



# **CIVIL PROCEDURE IN THE SYARIAH COURT**

**16<sup>th</sup> August 2006**

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- SETTLEMENT, WITHDRAWAL AND DISCONTINUANCE
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# Settlement

- Before the hearing.
- The case through settlement.
- Settlement can be either through:-
  - (1) Settlement outside court (sulh)
  - (2) Withdrawal

# SETTLEMENT

- S 94- Where by agreement of the parties an action has been settled, the court may at any time, by consent of the parties, record the fact of such settlement with the terms thereof and the record of the settlement shall afford a defence by way of res judicata to the subsequent proceedings from the same or substantially the same, cause of action.

# Res Judicata

- Res judicata (from "res iudicata", Latin for "a thing decided"), more commonly res judicata in legal usage, is a common law doctrine meant to bar relitigation of cases between the same parties in court.
- A rule of civil law that once a matter has been litigated and final judgment has been rendered by the trial court, the matter cannot be relitigated by the parties in the same court, or any other trial court. A court will use res judicata to deny reconsideration of a matter.

# Withdrawal

- S 95- PT- may with leave of the court, at any time b4 judgment withdraw any proceedings wholly or in part by giving notice in Form MS 19.
- The Dt entitled to the costs.
- S 96- Cannot bring an action for the same unless the Court granted leave to institute fresh proceedings.

# Stay

- S 97-If the Pt has withdrawn any proceedings and he is liable to pay costs, then if b4 payment of such costs he subsequently brings an action for the same, the court may order that the proceedings to be stayed until such costs are paid.

# Withdrawal of Defence

- S 98- A dt may at any time by giving notice to the Pt withdraw his defence and shall in such event be precluded from defending the proceedings or any part thereof, as the case may be.



# Sulh

- The parties to an action are encouraged to hold sulh. Pegawai Sulh is appointed and placed at Shariah Subordinate Court. Pegawai Sulh will conduct the Majlis Sulh.
- Functions of Pegawai Sulh
  - To solve problems of backlog cases in the court- In Selangor Sulh has decreased about 65% cases in Court.
  - As an arbitrator, to provide settlement on win win basis.
  - Majlis sulh will be attended by the disputed parties only and not in open court.

## S 99

- The parties to any proceedings may at any stage of the proceedings, hold sulh to settle their dispute in accordance with such rules as may be prescribed or, in the absence of such rules, in accordance with hukum syarak.
- *Manual Kerja Sulh,*

# Case

- Semek bt Mamat v Zubaidah Bt Yassin
- Mother claimed for harta sepencarian against her daughter.
- Defendant agreed to settle by way of sulh.

# SUBPEONAS

- An order from the court to any party (witness) to come to the court to give explanation on certain issue.
- 2 types:
  - (1) Subpoenas Ad Testificandum
  - (2) Subpoenas duces tecum.

# Section 102

- Request for issue of subpoenas
- Form MS20
- Filed in court
- Contained name, address or name of the firm
- Being sealed in by an officer of the court.

## Section 104

- Subpoenas to produce documents
- He shall sufficiently comply.

## Section 105

- Amendment of subpoenas
- Resealed and endorsed, amended and resealed.

# Section 106

- **Shall be served personally**
- **Service shall be done within 12 weeks after the date of the issue of the subpoena.**

# Section 109

- Attendance of prisoners as witness or party
- Exparte by notice in Form MS 24.
- The cost of conveying of the witness in safe custody and from the court shall paid in the first instance.
- Order in Form MS25.



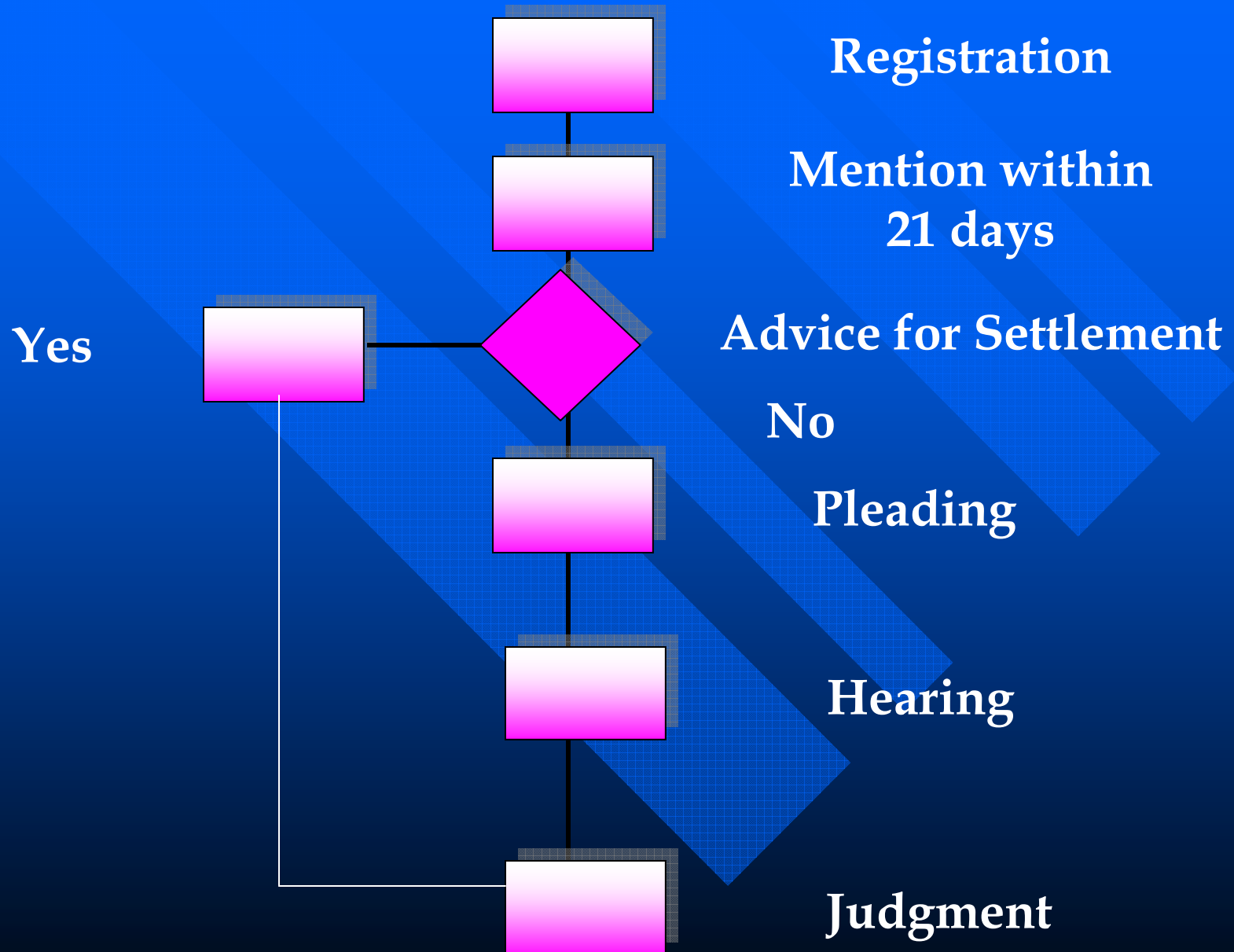
## Section 110

- Tender of expenses
- Shall not be compelled to attend
- Unless reasonable sum to cover his expenses.

## Section 111

- Affidavit of service.

# Flow Chart For Civil Cases



# 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.

# Section 126-Order of Speeches

- Plaintiff opening his case and each party may b4 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.

- (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.

# JUDGMENT AND ORDERS

- Judgment
- Where a decision brings finality to an action.
- Eg: Default judgment, consent judgment.
- Order-
- Where the decision of the court are only interlocutory in nature.
- Eg: Order to amend pleadings

# PART XVI- SS130-137

- S 130
- Every trial Judge shall deliver a written judgment
- Pronounce his judgment in open court  
Except in chambers.
- If unable to pronounce judgment, the written judgment may be read in open court by any other judge or Registrar
- Judgment shall form the record of the case.



# Section 131

- **Consent Judgment**
- **Judgment by confessions**
- **Consent of the parties**
- **Sulh**
- **May be recorded by the court at any time**

## SECTION 132

- **Terms of judgment or order to be settled by court.**
- **The court shall settle the terms of a judgment or order in such judgment or order.**

# SECTION 133

- **Installments when due.**
- **Where any order is made for payment by installments in a particular month, the installment shall, in the absence of any a direction to the contrary, be deemed to be payable on the first day of the month next following and on the first day of each succeeding month.**

# SECTION 133

- **Order for installments**
- **Any debtor against whom a judgment has been or is about to be given may apply to the court-**
- **For leave to pay the judgment debt by installments or**
- **For leave to pay by reduced installments**

## Cont....

- **If 1 month in arrears such order shall be deemed to be vacated and the JC may execute for the whole amount then due on the judgment, but the judgment debtor may apply for another order.**
- **Order for payment by Installment-Any party may apply**
- **Installment be vacated**
- **Be increased or decreased**
- **After hearing the parties.**

## SECTION 134

- **Judgment, etc requiring act to be done: time for doing it.**
- **Every judgment or order requiring any person to do any act, other than the payment of money, shall state the time within which the act is to be done, and if no time be so stated, the act shall be done within 7 days from the date of the judgment or order.**

## Cont....

- Where the person required to do the act was personally present or represented by his Peguam Syarie when the judgment or order was given or made, it shall not be necessary to serve him with a copy of the judgment or order.

## Cont...

- **Where the person required to do the act was not personally present or represented no proceedings for his arrest or commitment shall be taken unless he has been served with a copy of the judgment or order endorsed with a notice in Form MS 28.**
- **If there is no endorsement then committal proceedings (s 151) may not be successful.**



## Section 136

- **Date of judgment or order.**
- **Shall be dated and take effect on the date on which it was given or made.**

# Section 137

- **Judgment on Movable Property.**
- **A judgment for the delivery of movable property shall state the amount of money to be paid as an alternative if delivery cannot be made.**

# Section 147

- Duty to comply.
- Shall comply without demand,
- Not necessary to serve on him the judgment
- Except if a person was not personally present or represented.
- Contempt of court.
- S 229- Notice to show action or cause.
- S 23- body corporate.

# Appeal S138-146

- Section 139-
- Form MS 29
- File notice of appeal within 14 days
- The ct upon payment of prescribed fee supply the appellant a certified copy of the notes of evidence and the judgment.
- Notify the the Appellant in Form MS 30.
- Within 14 days deposit appropriates sum to the court.

# Section 141

- Grounds of appeal
- Within 14 days- lodge grounds of appeal in 5 copies.
- Shall state briefly the substance of judgment
- Shall contain definite particulars of the law or fact.

# Section 144

- Stay of execution pending appeal.
- Filing of notice shall not operate as a stay of execution
- The ct may on application and on sufficient cause being shown stay execution on such terms as it may think fit.

# Learning Outcome

- Students should be able to understand the hearing procedures, nature of judgment and orders.
- Committal proceedings could be invoked if a person do not comply with the judgment or orders.
- There is a right of appeal to any party in dispute and notice of appeal must be filed 14 days form the date of judgment.

# Thank You



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