditionally or unconditionally (s	Procedure Code
		(a)	97) Addresses (s. 98)	Enactment
		(c) (d)	Addresses (s 98) Power to award compensation	(Amendment) 2003
		(d)	Power to award compensation (s99)	
		(e)	Particulars to be recorded (s 100)	
		(e) (f)	Transfer of cases (s101)	
		(1)	14	

<u>Week</u>	9)	Judg	ment	Selangor Syariah Criminal	
<u>13</u>	-)	(a)	Mode of delivering judgment (s 118)	Procedure Code Enactment	
		(b)	Judgment to be explained to accused (s119)	(Amendment) 2003	
		(c)	Filing of judgment (s 120)		
		Sente	ences		
		(d)	Provision as to execution of sentences of imprisonment (s121)	Selangor Syariah Criminal Procedure Code	
		(e)	Provision as to sentences of fine (s 122)	Enactment (Amendment) 2003	
		(f)	Suspension of sentencing (s123)		
		(g)	Warrant : by whom issuable (s 124)		
		(h)	Sentence of whipping (s 125)		
		(i)	Time of executing sentence of whipping (s126)		
		(j)	Commencement of sentencing (s127)		
		(k)	Youthful offenders and first offenders (ss 128-129)		
		(1)	Bond and its conditions (s 130)		
		(m)	Return of warrant (s 131)		
	10)	Appeal		Selangor Syariah Criminal	
		(a)	Appeals to the Syariah High Court (ss 136 – 151)	Procedure Code Enactment	
		(b)	Appeals to the Syariah Appeal Court (ss 152-167)	(Amendment) 2003	

Week	11)	Revision		Selangor Syariah Criminal
14	/	(a)	Power to revise (s 168)	Procedure Code
		(b)	Power to order further inquiry (s 169)	Enactment (Amendment) 2003
		(c)	Power on revision (s 170)	
		(d)	Hearing of parties on revision (s 171)	
		(e)	Orders on revision (172)	
	12)	Bail		
		(a)	When person can be released on bail (s 185)	Selangor Syariah Criminal Procedure Code
		(b)	Amount of bond (s186)	Enactment
		(c)	Bond to be executed (s187)	(Amendment) 2003
		(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)	