



SYARIAH CIVIL PROCEDURE



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INTRODUCTION

- There are four types of services:-
 - (i) Personal Service;
 - (ii) Service on person under disability;
 - (iii) substituted service
 - (iv) service out of jurisdiction




PART VI CHAPTER 2

■ Section 52- Ct may order service of summons out of the jurisdiction:-

- (1) SM relates to immovable property situated within Selangor
- (2) Relief is sought against any person domiciled or ordinarily residing or carrying on business within the selangor

Cont...

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- (3) Action being properly brought against a person duly served within the selangor, out of selangor is necessary or proper party thereto
 - (4) Arising from marriage, the residence of one of the parties to the marriage is at the time of the application within selangor.
 - Subject to s54, order shall direct the mode of service is to be effected.



SECTION 53

An order of service shall fix the day of appearance of the person to be served and the court shall have regard to and may require evidence as to means of communication and transport.

SECTION 54

- Any summons or application OOI may be sent to any court having jurisdiction in the local area in which the person to be served is said to be.
- The summons or application may be sent by post or otherwise with a written request for service signed by the judge or registrar.



SECTION 55


- An order of service OOJ may be varied by the Court.

PART VII

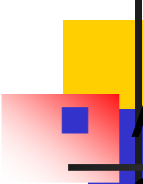
Interpleader Proceedings?

- **IP is one in which a person sued in respect to property, disclaims any interest in it and request the court that rival claimants litigate their titles between themselves and relieve him from responsibility.**
- **Normally in 2 situations:-**
- **(1) Sheriff interpleader**
- **(2) Stakeholder interpleader**

SECTION 56

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- Person or bailiff may apply to the court for relief by way of interpleader where:-
 - A person is under a liability in respect of any debt or any money or expects to be sued in respect of such debt or money
 - Claim is made to any money, goods taken or intended to be taken by a bailiff in execution under any judgment
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SECTION 57

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- Any person making a claim in respect of money shall give notice in form MS 9 of his claim to the bailiff charged with the execution of the judgment and shall include in his notice a statement of his address and that address shall be his address for service.
 - On receipt of a claim the bailiff shall forthwith give notice in Form MS10 to the execution creditor and the EC shall within 4 days give notice in Form MS 11 to the Bailiff informing him he admits or disputes the claim.



Cont....

Where the bailiff receives a notice from the EC, disputing the claim or the EC fails to give required notice and the claim is not withdrawn the bailiff may apply to the court for relief.

- A bailiff who receives a notice form EC admitting a claim shall withdraw possession of the money, goods or property claimed.



SECTION 58

- Application for relief shall be made in Form MS12 or MS13
- Supported by affidavit stating:-
- Claims no interest in the SM.
- Does not collude with any of the claimants to that SM
- Willing to transfer or pay that SM in to Court.
- If the applicant is a bailiff-no such requirement unless ct orders otherwise.



SECTION 59

- ~~The summons shall be personally served at least 7 days before the day of appearance~~
- IS shall be in Form MS14.



SECTION 60

- (1) Where on the hearing of summons, the court may order any claimant be made defendant or an issue b/n the claimants be stated and tried and may direct to be the PT or DT.



Cont...

- (2) Applicant is a bailiff
 - All the claimants consent
 - The question at issue is a question of law and facts are not in dispute
 - The court may summarily determine the question at issue between the claimants and make an order as it thinks just.



SECTION 61

- The court may make such order as to cost

SECTION 62

- Part XV shall apply .
- The court may give such judgment or order to dispose all questions arising in the IP.
- The judgment shall be in Form MS15.



Pleadings

Pleadings are statements in writing drawn up and filed by each party to an action stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer.

- Eg. SOC, defence, reply, counterclaim, defence to counterclaim.



Objectives of Pleadings

- To define with clarity and precision the issues in dispute
- To require each party to give fair and proper notice to his opponent in order to enable him to prepare his case.
- To inform the court the issues which are required to be determined by the court.



SECTION 63

Every SOC shall be signed by the PT or his peguam syarie and shall contain:

- A concise statement, in numbered para, particulars of any special capacity in which the Pt sues.
- Sufficient particulars of the claim
- A statement of the relief claimed
- Particulars of other application.
- If more than one cause of action, the grounds of each and relief shall be stated separately.



SECTION 64

Defendant to serve defence at any time before the day of appearance, serve on the Pt a defence

- Appear on the day of appearance and dispute the Pt's claim. The court may order him to serve a defence within such time as it may direct.



SECTION 65

Every defence shall be signed by the DT or his peguam syarie and shall:-

- Admit or deny every allegation
- State concisely any new facts
- Raise concisely without argument any necessary matters of law.

SECTION 66

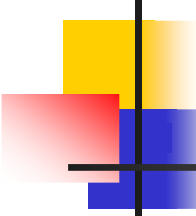
Every counterclaim shall be signed by dt or peguam syarie.

- It shall not be made against any person other than a party unless cross action is brought.

SECTION 67

The Pt shall if he desires to defend the counterclaim file and cause to be served on the DT. A defence to the counterclaim within such time as the court shall direct.

Section 68

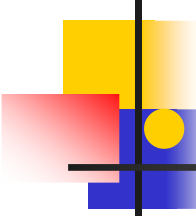


Defence of tender, the defendant shall on his filing his defence pay into court the amount alleged to be tendered.

Section 69

- The Ct may grant leave to file and deliver a reply to a defence whether such defence is a defence against a claim or counterclaim.

Section 70

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- The CT may refuse to accept or may return for amendment any pleading which does not comply with the requirements of this part.

Section 71

- If the pleading does not contain sufficient particulars the court may order the party responsible to file and cause to be served further and better particulars and may stay all proceedings pending compliance



PART XI-DISCOVERY

- Discovery is the process of finding out materials facts, documents from an adversary in order
- -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.

Cont....

It enables all the parties to an action to ascertain all the material facts constituting the case.

- Every party to an action is entitled to know the nature of his opponent's case so that he may know before hand what case he has to meet at the hearing.
- The process of discovery operates in 3 stages namely:- Disclosure, Inspection and Production.



SECTION 85

- The court may order any party to state on oath orally or by affidavit what document he has or has had in his possession or power relating to the matters in question.
- To produce any document in his possession or power.
- If a company or body , officers of the co. may be ordered to comply with the order.
- The Ct may stay the proceedings pending compliance of the order.



SECTION 86

- Any party shall be entitled to inspect and copy any document in the possession or power of another party and referred to in any pleading, affidavit filed by him in the proceedings or on oral examination.



SECTION 87

Production and inspection of documents shall be subject to the provisions of law relating to privilege communication and documents.

SECTION 88

- There shall be no appeal against any order of the court under this part except in an appeal against the judgment as a whole.



CONCLUSION

- Students should understand the procedures for service out of jurisdiction, pleadings, interpleader and discovery and inspections.
- These procedures are very important especially in preparing a case before the court.



Thank You



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