



# **LAWS OF SARAWAK**

**REPRINT**

## **Chapter 44**

### **SYARIAH CIVIL PROCEDURE ORDINANCE, 2001**

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**SYARIAH CIVIL PROCEDURE ORDINANCE, 2001**

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**SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001**

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Sarawak LawNet



**LAWS OF SARAWAK**

**Chapter 44**

**SYARIAH CIVIL PROCEDURE ORDINANCE, 2001**

*An Ordinance to make provisions relating to civil procedure for Syariah Courts.*

*\*[1.12.2004]*

*\*(Swk. L.N. 155/2004)*

Enacted by the Legislature of Sarawak—

**PART I  
PRELIMINARY**

**Short title and commencement**

1.—(1) This Ordinance may be cited as the Syariah Civil Procedure Ordinance, 2001.

(2) This Ordinance shall come into force on such date as the Chief Minister may, by notification in the *\*Gazette*, appoint.

**Application**

2. This Ordinance shall have effect in all civil proceedings commenced in any Syariah Court except as otherwise provided under any other written law or ordered by the Court.

**Interpretation**

3.—(1) In this Ordinance, unless the context otherwise requires

— “bailiff” includes the Registrar or any clerk or officer of the Court charged with performing the duties of a bailiff;

“certified translation” means a translation of any document certified as correct by an officer of the Court or by any other person accepted by the Court;

“Court” or “Syariah Court” means the Syariah Appeal Court, the Syariah High Court or the Syariah Subordinate Court, as the case may be, constituted under section 3 of the Syariah Courts Ordinance, 2001 [*Cap. 42*];

“day of appearance” means the day appointed in any summons or other proceedings for the appearance of the defendant or any other day for hearing of the proceedings;

“form” means a form set out in the Third Schedule, and a form referred to by a number means the form so numbered in that Schedule;

“Judge” or “Syariah Judge” means the Chief Syariah Judge, a Judge of Syariah Appeal Court, a Judge of Syariah High Court or a Judge of the Syariah Subordinate Court, as the case may be, appointed under section 4, 5, 6 or 8 of the Syariah Courts Ordinance, 2001 [*Cap. 42*];

“judgment” includes grounds of judgment;

“judgment creditor” means a person having the right to enforce judgment for payment of money either by instalment or otherwise;

“judgment debtor” means a person liable under any judgment for payment of money;

“lien” means a right on the property of a judgment debtor to the extent of the indebtedness;

“Majlis” means the Majlis Islam Sarawak established under section 3 of the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*];

“minor” means a person who has not attained the age of eighteen years;

“notice” means written notice unless the Court in any case shall order otherwise;

“*Peguam Syarie*” means a person who has been admitted as *Peguam Syarie* under section 28 of the Syariah Courts Ordinance, 2001 [*Cap. 42*];

“person under disability” includes an infant, a person of unsound mind and a person prohibited from administering his property;

“prescribed” means prescribed by rules made under this Ordinance;

“Registrar” means the Chief Registrar of the Syariah Appeal Court, the Registrar of the Syariah High Court or an Assistant Registrar of the Syariah Subordinate Court, as the case may be, appointed under section 9 of the Syariah Courts Ordinance, 2001 [*Cap. 42*].

(2) All words and expressions used in this Ordinance and not herein defined but defined in the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*], the Syariah Courts Ordinance, 2001 [*Cap. 42*], the Islamic Family Law Ordinance, 2001 [*Cap. 43*] or any other written law for the time being in force shall have meanings assigned thereto to the extent that such meanings do not conflict with Islamic Law.

(3) For the avoidance of doubt as to the identity or interpretation of words and expressions used in this Ordinance that are listed in the First Schedule, reference may be made to the Arabic script for those words and expressions as shown against them therein.

#### **General title of form**

4. Every document, including forms, filed in Court shall bear the general title as in Form MS 1.

PART II  
EFFECT OF NON-COMPLIANCE

**Non-compliance**

5. Non-compliance with any provisions of this Ordinance or any rules made thereunder shall not render any proceedings void unless the Court shall so order, but the Court may, of its own motion or on the application of any party, set aside any proceedings wholly or in part as irregular, or order such amendments to be made on such terms as it thinks just.

**Application to set aside for irregularity**

6. Any application to set aside for irregularity any proceedings, step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken a fresh step after becoming aware of the irregularity.

PART III  
MODE OF BEGINNING CIVIL PROCEEDINGS

CHAPTER 1  
GENERAL

**Mode of beginning civil proceedings**

7.—(1) Subject to subsection (2) or any other written law, every civil proceedings in a Court shall be begun by summons.

(2) All proceedings in respect of any of the matters specified in the Second Schedule shall be begun by application.

CHAPTER 2

SUMMONS

**Forms of summons**

8. Every summons—
- (a) shall be in Form MS 2; and
  - (b) shall be accompanied by a statement of claim which shall comply with the requirements of section 63.

**Copies of summons**

9. Every summons against a single defendant shall be presented for filing in triplicate and an additional copy shall be presented for every additional defendant.

**Issue and service**

- 10.—(1) The Registrar shall examine the summons and—
- (a) if the summons appears to be in proper form; and
  - (b) if the plaintiff has paid the prescribed fees, including the fees for service if service by Court is required,

the Registrar shall assign a serial number thereto, seal, sign and issue it.

(2) If the Registrar is of the opinion that the summons is not in proper form, he may reject it or direct that it be amended.

**Time of service**

11.—(1) For the purpose of service, each summons shall be valid in the first instance for twelve months beginning with the date of its issue.

(2) Where a summons has not been served on a defendant within the period specified in subsection (1), an application may be made to the Court to extend the validity of the summons before the expiry date or such later day, if any, as the Court may allow.

(3) The Court may by order extend the validity of the summons from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire.

### **Loss of summons**

12. If a summons is lost after issue, the Court may order a new summons to be issued bearing the date of, and having the like effect as, the original summons.

## CHAPTER 3 APPLICATIONS

### **Form of application**

13.—(1) Save as hereinafter provided, every application shall be made by notice in Form MS 3 and supported by an affidavit sworn in accordance with this Ordinance.

(2) Every application shall state in full the nature of the order applied for, and in sufficient detail the facts relied upon in support thereof, and unless the Court otherwise orders, shall be served on all parties and persons interested therein.

(3) In an application, the objector shall be referred to as the respondent.

### **Application of sections 9, 10, 11 and 12**

14. Sections 9, 10, 11 and 12 shall apply, with such modifications as may be necessary, in relation to an application as they apply in relation to summons.

### **Application for divorce**

**15.** Notwithstanding anything in this Part, an application for divorce shall be made in accordance with the procedures laid down in the Islamic Family Law Ordinance, 2001 [*Cap. 43*] and further proceedings in respect thereof shall be conducted in accordance with that Ordinance.

## **CHAPTER 4**

### **ORAL CLAIM OR DEFENCE**

#### **Oral claim or defence**

**16.—(1)** Notwithstanding anything in this Ordinance, the Court may, in its discretion, allow any claim or defence to be made orally:

Provided that in such a case the Court shall record the particulars of the claim or defence having regard to the requirements of this Ordinance relating to summons or applications, as the case may be.

(2) The Court shall serve a copy of the record made under subsection (1) on the party for whom the particulars of the claim or defence, as the case may be, is recorded.

(3) On receipt of the record referred to in subsection (2), the party on whom it is served shall—

(a) certify the particulars contained therein by setting down his signature or affixing his right thumb-print on the record;

(b) prepare sufficient copies of the record so that one copy can be served on each of the other parties to the proceedings; and

(c) serve one copy of the record to every such party at least fourteen days before the day of appearance.

(4) Where the Court allows a claim or defence to be made in accordance with subsection (1), it shall impose such fees as may be prescribed in addition to any other fees payable under this Ordinance.

PART IV  
PARTIES  
CHAPTER 1  
GENERAL

**Interpretation**

17. In this Part, “plaintiff” includes an applicant and “defendant” includes a respondent.

**Joinder of parties**

18.—(1) Two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where—

(a) separate actions were brought by or against each of them, as the case may be, and some common question of law or fact would arise in all the actions; and

(b) all rights to relief claimed in the action, whether they are joint, several or in the alternative, are in respect of or arise out of the same transaction or series of transactions.

(2) Notwithstanding subsection (1), if it appears to the Court that any joinder may embarrass any defendant or delay the trial or be otherwise inconvenient, the Court may, of its own motion or on the application of the defendant, order separate trials or make such other orders as it thinks fit.

(3) Judgment may be given without any amendment to any plaintiff for the relief to which he is entitled, or against such one or more of the defendants as may be found liable according to their respective liabilities.



### **Changes of parties**

**19.—**(1) Subject to subsection (2), the Court may, of its own motion or on the application of any parties at any stage of the proceedings, strike out, substitute or add any party in such manner and upon such terms as may be just and proper.

(2) No person shall be made plaintiff without his consent or, if under disability, the consent of his representatives which shall be signified in writing or in such other manner as may be authorized.

### **Misjoinder and nonjoinder of parties**

**20.—**(1) Subject to subsection (2), at any stage of the proceedings in any cause or matter the Court may, as it thinks just and either of its own motion or on application—

(a) order any party who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party; or

(b) order any party who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon to be added as a party.

(2) No person shall be added as a plaintiff without his consent which shall be signified in writing or in such other manner as may be authorized.

### **Amendment and service**

**21.—**(1) Where any change of parties occur during the pendency of any proceedings—

(a) the title of the proceedings shall be amended accordingly; and

(b) any person added or substituted as a defendant shall be served with the documents of the proceedings unless he consents to waive the service.

(2) The proceedings against the person referred to in subsection (1) (b) shall be deemed to have begun upon the date of such service or waiver, as the case may be.

**Abatement of action**

**22.** In the case of marriage, death or bankruptcy of any party—

(a) if the cause of action does not survive in accordance with Islamic Law, the proceedings shall abate, except as provided in paragraph (c);

(b) if the cause of action survives or continues in accordance with Islamic Law, the proceedings shall not abate or become defective;

(c) in case of death after the conclusion of the trial but before judgment is delivered or entered, the proceedings shall not abate, and judgment may be delivered or entered.

**Devolution of interest**

**23.—(1)** In the case of any assignment, creation, change, transmission or devolution of the interest, estate, title or liability of any party, between the commencement of any proceedings and judgment therein, the person to or upon whom the interest, estate, title or liability has come or devolved may apply to be added as a party or to be made a party in substitution for some other party, and the plaintiff may in like manner apply for such addition or substitution, if the party concerned was a defendant.

(2) Notice of any application under subsection (1) shall be served on all parties.

(3) Where an application should be made under subsection (1) and is not made within a reasonable period, the Court may, of its own motion or on the application of any party, order the party or person concerned to make the application within a stated time, and in default may strike out or dismiss the proceedings, or order that the party or person concerned be precluded from defending, as the case may be.

(4) Where any of the matters referred to in subsection (1) has occurred after judgment and there is money in Court to the credit of the proceedings, the Court may order any person or persons to be served with any application for an order for payment out of Court.

## CHAPTER 2

### PERSONS UNDER DISABILITY

#### **Person under disability**

24. Any person under disability may sue or be sued by his guardian *ad litem* duly approved by the Court.

#### **Consent on behalf of person under disability**

25. A consent or waiver which is given on behalf of a person under disability by his guardian *ad litem* with the approval of the Court shall be binding on the person under disability.

#### **General provisions as to disability**

26. Where a plaintiff is a person under disability—

(a) no settlement or compromise shall be valid without the sanction of the Court;

(b) all money or other property for the plaintiff recovered in, or in consequence of, the action shall be paid into Court or deposited in Court unless the Court otherwise orders.

### **Irregular proceedings**

27. Any proceedings taken by or against a person under disability otherwise than in accordance with this Ordinance or Islamic Law shall be dismissed and any judgment or order made therein may be set aside.

### **Removal of guardian *ad litem***

28.—(1) The Court may for sufficient reason in accordance with Islamic Law remove any guardian *ad litem* and replace him by another, being a fit and proper person and willing to act.

(2) The Court may appoint one of its officers to be a guardian *ad litem*.

### **Minor plaintiff attaining majority**

29.—(1) A minor plaintiff shall, on attaining majority during the pendency of any proceedings, either withdraw the proceedings before taking any step therein or adopt the proceedings.

(2) No leave to withdraw shall be required, but Part XIII shall apply as regards to the matters.

(3) If the minor plaintiff withdraws his claim, he shall not be personally liable for costs, unless the Court otherwise orders.

(4) Where there are more than one plaintiff, the minor plaintiff shall not be entitled to withdraw without leave of Court but may apply to the Court to remove his name or, if he is a necessary party in the proceedings, delete his name as plaintiff and make him as defendant, on such terms as the Court may specify.

(5) If the proceedings are continued, the minor plaintiff shall apply to amend the title of the proceedings and the Court may amend the title and release his guardian *ad litem*.

**Minor defendant attaining majority**

**30.** Where a minor defendant attains majority during the pendency of any proceeding, either he or his guardian *ad litem* may file an affidavit in proof of such majority and thereupon the title of the proceedings shall be amended, and the guardian *ad litem* shall be discharged, subject to any questions of costs occasioned by his negligence or misconduct.

CHAPTER 3  
POOR PERSONS

**Application to sue or defend as a poor person**

**31.—(1)** Any person who desires to commence or defend any action or other proceedings in his own right, and is unable to pay the Court fees therefor, may apply to the Court for leave to sue or defend as a poor person.

(2) An application under subsection (1) shall be made in Form MS 4 and supported by an affidavit containing the following particulars:

(a) his name, place of abode and occupation;

(b) a declaration that he is unable to pay the Court fees in the proceedings; and

(c) all the material facts of the case.

(3) The affidavit shall be prepared by the applicant or by an officer of the appropriate Court and shall be verified in the presence of a Judge or Registrar.

(4) Where the Court is satisfied—

(a) that the applicant is unable to pay the Court fees in the proceedings; and

(b) that the applicant has a good cause of action or defence, as the case maybe,

the Court shall make an order admitting the applicant (hereinafter called the “poor person”) to sue or defend, as the case may be, as a poor person.

(5) Where an order is made under subsection (4), the summons and other process in the action or other proceedings and the relevant entry in the cause book shall be marked “*orang miskin*”

(6) Where the Court is not so satisfied, it shall dismiss the application and there shall be no appeal against the dismissal.

**Poor person not to discontinue, etc., action or proceedings without leave**

32. The poor person shall not discontinue, settle or compromise the action or other proceedings without the leave of the Court.

**Costs**

33. Unless the Court otherwise orders, no poor person shall be liable to pay costs to any party, or be entitled to receive from any other party any costs other than the actual expenses incurred in the course of the proceedings.

PART V

*PEGUAM SYARIE*

***Wakalah* or memorandum of appointment**

34.—(1) The appointment of a *Peguan Syarie* shall be pronounced by the person who appoints, and accepted by the *Peguan Syarie* so appointed, before the Court or the Registrar.

(2) Where a *Peguan Syarie* has accepted his appointment under subsection (1), he shall, before taking any step in the proceedings, file a *wakalah* or memorandum of appointment in Form MS 5.

**Service on *Peguam Syarie***

35. Where a *Peguam Syarie* represents more than one party in any proceedings, service of a single copy of any document on the *Peguam Syarie* shall be sufficient service on all such parties.

**Change of *Peguam Syarie***

36.—(1) Where a party desires to change his *Peguam Syarie*, he shall file a notice of change in Form MS 6 and serve a copy of the notice on all parties.

(2) Section 34 shall apply in relation to a change of *Peguam Syarie* as it applies in relation to the appointment of the *Peguam Syarie*.

**Discharge of *Peguam Syarie***

37. Where a party desires to discharge his *Peguam Syarie*, he shall file a notice of discharge in Form MS 7 and serve a copy of the notice on all parties.

**Discharge on application of *Peguam Syarie***

38. Where a *Peguam Syarie* representing a party applies to be discharged, he shall file a notice of withdrawal in Form MS 8 and serve a copy of the notice on the party he represented.

**Death**

39. The *wakalah* or memorandum of appointment of a *Peguam Syarie* shall determine on the death of the *Peguam Syarie* or the party he represented.

PART VI

SERVICE

CHAPTER 1

SERVICE WITHIN JURISDICTION

**Address for service**

**40.**—(1) Subject to subsection (2), every plaintiff or applicant and every person filing a summons or other document in any proceedings, other than an officer of a Court acting as such, and any other person ordered by the Court so to do shall give an address for service in the State.

(2) Where any such plaintiff, applicant or other person is represented by a *Pegulam Syarie*, the address of the *Pegulam Syarie* shall be the address for service.

**Mode of service**

**41.**—(1) Subject to this Part, a summons or other document shall be served personally, and shall be effected by delivering the summons or other document, or by producing it for inspection and delivering a copy of the summons or other document, to the person to be served.

(2) For the purpose of subsection (1), a copy bearing the seal of the Court and the signature of the Registrar shall be deemed to be an original summons or document.

(3) Service of a summons or other document shall be effected by an officer of the Court or any other person.



**Non-acceptance**

42. Where the person required to be served with a summons or other document refuses to accept the summons, or other document or a copy thereof, it may be left near him and his attention shall be directed to it.

**Service on *Peguan Syarie***

43. A summons or other document may be served on the *Peguan Syarie* of any party who has filed a *wakalah* or memorandum of appointment in accordance with section 34 except as otherwise provided by this Ordinance.

**Service at address for service**

44. A summons or other document delivered at the address for service of any person shall be deemed to be served on that person.

**Day of appearance**

45.—(1) A summons commencing an action shall be served not less than seven clear days before the day of appearance, unless the Court otherwise orders.

(2) Subject to this Ordinance or any other written law, notice of all other proceedings shall be two clear days' notice, unless the Court otherwise orders.

(3) The day of appearance may be altered by the Registrar, where necessary.

**Place and time of service**

46.—(1) Service may be effected at any place, on any day and at any time of the day or night.

(2) Service after 4.00 p.m. shall ordinarily be deemed to have been effected on the following day.

(3) Service effected after 12.00 noon on the day preceding, or at any time on, the weekly holiday or at any time on any public holiday, shall be deemed to have been effected on the day following such holiday.

### **Special cases**

47.—(1) Service on a person under disability shall be made on his guardian *ad litem*, if any.

(2) Notwithstanding subsection (1), the Court may, on application, order the service on a person under disability to be made on any other person.

(3) Service on a person in prison shall be made on the officer in charge of the prison, who shall cause the summons or other document to be transmitted to that person.

(4) Service on any member of the Armed Forces shall be made on the commanding officer or adjutant of his unit, who shall cause the summons or other document to be transmitted to that member.

### **Substituted service**

48.—(1) Where the Court is satisfied that for any sufficient reason the summons or other document cannot be served in the ordinary way, the Court may order the summons or other document to be served by affixing a copy thereof on the Court's notice board and also on some conspicuous part of the building in which the party to be served is known to have last resided, or in any other manner as the Court thinks fit.

(2) The Court may also, in any case falling within subsection (1), make an order for service by advertisement in such local newspaper or newspapers as the Court may think fit.

(3) Substituted service shall be as effectual as personal service.

(4) In cases of substituted service, the Court shall, where necessary, fix the time for the appearance in Court of the relevant party.

(5) No order for substituted service shall be made in respect of

(a) a subpoena; or

(b) any document initiating proceedings for the arrest or committal of any person.

(6) Any application for an order under this section shall be supported by an affidavit stating the facts on which the application is founded.

#### **Proof of service**

49.—(1) Service of summons or other document may, unless the Court otherwise orders, be proved by affidavit of the person who effected service and, where the service was personal and the person served was not personally known to him, by the affidavit of the person who identified the person to be served.

(2) The person served shall sign an acknowledgement of service, but refusal or inability so to sign shall not affect the validity of the service.

#### **Variation of orders**

50. An order for service, or for substituted service, may be varied by the Court.

#### **Issue of warrant in lieu of or in addition to summons**

51. A Court may, in any case in which it is empowered to issue a summons for the appearance of any person, after recording its reasons, issue a warrant for his arrest—

(a) if, either before or after the issue of the summons but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if, at such time, he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

CHAPTER 2  
SERVICE OUT OF THE JURISDICTION

**When allowed**

**52.—**(1) The Court may order service of a summons or an application out of the jurisdiction—

(a) if the whole subject matter of the action relates to immovable property situated within the State;

(b) if any relief is sought against any person domiciled or ordinarily residing or carrying on business within the State;

(c) if, the action being properly brought against a person duly served within the State, a person out of the State is a proper or necessary party thereto; or

(d) if, in any case arising from marriage, the residence of one of the parties to the marriage is at the time of the application within the State.

(2) Subject to section 54, any order giving leave to effect service out of the jurisdiction outside Malaysia shall direct in what mode the service is to be effected and how such service may be proved.

**Form of order**

**53.** An order for service out of the jurisdiction 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.

**Mode of service out of jurisdiction within Malaysia**

**54.—**(1) Any summons or application for service out of the jurisdiction within Malaysia may be sent to any Court having jurisdiction in the local area in which the person to be served is said to be.

(2) The summons or application to be served may be sent by post or otherwise with written request for service signed by the Judge or the Registrar.

**Variation order**

55. An order for service out of the jurisdiction may be varied by the Court.

PART VII  
INTERPLEADER

**Entitlement to relief by way of interpleader**

56. Where—

(a) a person is under a liability in respect of any debt or in respect of any money, goods or other movable property and he is, or expects to be, sued for or in respect of such debt, money, goods or property by two or more persons making adverse claims in respect thereof; or

(b) claim is made to any money, goods or other movable property taken or intended to be taken by a bailiff in execution under any judgment, or to the proceeds or value of any such goods or property by a person other than the person against whom the judgment is issued,

the person under liability or the bailiff may apply to the Court for relief by way of interpleader.

**Claims to goods, *etc.*, taken in execution**

57.—(1) Any person making a claim to or in respect of any money, goods or other movable property taken or intended to be taken in execution of any judgment, or to the proceeds or value of any such goods or property, 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.

(2) On receipt of a claim made under subsection (1), the bailiff shall forthwith give notice of such claim in Form MS 10 to the execution creditor and the execution creditor shall, within four days after receiving the notice, give notice in Form MS 11 to the bailiff informing him whether he admits or disputes the claim.

(3) Where—

(a) the bailiff receives a notice from the execution creditor under subsection (2) disputing the claim, or the execution creditor fails, within the period mentioned in that subsection, to give the required notice; and

(b) the claim made under this section is not withdrawn,

the bailiff may apply to the Court for relief under this Part.

(4) A bailiff who receives a notice from an execution creditor under subsection (2) admitting a claim made under this section shall withdraw from possession of the money, goods or other movable property claimed.

### **Mode of application**

**58.—**(1) An application for relief under this Part shall be made by summons in Form MS 12 or MS 13, whichever is appropriate.

(2) Subject to subsection (3), a summons under this section shall be supported by an affidavit stating that the applicant—

(a) claims no interest in the subject matter in dispute other than for charges or costs;

(b) does not collude with any of the claimants to that subject matter; and

(c) is willing to pay or transfer that subject matter into Court or to dispose of it as the Court may direct.

(3) Where the applicant is a bailiff, he shall not provide such affidavit as is referred to in subsection (2) unless the Court otherwise orders.

### **Service of summons**

**59.**—(1) Unless the Court otherwise orders, the summons referred to in section 58 shall be served personally at least seven days before the day of appearance.

(2) An interpleader summons shall be in one of the forms in Form MS 14.

### **Powers of Court hearing summons**

**60.**—(1) Where, on the hearing of a summons under this Part, all the persons by whom adverse claims to the subject matter in dispute (hereinafter in this Part referred to as the “claimants”) appear, the Court may order—

(a) that any claimant be made a defendant in any action pending with respect to the subject matter in dispute in substitution for or in addition to the applicant for relief under this Part; or

(b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be the plaintiff and which defendant.

(2) Where—

(a) the applicant on a summons under this Part is a bailiff;

(b) all the claimants consent or any of them so requests; or

(c) the question at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as it thinks just.

**Other powers**

**61.** Subject to this Part, the Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

**Trial of interpleader issue**

**62.—**(1) Part XV shall, with such modifications as may be necessary, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

(3) The judgment shall be in one of the forms in Form MS 15.

PART VIII  
PLEADINGS

**Statement of claim**

**63.—**(1) Every statement of claim shall be signed by the plaintiff or his *Peguan Syarie* and shall contain—

(a) a concise statement, in numbered paragraphs, of the fact relied on by the plaintiff and indicating his cause of action, including particulars of any special capacity in which the plaintiff sues, if any;

(b) sufficient particulars of the claim;

(c) a statement of the relief claimed; and

(d) particulars of any other applications.

(2) Where more than one cause of action is relied on, the grounds of each and the relief claimed thereon shall be stated separately.



### **Defendant to serve defence**

**64.—**(1) A defendant who disputes his liability for the whole or part of any claim in the action may,—

(a) at any time before the day of appearance, serve on the plaintiff a defence; or

(b) appear on the day of appearance and dispute the plaintiff's claim.

(2) Where a defendant appears in Court and disputes the plaintiff's claim, the Court may order him to serve a defence within such time as it may direct.

(3) A defence shall be in Form MS 16.

### **Form of defence**

**65.—**(1) Every defence shall be signed by the defendant or his *Peguam Syarie* and shall—

(a) either admit or deny every material allegation of the fact in the statement of claim;

(b) state concisely any new facts on which the defendant relies by way of defence; and

(c) raise concisely and without argument any necessary matters of law.

(2) A denial under subsection (1)(a) shall not be evasive but shall answer the point of substance.

### **Counterclaim**

**66.—**(1) Every counterclaim shall contain the like matter and particulars as a statement of claim and shall be signed by the defendant or his *Peguam Syarie*.

(2) A counterclaim shall not be made against any person not then a party to the action, but if a cross-action is brought, an order for consolidation may be made by the Court.

**Defence of counterclaim**

67.—(1) Where any defendant counterclaims, the plaintiff shall, if he desires to defend the counterclaim, file and cause to be served on the defendant a defence to the counterclaim within such time as the Court shall direct.

(2) If the plaintiff fails to comply with subsection (1), section 16 shall apply as if the plaintiff were a defendant.

**Defence of tender**

68. If a defence of tender before action is raised, the defendant shall, on filing his defence, pay into Court the amount alleged to have been tendered.

**Reply**

69. The Court may, for sufficient reason, grant leave to file and deliver a reply to a defence, whether such defence is a defence against a claim or counterclaim.

**Refusal to accept pleading and amendment**

70. The Court may refuse to accept or may return for amendment any pleading which does not comply with the requirements of this Part.

**Particulars**

71.—(1) If any pleading does not contain sufficient particulars, the Court may, of its own motion or on the application of any party, order the party responsible to file and cause to be served further and better particulars, and may stay all proceedings pending compliance.

(2) Further and better particulars may be filed and served on request without order.

**PART IX**  
**PAYMENT INTO AND OUT OF COURT**

**Payment into court**

72.—(1) A defendant may pay money into Court in satisfaction of the claim or any part thereof and may also pay into Court a sum of money in respect of costs.

(2) The defendant shall give notice to the plaintiff of the payment into Court and, where the payment is less than the amount claimed, the notice shall state in respect of what the payment is made.

**Payment out of court**

73. Subject to sections 26 and 78, where the payment into Court is of the amount claimed or the plaintiff elects to take it in satisfaction of the whole of his claim, the amount shall be paid out to him, and he may obtain judgment for all costs actually incurred prior to his receiving notice of the payment into Court, and costs of entering judgment for such costs, unless paid without order.

**Part satisfaction**

74. Where the payment referred to in section 73 is in respect of a part of his claim, the plaintiff may continue the action in respect of the other part.

**Order for payment out of court**

75. Except as otherwise provided in sections 72, 73 and 74, money paid into Court shall not be paid out without the order of the Court.

**Costs**

76. Where money has been paid into Court and the plaintiff fails to obtain judgment for any larger amount, the costs incurred by the defendant after the payment into Court shall be paid by the plaintiff.

**Other relief**

77. Where the plaintiff seeks relief other than the payment of money, he may continue his action for that other relief, notwithstanding the payment out of Court to him of any money.

**Tender**

78. Where payment into Court is made with a defence of tender and is accepted, the defendant shall be entitled to full costs of the action and the money in Court shall not be paid out without order of the Court.

**Counterclaims**

79. This Part shall, with such modifications as may be necessary, apply to counterclaims.

PART X  
AMENDMENT

**Amendment of summons or pleading**

80.—(1) Subject to this Part, the Court may, at any stage of the proceedings, allow the plaintiff to amend his summons, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner, if any, as it may direct.

(2) Where an application to the Court for leave to make the amendment referred to in subsection (1) is made after any relevant period of limitation current at the date of issue of the summons has expired, the Court may, if it thinks just, grant such leave on such terms as it thinks fit.

(3) Subject to subsection (2), any party to any proceedings may amend his pleading at any time before service to the other party without order of the Court.

**Amendment to application**

81. Section 80 shall, with such modifications as may be necessary, apply in relation to an application as it applies in relation to summonses and pleadings.

**Defective proceedings**

82. The Court may at any time, of its own motion or on the application of any party, and on such terms as it thinks just, order amendment to be made for the purpose of—

- (a) correcting any defect or error in any proceedings; or
- (b) determining the real question in controversy or to achieve justice between the parties.

**Mode of amendment**

83. An amendment shall be made by filing a fair copy of the amended document, which shall indicate the amendment made, and serving a copy of the amended document on the other party or parties:

Provided that if the amendment is ordered during the trial or hearing of any action or proceedings, or if all parties are present when the amendment is made, the Court may, in its discretion, amend the document in the Court's file and service on the parties shall not be necessary.

**Slip or omission**

84. Clerical mistakes or errors arising from accidental slips or omissions may at any time be corrected by the Court without formality.

PART XI  
DISCOVERY

**Discovery of documents and facts**

85.—(1) The Court may, where necessary and upon such terms as it thinks just, order any party—

(a) 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, or whether he has or has had in his possession or power any specified document or documents or class of documents and, in either case, the present whereabouts of any documents formerly, but not now, in his possession or power;

(b) to produce any document in his possession or power.

(2) If the party is a body, whether incorporated or otherwise, an officer of that body may be ordered to comply with the order or direction of the Court in respect of discovery of any documents.

(3) The Court may stay the proceedings pending compliance of the order or direction of the Court under this section.

#### **Inspection of documents**

**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 or other document filed by him in the proceedings or on oral examination under section 85.

#### **Privileged communications and documents**

**87.** Production and inspection of documents under this Part shall be subject to the provisions of any law relating to privileged communications and documents.

#### **No appeal against the order**

**88.** There shall be no appeal against any order of the Court under this Part except in an appeal against the judgment of the case as a whole.

**PART XII**  
**TRANSFER OF PROCEEDINGS**

**Transfer of proceedings to another Court**

**89.**—(1) Where the Judge of any Court is satisfied that any proceedings in that Court can be more conveniently or fairly tried in some other Court, he may order the proceedings to be transferred to the other Court.

(2) Any transfer of any proceedings under subsection (1) may be made by the Judge of his own motion or on the application of any party by notice.

**Procedure on transfer**

**90.**—(1) Where an order is made for the transfer of any proceedings from one Court to another Court, the Court from which the proceedings are transferred shall send to the Court to which the proceedings are transferred the file, all documents, exhibits and certified copies of the notes of evidence of the proceedings, if any.

(2) The Court to which the proceedings are transferred may, of its own motion or on the application of any party, give such directions as to the further conduct of the proceedings as it may think fit.

**Costs on transfer**

**91.** Where an order for transfer is made on the application of a party, the costs incurred shall be at the discretion of the Judge.

**Procedure on transfer from Syariah High Court to Syariah Subordinate Court**

**92.**—(1) Where by an order of the Syariah High Court any proceedings are ordered to be transferred to a Syariah Subordinate Court, or an issue is directed to be tried in such a Court, the Registrar shall, on receipt of the order or certified copies of the order, enter the proceedings in the appropriate Register of Cases, and give notice in Form MS 17, at least fourteen days before the day of appearance, to every party to appear before the Court for such directions as to the further conduct of the proceedings.

(2) Subject to any directions contained in the order of the Syariah High Court, the trial shall proceed as if the proceedings had commenced in a Syariah Subordinate Court.

**Procedure on transfer from Syariah Subordinate Court to Syariah High Court**

93. Where an order is made by the Syariah High Court for the transfer of any proceedings from a Syariah Subordinate Court to the Syariah High Court, the Assistant Registrar of the Syariah Subordinate Court shall send to the Registrar of the Syariah High Court the file, all documents, exhibits and certified copies of the notes of evidence of the proceedings, if any, and shall also give notice of the transfer in Form MS 18 to every party to the action.

PART XIII

SETTLEMENT, WITHDRAWAL AND DISCONTINUANCE

**Settlement of action**

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 subsequent proceedings from the same, or substantially the same, cause of action.

**Withdrawal of claim**

95.—(1) The plaintiff may, with leave of the Court, at any time before judgment, withdraw any proceedings wholly or in part by giving notice in Form MS 19 to the Court and serving a copy of the notice to the defendant.

(2) Where the plaintiff withdraws any proceedings under subsection (1), the defendant shall be entitled to the costs of the proceedings.



### **Effect of withdrawal on future proceedings**

96. Where the plaintiff has withdrawn the proceedings under section 95, he shall not thereafter bring an action for the same, or substantially the same, cause of action unless the Court has granted leave to institute fresh proceedings.

### **Stay**

97. Where the plaintiff has withdrawn any proceedings under section 95 and he is liable to pay any other party's costs of the action, then, if before payment of such costs he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until such costs are paid.

### **Withdrawal of defence**

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

### **Sulh**

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 Islamic Law.

PART XIV

EVIDENCE

CHAPTER 1

GENERAL

**Evidence to be taken orally**

**100.** Subject to this Ordinance and the Syariah Evidence Ordinance, 2001 [*Cap. 47*], any fact required to be proved at the trial of any proceedings by the evidence of parties or witnesses shall be proved by the examination of the parties or witnesses orally in open Court.

**Evidence by affidavit**

**101.** The Court may, at or before the trial of any proceedings, order that the affidavit of any witness to be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

CHAPTER 2

SUBPOENAS

**Request for issue of subpoena**

**102.—(1)** Before a subpoena is issued a request in Form MS 20 for the issue of the subpoena shall be filed in Court; and the request shall contain the name and address of the party requesting for the issue of the subpoena if he is acting in person, or the name of the firm and the business address of the party's *Peguan Syarie*.

(2) Issue of a subpoena takes place upon it being sealed by an officer of the Court.

(3) A subpoena shall be in one of the forms in Form MS 21, MS 22 or MS 23, as the case may require.

### **Number of persons in subpoena**

**103.**—(1) Every subpoena, other than a subpoena to produce documents or things, may include the names of two or more persons.

(2) A subpoena to produce documents or things shall contain the name of one person only.

### **Subpoena to produce documents**

**104.** Any person served with a subpoena to produce a document or thing only shall sufficiently comply if he causes the document or thing to be produced without attending personally.

### **Amendment of subpoena**

**105.** Where there is a mistake in any person's name and address in a subpoena, and if the subpoena has not been served, the party on whose request the subpoena was issued may by filing a second request under section 102(1) have the subpoena re-sealed in the correct form endorsed with the words "Amended and re-sealed".

### **Service of subpoena**

**106.** Unless the Court otherwise orders, a subpoena shall be served personally and the service shall not be valid unless effected within twelve weeks after the date of issue of the subpoena.

### **Duration of subpoena**

**107.** A subpoena continues to have effect until the conclusion of the hearing at which the attendance of the witness is required.

### **Court records**

**108.**—(1) An officer of the Court shall not be required by subpoena to produce the record of the Courts.

(2) If the original of any record of a Court or any document filed in such Court is for any special reason required, a request for the production thereof may, on the application of the party requiring it, be addressed by the Registrar to that Court.

(3) No mark shall be placed upon any record or document produced under this section.

**Attendance of prisoner as witness or party**

**109.**—(1) An application for an order for the production before the Court of a person confined in a prison may be made to the Court *ex parte* by notice in Form MS 24 and supported by an affidavit.

(2) Unless the Court otherwise orders, the costs of conveying of the witness in safe custody to and from the Court shall be paid in the first instance by the party on whose application the order was issued and shall be costs in the cause.

(3) An order by the Court for the production of such person shall be in Form MS 25.

**Tender of expenses**

**110.** A witness shall not be compelled to attend on a subpoena unless a reasonable sum to cover his expenses of going to, remaining at, and returning from, the Court is tendered to him.

**Affidavit of service of subpoena**

**111.** An affidavit filed for the purpose of proving the service of a subpoena shall state when, where, how and by whom service was effected.

CHAPTER 3

AFFIDAVITS

**Making of affidavit**

**112.** An affidavit to be used in any proceedings in Court shall be sworn—

(a) in the State, before any Syariah Judge or Registrar;

(b) in a State of Malaysia, before the Syariah Judge or *Kadi*, as the case may require; and

(c) at any place outside Malaysia, before any Muslim officer of the Malaysian Embassy or High Commission or Consulate or Permanent Mission thereat authorized to administer oath.

### **Form of affidavit**

**113.**—(1) An affidavit shall be in Form MS 26.

(2) Notwithstanding subsection (1), the Court may, in its discretion, accept an affidavit notwithstanding any irregularity in the form thereof.

### **Copy of document shall be annexed to the affidavit**

**114.**—(1) A copy of any document to be used in conjunction with an affidavit shall be annexed to the affidavit as an exhibit.

(2) An exhibit to an affidavit shall be identified by a certificate of the person before whom the affidavit is sworn, and such certificate shall be in Form MS 27.

### **Rejection of affidavit**

**115.** The Court may, in its discretion, reject any affidavit the content of which cannot be easily read or understood, or in which there is any interlineation, alteration or erasure or other defect of form.

### **Amendment**

**116.**—(1) An affidavit which has been filed cannot be amended except for the purpose of correcting any defect of form or clerical mistake.

(2) Any amendment made under subsection (1) shall be made by way of corrective affidavit and shall be filed before the trial.

(3) An additional affidavit may be filed before the trial.

### **Filing of affidavit**

**117.**—(1) No affidavit may be filed after the trial has begun except with leave of the Court.

(2) There shall be no appeal against the refusal of the Court to grant leave under subsection (1), except in an appeal against the decision of the case as a whole.

### **Cross examination**

**118.**—(1) 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, and thereupon, if the deponent is not produced for cross-examination, the Court shall, except in special circumstances, reject or disregard the affidavit.

(2) The Court may of its own motion require the attendance of a any deponent for examination on his affidavit and, in the absence of such attendance, may reject or disregard the affidavit.

## **PART XV**

## **HEARING**

### **Hearing in Court**

**119.** Except as otherwise provided in this Ordinance or any other written law, all proceedings begun by way of summons shall be heard and determined in open Court and all proceedings begun by way of application shall be heard and determined in Chambers.

### **Appearance**

**120.**—(1) Any party may appear in person or through his *Peguan Syarie*, but every party shall be present at the hearing except as otherwise allowed by the Court.

(2) Appearance of a person under disability shall be through his guardian *ad litem*.

### **Absence of parties**

**121.**—(1) If, when any action is called on for hearing—

- (a) neither party appears, the Court may dismiss the action;
- (b) the defendant does not appear, the Court may, subject to proof of due service, hear and determine the action in his absence; or
- (c) the plaintiff does not appear, the Court may dismiss the action and hear and determine any counterclaim.

(2) The Court shall, before making any judgment on the plaintiff's claim under subsection (1)(b) or the defendant's counterclaim under subsection (1)(c), order the plaintiff or the defendant, as the case may be, to take an oath of *istizhar*.

(3) Where there are more than one plaintiff or defendant and only one of them is present, the Court may hear the action against the one present and determine the action against the parties absent in accordance with subsection (1) or (2).

(4) The Court may in its discretion in any of the cases specified in subsection (1) or (3) order an adjournment.

### **Counterclaims**

**122.** The stay, withdrawal, striking out or dismissal of the plaintiff's claim shall not prevent the hearing and determination of a counterclaim.

### **Mutual claims**

**123.** Where judgment is given for sums of money on both claim 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 costs as it thinks just.

### Notes of evidence

**124.** The Court shall record the evidence given and, so far as appears desirable, of the submissions of law made, including any objections to evidence, and may record such remarks on the demeanour of witnesses and other material matters.

### Documents or exhibits

**125.—**(1) Documents or other exhibits put in evidence and accepted shall be marked and, unless the Court otherwise orders, such documents or exhibits or copies of the documents or exhibits shall be retained in Court during the pendency of the proceedings and until the time for appeal has expired.

(2) For the purpose of identification, documents or other exhibits tendered in evidence but rejected, shall also be marked.

### Order of speeches

**126.—**(1) Subject to subsection (2)—

(a) the plaintiff shall begin by opening his case;

(b) each party may, before calling any evidence, open his case.

(2) The Judge before whom an action is heard may give directions as to the party to begin and the order of speeches at the trial, and subject to any such directions, the party who begins shall have the first right to sum up his case.

(3) When the plaintiff has adduced all evidence for his case, the Judge shall call upon the defendant to adduce evidence in answer to the plaintiff's claim, and in such a case the defendant shall have the option either to adduce evidence or to submit that there is no case to answer.

(4) Where the defendant elects to adduce evidence, the Judge shall record the evidence so adduced, and after the defendant has given all evidence on his behalf the Judge shall ask the defendant to make a submission closing his case.



(5) When the defendant has closed his case, the Judge shall ask the plaintiff to submit in answer to the defendant's submission and to close his case.

(6) Notwithstanding anything in this section but subject to subsections (7) and (8), the Judge may order any party to submit a written submission in such order and within such time as he may direct.

(7) Where the defendant elects not to adduce any evidence but elects to submit that there is no case to answer, the Judge shall—

(a) record the defendant's submission; and

(b) order the defendant to take an oath denying the plaintiff's claim, and if the defendant refuses to take such oath, the Judge shall, subject to subsection (8), dismiss the defendant's case and allow the plaintiff's claim.

(8) Before the Court allows the plaintiff's claim under subsection (7), the Court shall—

(a) hear and record the plaintiff's submission in closing his case; and

(b) order the plaintiff to take an oath admitting the truth of his claim, and if the plaintiff refuses to take such oath, the Court shall dismiss his case.

**Power of court**

127. 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.

**Trial not concluded**

**128.**—(1) Where a Judge has commenced the trial of any proceedings and is unable for any reason to conclude the trial, another Judge may with the consent of all parties continue the trial and give judgment.

(2) Where the consent referred to in subsection (1) cannot be obtained, there shall be a new hearing.

**Adjournment**

**129.** The Court may from time to time adjourn or transfer any trial from one place to another, and in so doing may impose any condition.

PART XVI

JUDGMENTS AND ORDERS

**Judgment**

**130.**—(1) Every trial Judge shall deliver a written judgment.

(2) Except in the case of proceedings in Chambers, the trial Judge shall, subject to subsection (3), pronounce his judgment in open Court.

(3) When a Judge who has tried any proceedings is for any reason unable to pronounce judgment, the judgment written by him may be read in open Court by any other Judge or by the Registrar.

(4) All judgments pronounced under this section shall form part of the record of the case.

**Consent judgment**

**131.** Judgment by confession or consent of the parties, including *sulh*, may be recorded by the Court at any time.

### **Terms of judgment or order to be settled by Court**

**132.** The Court shall settle the terms of a judgment or order in such judgment or order.

### **Instalments, when due**

**133.** Where any order is made for payment by instalments in a particular month, the instalment shall, in the absence of any 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.

### **Order for instalments**

**134.—(1)** Any debtor against whom a judgment has been or is about to be given may apply to the Court—

(a) for leave to pay the judgment debt by instalments; or

(b) if an order for payment by instalments has been made, for leave to pay by reduced instalments,

and the Court may, after hearing the parties, make such order as it thinks just.

(2) Where any instalment allowed by order under subsection (1) is more than one month in arrears, such order shall be deemed to be vacated and the judgment creditor may execute for the whole amount then due on the judgment, but the judgment debtor may apply for another order.

(3) Any party may, if an order for payment by instalments has been made, apply that it be vacated or that the instalments be increased or decreased and the Court, after hearing the parties, may make such order as it thinks just.

### **Judgment, *etc.* requiring act to be done; time for doing it**

**135.—(1)** 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 seven days from the date of the judgment or order.

(2) Where the person required to do the act was personally present or represented by his *Pegulam 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.

(3) 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.

#### **Date of judgment or order**

**136.** Every judgment or order shall be dated and take effect on the date on which it was given or made.

#### **Judgment on movable property**

**137.** 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.

### **PART XVII**

#### **APPEAL**

#### **Interpretation**

**138.** In this Part, “decision” includes judgment or order.

#### **Notice of appeal**

**139.—(1)** An appeal against the decision of the Syariah Subordinate Court shall be made to the Syariah High Court, and the decision of a Syariah High Court to the Syariah Appeal Court.

(2) An appeal shall be made by giving a notice of appeal in Form MS 29.

(3) An appellant may appeal against the whole or any part of a decision.

(4) The notice of appeal shall be filed within fourteen days from the day on which the decision was pronounced, and shall state whether the whole or part only, and what part, of the decision is appealed against.

(5) The Court appealed from shall, upon receipt of the notice of appeal and upon payment of the prescribed fee, supply to the appellant a certified copy of the notes of evidence and the judgment.

(6) As soon as the certified copies are ready, the Court shall notify the appellant in Form MS 30.

(7) Within fourteen days from the receipt of the notification under subsection (6), the appellant shall, unless the Court otherwise orders—

(a) deposit in the Court appealed from a sum which in the opinion of the Registrar will cover the costs of preparing a sufficient number of copies of the appeal record for the use of the Court hearing the appeal and the parties to the appeal; and

(b) lodge in the Court appealed from a sum of money as the Court may direct by way of security for the costs of the appeal.

(8) The notice of appeal shall be served by the appellant within the time limited for filing the appeal on all parties affected by the appeal or their respective *Peguam Syarie*.

#### **Notice of counter appeal**

**140.** A respondent in any appeal may, within seven days from the date of the service of the notice of appeal on him, file in the Court hearing the appeal and serve on the appellant a notice in Form MS 31 of his intention to submit at the hearing of the appeal that the decision appealed against should be varied.

### **Grounds of appeal**

**141.**—(1) Within fourteen days from the date of receipt of the notification under section 139(6), the appellant shall lodge with the Registrar of the Court appealed from grounds of appeal in five copies addressed to the Court hearing the appeal.

(2) Every ground of appeal shall state briefly the substance of the judgment appealed against and shall contain definite particulars of the point of law or fact in respect of which the appeal is made and, except with leave of the Court hearing the appeal, the appellant shall not be permitted on the hearing of the appeal to rely on any ground other than those set out in the grounds of appeal.

### **Appeal record where appellant is represented**

**142.**—(1) When the appellant who is represented by a *Peguam Syarie* has complied with the requirements of sections 139 and 141, the appellant shall prepare the requisite number of copies of the appeal record and the record shall contain copies of—

- (a) the pleadings;
- (b) the notes of evidence;
- (c) the grounds of judgment;
- (d) the notice of appeal;
- (e) the grounds of appeal;
- (f) all documentary exhibits; and
- (g) the list of non-documentary exhibits, if any, lodged in the Court.

(2) Two copies of the appeal record shall be filed in Court hearing the appeal within six weeks of the receipt of the notification from the Court appealed from that the certified copies of the notes of evidence and the grounds of judgment are ready.

(3) The appellant shall within the period limited for the filing of the record serve a copy on each party who has been served with the notice of appeal.

**Appeal record where appellant is not represented or appeals as a poor person**

**143.**—(1) Where the appellant has complied with the requirements of sections 139 and 141 and the appellant is not represented by a *Peguam Syarie* or the Court hearing the appeal has allowed the appellant to appeal as a poor person, the Court appealed from shall prepare the requisite number of copies of the appeal record which shall contain copies of the documents mentioned in section 142(1).

(2) As soon as the appeal record is ready, the Court appealed from shall serve on the appellant a notice in Form MS 32.

(3) Upon request by the appellant and, if the deposit mentioned in subsection 139(7) is insufficient, upon payment by the appellant of a further sum sufficient to defray the costs of preparing the appeal record, the Registrar shall—

(a) supply the appellant with a copy of the appeal record and sufficient additional copies for service on the respondent or respondents; and

(b) forward to the Court hearing the appeal the remaining copies of the record.

**Stay of execution pending appeal**

**144.** The filing of a notice of appeal shall not operate as a stay of execution, but the Court may, on application and on sufficient cause being shown, stay execution on such terms as it may think fit.

**Judgment to state grounds**

**145.** The Court hearing the appeal shall state the grounds of its judgment in writing.

**Execution of judgment on appeal**

**146.** When either party has extracted the order of the Court hearing the appeal and has produced the order to the Court appealed from, the Court appealed from shall execute the order in accordance with this Ordinance.

PART XVIII  
ENFORCEMENT AND EXECUTION

CHAPTER 1  
GENERAL

**Duty to comply**

**147.—(1)** Every person directed by any judgment to do any act shall comply therewith without demand, and it shall not be necessary to serve on him the judgment or any notice of the judgment except as provided in section 135(3).

(2) A judgment debtor shall from time to time inform the Court of his latest address of residence and failure to comply with the requirement of this subsection shall be deemed to be a contempt of Court.

CHAPTER 2  
ENFORCEMENT

**Enforcement of judgment, etc. for payment of money**

**148.—(1)** Subject to this Ordinance, a judgment or an order for the payment of money, other than a judgment or an order for the payment of money into Court, may be enforced by one or more of the following means:



- (a) an order of seizure and sale;
- (b) *hiwalah* proceedings;
- (c) in a case in which section 151 applies, an order of committal.

(2) Subject to this Ordinance, a judgment or an order for the payment of money into Court may be enforced, in a case where section 151 applies, by an order of committal.

(3) Subsections (1) and (2) are without prejudice to any other remedy available to enforce a judgment or an order for the payment of money under any other written law, or to the power of a Court to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him.

#### **Enforcement of judgment for possession of immovable property**

**149.**—(1) Subject to this Ordinance, a judgment or an order for the giving of possession of immovable property may be enforced by one or more of the following means, that is to say—

- (a) an order of possession;
- (b) in a case in which section 151 applies, an order of committal.

(2) An order for possession shall not be given unless it is shown that every person in actual possession of the whole or any part of any immovable property has received such a notice of the proceedings as appear to the Court to be sufficient to enable him to apply to the Court for any relief to which he may be entitled.

(3) An order for possession may include provisions for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the order.

**Enforcement of judgment for delivery of movable property**

**150.**—(1) Subject to this Ordinance, a judgment or an order for the delivery of any movable property which does not give the person against whom the judgment is given or order made the alternative of paying the assessed value of the property may be enforced by one or more of the following means, that is to say—

(a) an order of delivery to recover the property without alternative provisions for the recovery of its assessed value (hereinafter referred to as an “order of specific delivery”); or

(b) in a case in which section 151 applies, an order of committal.

(2) Subject to this Ordinance, a judgment or an order for the delivery of any movable property or payment of its assessed value may be enforced by one or more of the following means, that is to say—

(a) an order of delivery to recover the property or its assessed value;

(b) with the leave of the Court, an order of specific delivery;

(c) in a case in which section 151 applies, an order of committal.

(3) An order of specific delivery, and an order of delivery to recover any movable property or its assessed value, may include provisions for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the order.

(4) A judgment or an order for the payment of the assessed value of any movable property may be enforced by the same means as any other judgment or order for the payment of money.

**Enforcement of judgment to do or abstain from doing an act**

**151.—(1)** Where—

(a) a person required by a judgment or an order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or within that time as extended or abridged under section 238, as the case may be; or

(b) a person disobeys a judgment or an order requiring him to abstain from doing an act,

then, subject to this Ordinance, the judgment or order may be enforced by one or more of the following means, that is to say—

(aa) with the leave of the Court, an order of committal;

(bb) where that person is a body corporate, with the leave of the Court, an order of committal against any director or other officer of the body.

(2) Where a judgment or an order requires a person to do an act within a time specified therein and an order is subsequently made under section 152 requiring the act to be done within some other time, references in subsection (1) to a judgment or an order shall be construed as references to the order made under section 152.

(3) Where under any judgment or order requiring the delivery of any movable property, the person liable to execution has the alternative of paying the assessed value of the property, and the judgment or order shall not be enforceable by order of committal under subsection (1), the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the property to the applicant within a time specified in the order and that order may be so enforced.

(4) An application under subsection (3) shall be made in Form MS 33 and supported by an affidavit and a copy of the application and the affidavit shall be served on the person against whom the order is to be enforced.

**Power of Court to fix time**

**152.**—(1) Notwithstanding that a judgment or an order requiring a person to do an act specifies the time within which that act is to be done, the Court may, on such terms as it thinks just, make an order requiring the act to be done within such time as may be specified therein.

(2) Where a judgment or an order requiring a person to do an act does not specify the time within which the act is to be done, the Court shall have the power subsequently to make an order requiring the act to be done within such time as may be specified therein.

(3) An application for an order under this section shall be made in Form MS 34 and copies of the application shall, notwithstanding any other provisions of this Ordinance, be served on the person required to do the act in question.

**Execution by or against person not being a party**

**153.**—(1) Any person, not being a party to a cause or matter, who obtains an order or in whose favour an order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party in the cause or matter.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party in the cause or matter.

CHAPTER 3

EXECUTION

**Leave to issue order of execution**

**154.**—(1) An order for execution to enforce a judgment or an order shall not issue without the leave of the Court—

(a) if the judgment or order is subject to any condition or contingency;

(b) if at any time six years or more have lapsed since the date of the judgment or order;

(c) if any change has taken place by death, assignment or otherwise in the parties entitled or liable to execution under the judgment;

(d) if the judgment creditor desires to enforce the judgment against any person other than the judgment debtor named in the judgment;

(e) if an order of committal is outstanding;

(f) except as provided in section 134(2), if an order for payment by instalments is in force; or

(g) if execution has been stayed by the Court.

(2) An application for leave to execute may be made *ex parte*, but the Court may order service of the application on any party or person concerned.

(3) The Court shall, if it is satisfied that the order for execution should be issued, grant leave in accordance with the application.

#### **Issue of order for execution**

**155.** Subject to section 154, a judgment creditor may present to the Registrar an order for execution in Form MS 35 and the Registrar, if there appears no reason why execution should not issue, shall sign and seal the order in duplicate, file one copy thereof and deliver the other to the bailiff for execution.

#### **Indorsement of time of delivery**

**156.** The bailiff shall indorse in any order for execution the date and time the order is delivered to him.

### **Fees and expenses to be levied**

**157.** All expenses and fees of execution, including a *Peguam Syarie*'s costs of execution, shall be levied in addition to the judgment debt.

### **Satisfaction**

**158.** Where the Court is satisfied that the judgment debtor has satisfied the judgment, the Court may, on the application of the judgment debtor, record in the *Register of Mal* that the judgment has been satisfied.

### **Types of execution**

**159.—(1)** An order for execution may direct the bailiff to take any one or more of the following actions:

(a) recover any sum payable by seizing and selling the movable property of the judgment debtor;

(b) attach the movable property of the judgment debtor in the possession or control of a third party (hereinafter referred to as "*muhal 'alaih*") or a debt due by the *muhal 'alaih* to the judgment debtor;

(c) seize and deliver to the judgment creditor any chattel ordered to be delivered by the judgment debtor; or

(d) attach the income of the judgment debtor.

(2) Every order for execution—

(a) shall state by which methods as specified under subsection (1) execution is to take place; and

(b) shall specifically describe the property to which the order relates.

(3) The Court may, on the application of any judgment creditor, issue a further order of execution in respect of different property or different methods of execution from those set out in the current order for execution.

### **Seizure and sale**

**160.** The following provisions shall apply when an execution by seizure and sale is ordered for any property:

(a) the bailiff shall—

(i) subject as hereinafter provided, take the property and place it under his custody;

(ii) if the property consists of shares, stocks, debentures or bonds not transferable by delivery, in any loan or fund, serve on the appropriate authority a copy of the order for execution in Form MS 36 together with sufficient description of the shares, stocks, debentures or bonds seized, and thereafter no transfer of the shares, stocks, debentures or bonds shall be registered except with the leave of the Court, and any interest or dividend in respect of the shares, stocks, debentures or bonds shall be paid into Court until the Court shall otherwise order or shall permit transfer thereof;

(b) after seizure of property, any alienation or disposal of the property seized, otherwise than with the leave of the Court, shall be void against the bailiff, and such action shall also be a contempt of Court;

(c) at any time before sale, the judgment creditor may request the bailiff to release any specified property, and such release shall not be deemed to be abandonment of the execution as a whole;

(d) at any time before sale, the judgment creditor may abandon the execution, and the bailiff shall thereupon return the order for execution to the Court;

(e) the bailiff shall, unless the property seized be money, proceed to sell the property in accordance with this Part;

(f) the bailiff shall, on completion of the execution, make a return relating to the execution and submit it to the Registrar.

**Hiwalah**

**161.**—(1) In this section, “property” includes a debt due by the *muhal ‘alaih* to the judgment debtor.

(2) The following provisions shall apply where the execution is ordered by attachment of property in the possession or control of a *muhal ‘alaih*:

(a) the bailiff shall serve on the *muhal ‘alaih* a *hiwalah* notice in Form MS 37, and the notice in Form MS 38 shall be used if the property is in the Court;

(b) all property specified in a *hiwalah* notice shall be attached as from the service of the notice on the *muhal ‘alaih* to the extent or value therein mentioned, and any alienation or disposal of the property contrary to the terms of the notice, except with the leave of the Court, shall be void against the bailiff, and such action shall also be a contempt of Court;

(c) the *muhal ‘alaih* may pay to the bailiff the amount claimed or may deliver to him the property attached;

(d) if the *muhal ‘alaih* does not make such payment or delivery, the bailiff may serve on him a *hiwalah* summons in Form MS 39 and the Court shall examine him as to the property attached:

Provided that—



(i) no such summons shall be issued to a public servant in respect of money or property in his possession in his capacity as such, except with the leave of the Court and the consent in writing from the Treasury; and

(ii) no such summons shall be issued in the case of money, investment funds or property in any Court;

(e) the Court may hear other evidence on any *hiwalah* summons;

(f) after hearing the summons, the Court may make an order for payment or delivery and may order execution to be issued against the *muhal 'alaih* for any property found to have been lawfully attached in his hands, as if he were himself a judgment debtor for the amount claimed against the original judgment debtor, or for the amount or value of the property in the *muhal 'alaih's* hands, whichever is less;

(g) the Court—

(i) may order costs against the *muhal 'alaih*, and may grant or refuse him his recourse therefor against the judgment debtor;

(ii) may allow costs to the *muhal 'alaih* against the judgment creditor, and may grant or refuse leave to treat the costs as costs of the execution;

(h) if a debt due on a judgment and payable by instalments is attached, the *muhal 'alaih* shall not be liable to pay except in accordance with the order for instalments;

(i) payment by the *muhal 'alaih* under this section shall be a valid discharge against the judgment debtor;

(j) the bailiff may, at the request of the judgment creditor, and shall, if so ordered by the Court, withdraw any *hiwalah* notice or *hiwalah* summons;

(k) a *hiwalah* notice shall be deemed to be vacated three months after service, unless proceedings under the summons are then pending or the Court otherwise orders.

### **Money and property in Court**

**162.** Money, invested funds or other property of the judgment debtor in or under the control of the Court which gives the judgment may, if an order for execution has been made, be applied with the leave of the Court towards satisfaction of the judgment debt, and investment and property other than money may for such purposes be ordered to be sold.

### **Seizure and delivery**

**163.** Where execution is ordered by seizure and delivery of a chattel—

(a) the bailiff shall seize the chattel and upon payment of all expenses due shall deliver it to the judgment creditor;

(b) the order for execution may, if the judgment creditor so desires, order that if the chattel cannot be found, the value thereof, as found either in the original judgment or on subsequent application to the Court, shall be levied;

(c) an order under paragraph (b) shall not bar proceedings for commitment.

### **Deposit of expenses**

**164.—(1)** The bailiff shall not be obliged to take any action under an order for execution until the judgment creditor has deposited a sum sufficient in the opinion of the bailiff to defray any expenses of the execution, including those of keeping possession for a period not exceeding fourteen days, and if the bailiff has to remain in possession for more than fourteen days, he may require a further deposit and may release the property if such deposit is not furnished.

(2) The bailiff shall keep a record of all moneys deposited with him under subsection (1).

### **Entry of premises**

**165.** The bailiff shall not break into any enclosed house or inhabited building except with the leave of the Court.

### **Receipt**

**166.** The bailiff shall give a receipt for every sum of money received by him by way of levy, deposit or otherwise, and shall pay the money to the proper officer of the Registry.

### **Application of proceeds**

**167.** The bailiff shall apply moneys levied or received by him by way of execution in the following order:

- (a) expenses of execution;
- (b) return of judgment creditor deposit outstanding;
- (c) where the case falls within Part XIX, payment into Court to be dealt with in accordance with that Part;
- (d) where the case does not fall within Part XIX, payment into Court to the credit of the judgment creditor not exceeding the amount necessary to satisfy the judgment in respect of which the execution was issued and the costs of the execution;
- (e) payment into Court of the balance to the credit of the judgment debtor.

### **Expenses**

**168.** Where the proceeds of the execution do not cover the expenses of such execution, the judgment creditor shall pay such expenses, but with recourse to the judgment debtor.

### **Return of order**

**169.—(1)** The bailiff shall make a return in Form MS 40 to every order for execution as soon as he has completed the execution and shall deliver a copy of the return to the judgment creditor and the judgment debtor.

(2) The judgment creditor shall have the right to inspect and copy any inventory of property, sale account, voucher or other documents relating to the execution which is kept or managed by the bailiff.

#### **List of inventory**

**170.** Where any property is seized and removed from the original place, the bailiff shall, upon request, give to the person in whose custody it was a sufficient inventory of the property.

#### **Direction as to performance of bailiff's duty**

**171.—**(1) The Court may, of its own motion or on the application of any interested party, give to the bailiff such directions as to the performance of his duties as may be considered just.

(2) The Court may summon and examine any person who can give information regarding any execution.

#### **Delivery to bailiff**

**172.** Any document to be delivered to, or served on, a bailiff may be served on the Registrar during office hours.

#### **Payment out of Court**

**173.** Subject to any written law, any sum paid into Court by the bailiff to the credit of any person shall be paid out of Court to him on his application without any order:

Provided that the Registrar may in his discretion in any case and shall, if he has notice that any other person claims the sum in question or any part thereof, require the applicant to obtain an order of the Court before making payment.

## **Sale**

**174.** Unless the Court otherwise orders, all sales shall be by public auction during office hours and a notice in Form MS 41 as to the date, time and place of the intended sale shall be posted at the Court's Notice Board and at the place of the intended sale not less than seven days before such sale.

## **CHAPTER 4**

### **SPECIAL PROVISIONS RELATING TO JUDGMENT DEBTOR SUMMONS**

## **Application**

**175.** Unless otherwise provided under any other written law, this Chapter shall apply to the execution of any judgment for the payment of money.

(2) In this Chapter, "judgment" includes any order for the payment of money.

## **Application for judgment debtor summons**

**176.—(1)** Where a judgment of the Court is for the payment of money, the judgment creditor who is entitled to enforce the judgment may require the judgment debtor liable under the judgment to appear in Court to be examined orally as to his capacity of paying or settling the judgment debt and to get any property which may be used for such payment.

(2) An application requesting a judgment debtor to appear under subsection (1) shall be made by filing a request in Form MS 42, signed by the applicant or his *Peguam Syarie*.

(3) Where a judgment has been given against two or more persons, the judgment creditor may require the judgment debtor summons to be issued against each or any of the persons liable under the judgment.

### **Issue of judgment debtor summons**

**177.**—(1) On receipt of an application under section 176, the Court shall issue a judgment debtor summons in Form MS 43.

(2) A judgment debtor summons shall be served on the judgment debtor at least seven days before the day fixed for the hearing of the summons.

### **Examination of judgment debtor**

**178.**—(1) On the day fixed for the hearing of the judgment debtor summons, the Court may examine the judgment debtor or other witnesses on *iqrar*.

(2) If the judgment debtor is not present on the day fixed for the hearing of the summons, the Court may—

(a) order that he may be arrested and brought to the Court to be examined; or

(b) make an order under subsection (3) against the judgment debtor.

(3) The Court may order the judgment debtor to pay the judgment debt either—

(a) immediately in lump sum or within such time as may be fixed by the Court; or

(b) by instalments to be paid at the time fixed by the Court.

### **Application for judgment notice**

**179.**—(1) Where a judgment debtor fails to comply with any order made by the Court against him under section 178, the judgment creditor may, by way of judgment notice, request the judgment debtor to appear in Court to show cause why he should not be committed to prison for such refusal.

(2) An application for a judgment notice under subsection (1) shall be made and sworn by the applicant in Form MS 44.

#### **Issue of judgment notice**

**180.**—(1) When the Court receives the application under section 179, it shall issue a judgment notice in Form MS 45.

(2) Unless the Court otherwise orders, a judgment notice shall be served personally on the judgment debtor at least seven days before the date fixed for the appearance of the judgment debtor.

#### **Hearing of judgment notice**

**181.**—(1) The Court may, after hearing the judgment debtor who appears pursuant to a judgment notice under section 180, make an order of committal for a period not exceeding thirty days or vary the order referred to in section 178 as it thinks just.

(2) If an order of committal is made, the Court may order the execution of the order to be suspended with or without condition to enable the judgment debtor to pay the amount in respect of which the order is made.

#### **Order of committal**

**182.** An order of committal under section 181 shall be in Form MS 46.

#### **Payment by judgment debtor**

**183.** Where an order of committal is made under section 181, the judgment debtor may at any time pay, either to the bailiff or, if the judgment debtor is in prison, to the officer in charge of the prison the amount stated in the order, and obtain his discharge.

#### **Certificate of satisfaction**

**184.**—(1) Where any judgment debt in respect of which a judgment debtor is imprisoned under section 181 is satisfied by payment or otherwise, the judgment creditor shall lodge with the Registrar a certificate of satisfaction signed by him in Form MS 47.

(2) If the judgment creditor makes default in lodging the certificate referred to in subsection (1), the judgment debtor or any person on his behalf may apply to the Court for an order for his discharge, and the Court in making such order may direct that the cost for such application be paid by the judgment creditor.

(3) An order under subsection (2) shall be in Form MS 48.

**Date of committal order**

**185.** Any order of committal of a judgment debtor under section 181 shall contain the date on which the order is made and shall be enforced for a period of one year from that date.

PART XIX  
RATEABLE DISTRIBUTION

**Proceeds of execution of sale to be distributed rateably among judgment creditors**

**186.—**(1) Subject to subsection (2), where assets are realized by sale or otherwise in execution of an order or judgment and more persons than one have, prior to the realization, attached the property from which such assets have been realized in execution of orders or judgments for the payment of money against the same judgment debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be distributed rateably among all such persons:

Provided that—

(a) where the property is sold subject to a charge, the chargee shall not be entitled to share in any surplus arising from the sale;

(b) where any property liable to be sold in execution of an order or judgment is subject to a charge, the Court may, with the consent of the chargee, order that the property be sold free from the charge, giving to the chargee the same right against the proceeds of the sale as he had against the property sold; and



(c) where any immovable property is sold in execution of an order or judgment ordering its sale for the discharge of the encumbrances thereof, the proceeds of sale shall be applied—

(i) firstly, in defraying the expenses of the sale;

(ii) secondly, in discharging the principal money due on the encumbrance;

(iii) thirdly, in discharging the principal money due on subsequent encumbrances, if any; and

(iv) fourthly, rateably among the holders of the orders or judgments for the payment of money against the judgment debtor who have, prior to the sale of that property, applied to the Court which passed the order or judgment and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the distribution, any person so entitled may sue that person for the refund of the assets.

(3) Nothing in this section shall operate to defeat or postpone any claim which under the provisions of other written law ought to be given priority.

## PART XX

### INTERLOCUTORY PROCEEDINGS AND INTERIM ORDER

#### CHAPTER 1

##### INTERLOCUTORY PROCEEDINGS

#### **Mode of application**

**187.—(1)** Where by this Ordinance an application in the course of any proceedings, whether before or after judgment, is expressly or by implication authorized to be made to the Court, such application shall be made in Form MS 49 and shall, unless the Court otherwise directs, be heard in Chambers before a Judge.

(2) Every application shall state the nature of the order applied for in general terms and the grounds of the application.

(3) An application under this Chapter may be made *ex parte* unless the Court otherwise directs or otherwise provided in this Chapter.

#### **Notice of application shall be filed**

**188.**—(1) An application shall be deemed to have been made when a notice in respect of the application have been filed and sealed by an officer of the Registry.

(2) An application cannot be amended after filing without the leave of the Court.

#### **Service of application**

**189.** Any application asking only for the extension or abridgment of any period of time may be served on the day before the day specified for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or otherwise provided in this Ordinance, an application shall be served on each of the other parties not less than two clear days before the day so specified.

#### **Affidavit**

**190.**—(1) Every application shall be supported by an affidavit.

(2) Any party—

(a) filing an affidavit intended to be used by him in any proceedings relating to the application; or

(b) intending to use in any such proceedings any affidavit filed by him in previous proceedings,

shall give notice to every other party of the filing or of his intention, as the case may be.

### **Copies of the document**

**191.** The original of any document which is to be used in evidence in proceedings relating to the application shall, if it is available, be brought in, and copies of any such document or of any part thereof shall be supplied for the use of the Court or be given to the other parties to the proceedings.

### **Adjournment**

**192.—(1)** The hearing of an application may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the application was taken out may restore it on two clear days' notice before the day specified for the hearing to all the other parties on whom the application was served.

### **Non-appearance**

**193.—(1)** Where the applicant fails to attend on the hearing of his application, the Court may dismiss the application.

(2) Where any party to an application fails to attend on the first or any resumed hearing of the application and the Court thinks it expedient to proceed with the hearing in the absence of any party, the Court may do so.

(3) Before proceeding in the absence of any party, the Court shall be satisfied that the application or the notice of the time appointed for the resumed hearing, as the case may be, was duly served on that party.

(4) Where the application has been dismissed without hearing by reason of the failure of the applicant to attend, the Court may, if satisfied that it is just to do so, allow the application to be restored.

(5) Where the Court hearing an application proceeded with the hearing in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may rehear the application.

**Order made *ex parte* may be set aside**

**194.**—(1) The Court may, on the application of any party to any cause or matter, set aside an order made *ex parte* under this Chapter.

(2) An application under subsection (1) shall be made within fourteen days from the date of the order and shall be heard *inter parte*.

**Application in a proceedings**

**195.** The Court may, in its discretion, during the hearing of an application under this Chapter, allow any application therein to be heard orally.

CHAPTER 2  
INTERIM ORDER

**Application**

**196.** This Chapter shall apply only to the Syariah High Court.

**Power of Court to grant interim order**

**197.**—(1) Subject to this Chapter, the Court shall, in its discretion, have the power to grant any interim order on such terms as it deems fit and may give directions as to further proceedings.

(2) An application for an interim order shall be made in Form MS 50 and supported by an affidavit.

**No appeal against interim order**

**198.** There shall be no appeal against any interim order made under this Chapter.

**Detention, preservation, *etc.*, of subject matter of cause or matter**

**199.** On the application of any party to a cause or matter, the Court may make an order for the detention, preservation or custody of any property which is the subject matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under subsection (1) to be carried out, the Court may by the order authorize any person to enter upon any immovable property in the possession of any party to the cause or matter.

(3) Where the right of any party to specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into Court or otherwise secured.

### **Injunction**

**200.**—(1) Upon an application of any party in any cause or matter, before or after the hearing of the cause or matter, the Court may grant an injunction whether or not the claim for the injunction has been included in the summons, counterclaim or third party notice, as the case may be.

(2) An application under this section shall not be made before an action has begun except where it is one of urgency.

(3) Where the applicant is the plaintiff and the case is one of urgency, such application may be made *ex parte* and shall be supported by an affidavit and that affidavit shall contain a clear and concise statement—

(a) of the facts giving rise to the claim against the defendant in the proceedings;

(b) of the facts giving rise to the claim for the injunction;

(c) of the facts relied on as justifying the application being made *ex parte*, including details of any notice given to the defendant or, if none has been given, the reason for giving none;

(d) of any answer asserted by the defendant, or which he is thought likely to assert, either to the claim in the action or the claim for the injunction;

(e) of any facts known to the applicant which might lead the Court not to grant *ex parte* injunction;

(f) of whether any previous similar *ex parte* application has been made to any other Judge and, if so, the order made in that previous application; and

(g) of the precise relief sought.

(4) Notwithstanding subsections (1) and (3), in any proceedings against the Government or the Majlis, the Court shall not grant an injunction but may in substitution make an order declaring the right of the parties in the cause or matter.

(5) The Court shall not grant an injunction or any order against any officer of the Government or of the Majlis if the effect of the injunction or the making of the order is to give relief that may not be obtained by it in proceedings against the Government or the Majlis.

**An interim order as to *hadhanah***

**201.**—(1) Subject to the Islamic Family Law Ordinance, 2001 [*Cap. 43*], if the Court is satisfied, on the application of any party for the *hadhanah* of a child in any cause or matter, that the circumstances require an interim order to be made for the *hadhanah* of that child, the Court may make such an order which shall have immediate effect and shall continue to be in force until the Court has made a decision on the cause or matter.

(2) An application under this section shall not be made before the action has begun except in a case of urgency which in the interest of justice or for the protection of the applicant or the child it appears that the immediate intervention of the Court is necessary.

(3) Where the applicant is the plaintiff and the case is one of urgency, such application may be made *ex parte* and shall be supported by an affidavit and that affidavit shall contain a clear and concise statement—

(a) of the facts giving rise to the claim against the defendant in the proceedings;

(b) of the facts giving rise to the claim for an interim order;

(c) of the facts relied on as justifying the application being made *ex parte*;

(d) of any facts known to the applicant which might lead the Court not to grant an interim order;

(e) of whether any previous similar *ex parte* application has been made to any other Judge and, if so, the order made in that previous application; and

(f) of the precise relief sought.

#### **Interim order as to maintenance**

**202.**—(1) Subject to the Islamic Family Law Ordinance, 2001 [*Cap. 43*], if the Court is satisfied, on the application of any party entitled to maintenance in any cause or matter, that the circumstances require an interim order for maintenance to be made against the person liable under Islamic Law to pay maintenance, the Court may make such an order which shall have immediate effect and shall continue to be until the Court has made a decision on the cause or matter.

(2) Where the application referred to in subsection (1) is in respect of an interim order for the maintenance of a child, the Court shall not make such an order unless it is satisfied that the father or the person liable under Islamic Law for the maintenance of the child has the capability to pay for the maintenance applied for.

#### **Power to order samples to be taken, etc.**

**203.**—(1) Where the Court considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of any party to the cause or matter, and on such terms, if any, as it thinks just, by order authorize or require any sample to be taken of any property which is the subject matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under subsection (1) to be carried out, the Court may by the order authorize any person to center upon any immovable property in the possession of any party to the cause or matter.

(3) An application under this section shall be supported by an affidavit.

**Sale of perishable property, etc.**

**204.** The Court may, on the application of any party to any cause or matter, make an order for the sale by such person, in such manner and on such terms, if any, as may be specified in the order of any movable property which is the subject matter of the cause or matter or as to which any question may arise therein and likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

**Order for early trial**

**205.** Where on the hearing of the application, made before the trial of a cause or matter, for an interim order it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purpose of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

**Recovery of movable property subject to lien, etc.**

**206.** Where the plaintiff, or defendant by way of counterclaim, claims the recovery of a specific movable property and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleading, if any, or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum, if any, for service charge and costs as the Court may direct and that, upon such payment being



made, the property claimed be given up to the party claiming it, but subject to the Exchange Control Act 1953 [*Act 17*].

**Allowance of income of property the subject matter of proceedings**

**207.** Where any movable or immovable property forms the subject matter of any proceedings, and the Court is satisfied it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the movable property be transferred or delivered to any or all such parties.

PART XXI

POWERS OF JUDGE AND REGISTER

**Powers of Registrar**

**208.** In any Court to which he is appointed, the Registrar in Chambers may—

- (a) adjourn any proceedings;
- (b) fix a date for the trial of any proceedings;
- (c) administer oaths for affidavits and take bonds;
- (d) where security is ordered, determine its sufficiency and require sureties to justify;
- (e) by consent of all parties, order consolidation of any proceedings; and
- (f) carry out any other functions provided under this Ordinance or any order of a Judge.

### **Powers of Judge**

**209.**—(1) A Judge may—

(a) exercise all duties and powers conferred upon him by any written law;

(b) exercise his functions in Court or in Chambers in any proceedings within the local limits of his jurisdiction; and

(c) enter judgment by confession or consent of parties in Court or in Chambers.

(2) A Judge may exercise in Court or in Chambers all the powers conferred on the Registrar under section 208.

(3) A Judge of a Syariah High Court may, on the application of any person or in his discretion, order the Syariah Subordinate Court to reinstate any case that have been rejected.

(4) The Chief Syariah Judge may, on the application of any party or in his discretion, order any Court to reinstate any case which has been rejected.

### **Appeal against judgment, etc., of Registrar to Judge in Chambers**

**210.**—(1) An appeal may be made to a Judge in Chambers against any judgment, order or decision of the Registrar.

(2) An appeal under subsection (1) shall be made by serving on each of the other parties to the proceedings in which judgment, order or decision was given a notice in Form MS 51 to attend before the Judge on a day specified in the notice.

(3) Unless the Court otherwise orders, the notice must be filed within seven days after the judgment, order or decision appealed against was given or made and served not less than two clear days before the day fixed for hearing the appeal.

(4) Except as the Court may otherwise direct, an appeal under this section shall not operate as a stay of the proceedings in which the appeal is brought.

(5) The decision of the Judge in Chambers shall be final.

PART XXII  
MONEY AND PROPERTY IN COURT

**Court's bank account**

**211.** Every Court shall keep an official account in accordance with Islamic Law at any bank.

**Payment in**

**212.** Money paid into Court may be paid to the Registrar stating the purpose for which the money is paid and the Registrar shall issue the receipt of acceptance.

**Payment into bank**

**213.** All moneys received under section 212 shall, as soon as may be, be paid into the Court's bank account.

**Notice to person entitled**

**214.** Where money is paid into Court to the credit of any person, the person paying in shall forthwith give notice of the payment to the person to whose credit the money is paid.

**Payment out**

**215.** Before making any payment out of Court, the Registrar—

(a) may require proof that the person applying for payment is the person entitled or authorized to receive the payment; and

(b) shall ascertain that all moneys due to the Government of which he has notice has been paid or deducted.

**Mode of payment**

**216.—(1)** Payment out of Court—

(a) if not more than fifty ringgit, may be made in cash;  
and

(b) if fifty ringgit or more, shall be made by cheques payable to the payee, crossed and endorsed “not negotiable” and marked “Payable only within 90 days from the date”

(2) Cheques not cashed within ninety days from the date of the cheques may be renewed or replaced.

#### **Remittance by post**

**217.**—(1) The Registrar may in his discretion or if so requested remit by post any money to be paid out of Court.

(2) Where any money is remitted by post, the Registrar shall procure its receipt after remittance is made and the responsibility for its loss shall be borne by the recipient.

#### **Books of accounts**

**218.**—(1) The Court shall maintain such books of accounts as may be required by the Treasury’s Instructions.

(2) In this section, “Treasury’s Instructions” means instructions issued by the Treasury under section 4 of the Financial Procedure Act 1957 [*Act 61*].

#### **Service cost**

**219.** No service cost shall be payable upon any fund kept in the Court.

#### **Unclaimed fund, etc.**

**220.**—(1) Notwithstanding anything in any other written law, fund in Court and all jewelleries, securities and movable property, other than money, and any deeds or documents required for the purpose of the hearing or proceedings, which are unclaimed after fifteen years, shall become the property of and be vested in the *Baitulmal*.

(2) The Court may, upon the application of any claimant and if satisfied that the claimant is entitled to the money or property vested in the *Baitulmal* under subsection (1), order the *Baitulmal* to pay the money or return the property or the value thereof to the claimant.

### PART XXIII

#### COSTS, ALLOWANCE AND COURT FEES

##### **Court fees**

**221.**—(1) Subject to subsection (2), there shall be payable in respect of all causes, matters and proceedings in Court such fees as may be prescribed.

(2) The Government or the Majlis shall not be required to pay any Court fees in proceedings by or against the Government or the Majlis.

(3) Court fees shall be paid in cash.

(4) No fee shall be chargeable in respect of proceedings taken at the instance of the Court.

##### **Costs**

**222.** Subject to this Ordinance, the Court shall, in its discretion, award costs of proceedings filed in that Court although it has no jurisdiction on such proceedings.

##### **Assessment of costs**

**223.** Costs shall be assessed by the Court or Registrar in accordance with the rules made under this Ordinance.

##### **Witnesses**

**224.** Where on the hearing of any proceedings a person attends Court as a witness of fact, or as a witness to produce a document, he may be allowed such appropriate sum as may be prescribed.

**Expert witnesses**

**225.** Where on the hearing of any proceedings a person attends Court as an expert witness, he may be allowed a fee for attending the Court, and in addition, a fee for qualifying to give evidence as such expert.

**Subsistence and travelling allowances**

**226.** In addition to any of the allowances payable under sections 224 and 225, a witness or a party may be allowed such expenses which the witness or party has actually or reasonably incurred in travelling to and from the Court or in staying at his place of abode.

**Attendance in more than one proceedings**

**227.** Where a witness or party attends Court in respect of two or more proceedings, the sum which might be allowed to him under section 224 or 225 in respect of a proceedings may be apportioned between the several proceedings.

**Witness not called**

**228.** Allowance may be made to a witness whether he was called or not, if his attendance was necessary.

PART XXIV

CONTEMPT OF COURT

**Notice to show cause**

**229.—(1)** The Court shall have the jurisdiction to commence proceedings against any person for contempt of Court and may, in such proceedings, make an order of committal for a period not exceeding six months or may impose a fine not exceeding two thousand ringgit.

**(2)** Where contempt is committed in the face of the Court, it shall not be necessary for the Court to serve the notice to show cause but the Court shall ensure that the person alleged to be in contempt understands the nature of the offence alleged against him and has the opportunity to be heard in his own defence, and shall make a proper record of the proceedings.

(3) In the case of contempt committed outside Court, notice to show cause why an action or proceedings should not be taken against him shall be served personally on the person alleged to have committed such contempt.

#### **Contempt by body corporate**

**230.** Where contempt of Court is committed by a body corporate, any person who at the time of the commission of such contempt is a director, manager or secretary of the body corporate or otherwise responsible for the management of the body corporate shall also be guilty of contempt unless he proves that—

(a) the contempt is committed by the body corporate without his consent or connivance; or

(b) he has exercised due diligence to prevent the commission of the contempt as he ought to have exercised, having regard to the nature of his office and function in that capacity and to all the circumstances.

#### **Proceedings without authority**

**231.** Any person doing any act or taking any proceedings in the name or on behalf of another person knowing himself not to be lawfully authorized by that person shall be guilty of contempt of Court.

### **PART XXV**

#### **MISCELLANEOUS**

#### **Language**

**232.—(1)** Unless otherwise ordered by the Chief Syariah Judge, the national language may be used in all proceedings in Court.

(2) Any document required for use in pursuance of this Ordinance may be in the national language, and a document in any other language shall be accompanied by a translation thereof in the national language.

### **Forms**

**233.** The Forms set out in the Third Schedule, with such variations as the circumstances may require, shall be used for the respective purposes therein mentioned.

### **Certified copies**

**234.** Upon application and payment of the prescribed fee by any person, the Registrar may supply a certified copy of any document including, with the consent of the Court, any notes of evidence to that person.

### **Fees, deposit and disbursement**

**235.** Where any fee or deposit is payable in respect of any act, or any disbursement is necessarily involved in doing the act, the officer charged with the doing of the act shall not be obliged to do it until the fee or deposit or the amount of the disbursement has been paid.

### **Prohibition on officers of the Court**

**236.** No officer of the Court shall become a surety, or sign any receipt or document or receive any money for or on behalf of any party to any proceedings in the Court, or bid or otherwise become purchaser directly or indirectly at any sale by the Court.

### **Furnishing security**

**237.—(1)** Security shall be given by deposit of money or by bond, the amount of which shall be fixed by the Court or the Registrar.

(2) Expenses of security, if any, shall be borne by the person giving the security.

(3) The undertaking in writing of a *Peguam Syarie* may be accepted in lieu of the security mentioned in subsection (1).

(4) Where security is given by deposit of money, the money shall not be paid out without the order of the Court.

(5) Where security is given by bond, one surety shall be required unless the Court otherwise orders.



### **Enlargement or abridgement of time**

**238.**—(1) The Court may, upon such terms as it thinks just, by an order, extend or abridge the period within which a person is required or authorized by this Ordinance or by any judgment, order or direction to do any act in any proceedings.

(2) The Court may extend any such period as is referred to in subsection (1) although the application for extension is not made until after the expiration of such period.

### **Scandalous matter, etc.**

**239.** The Court may, of its own motion or on the application of any party, at any time, order that any scandalous, irrelevant, vexatious, oppressive, argumentative or lengthy document, or content of a document, be struck out.

### **Personal appearance**

**240.** Subject to any other written law, the Court may if it thinks necessary order the personal appearance of any party to any proceedings at any time, unless the party is outside the State, and wilful failure to comply with the order shall be a contempt of Court.

### **Service by other Court**

**241.** Any process or document required to be served by an officer of the Court on a party may be served by any other Court.

### **Recording of evidence before hearing**

**242.**—(1) Where the Court is satisfied that the evidence of any party or witness should be taken before the date of the hearing, the Court or any Judge ordered by the Court may take the evidence from any such party or witness at such place as it thinks fit and the evidence so taken may be used at the hearing.

(2) Notice that evidence will be taken under subsection (1) shall be served on the other party not less than two days before the date the evidence is to be so taken and the other party may take part in such proceedings.

### **Letter of request**

**243.**—(1) Subject to subsection (2), the Court or a Judge may, in the case of any pending proceedings before another Court, take evidence from any party or witness or other person and accept any documents submitted in the pending proceedings.

(2) The powers of the Court or a Judge under subsection (1) shall be exercised if there is a written request from the Court before which the proceedings are pending.

(3) Notwithstanding subsection (1), the Court before which the proceedings are still pending may, of its own motion or on the application of any party to the proceedings, request another Court to take evidence from any party or witness in such proceedings, if the Court is satisfied that the party or witness cannot attend the Court on a reasonable ground or if the appearance of the party or witness will cause the party calling the witness to incur unreasonable expenses.

### **Inherent power of the Court**

**244.** Nothing in this Ordinance shall be deemed to limit or affect the inherent power of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

### **Reference to Islamic Law**

**245.**—(1) Any provision or the interpretation of any provision in this Ordinance which is inconsistent with Islamic Law shall, to the extent of the inconsistency, be void.

(2) In the event of a *lacuna* or where any matter is not expressly provided for in this Ordinance, the Court shall refer to Islamic Law.

### **Syariah Court Rules Committee**

**246.**—(1) There shall be established a Committee to be called the Syariah Court Rules Committee consisting of—

- (a) the Chief Syariah Judge who shall be the Chairman;

- (b) a representative of the Majlis Islam Sarawak;
- (c) a representative of the State Attorney General's Chambers;
- (d) a representative of the *Persatuan Peguam-Peguam Syarie*; and
- (e) two other persons appointed by the Chief Syariah Judge.

(2) The members appointed under subsection (1)(e) shall hold office for a period of two years and shall be eligible for reappointment.

(3) The Chief Registrar of the Syariah Appeal Court shall be the Secretary of the Syariah Court Rules Committee.

### Rules

**247.**—(1) The Syariah Court Rules Committee may, by notification in the *Gazette*, make rules for carrying out the provisions of this Ordinance, and in particular, but without prejudice to the generality of the foregoing, such rules may provide for—

- (a) the procedure and practice of the registries of a Syariah Court;
- (b) the fees, allowances and costs payable in respect of proceedings under this Ordinance;
- (c) procedure for *sulh*;
- (d) the forms, books of accounts, reports and other documents to be used in respect of any act or thing done under or in pursuance of this Ordinance; and
- (e) the conduct of Court, the form and method of execution of instruments and the appointment of any officer or agent of the Court.

(2) The Syariah Court Rules Committee may, by order, amend the Second and Third Schedules.

**Repeal and transitional**

**248.**—(1) The Ordinan Acara Mal Syariah, 1991 [*Ord. No. 7/91*] is repealed.

(2) Where any case or matter is pending before any Court on the coming into force of this Ordinance, the provisions of this Ordinance shall apply in respect of the proceedings of such case or matter to the extent that it does not result in injustice.

FIRST SCHEDULE

(Sections 3(3))

ARABIC SCRIPT FOR CERTAIN WORDS  
AND EXPRESSIONS

<i>Baitulmal</i>	— بيت المال
<i>hadhanah</i>	— حضانه
<i>hiwalah</i>	— حواله
<i>'iddah</i>	— عدّه
<i>iqrar</i>	— إقرار
<i>istizhar</i>	— استظهار
<i>mal</i>	— مال
<i>muh'al 'alaih</i>	— محل عليه
<i>Kadi</i>	— قاضي
<i>sulh</i>	— صلح
<i>wakalah</i>	— وكالة

SECOND SCHEDULE

(Sections 7(2) and 247(2))

**PROCEEDINGS TO BE BEGUN BY APPLICATION**

Matters relating to personal and family law as follows:

Consent for solemnization of marriage of a minor

Appointment of *wali am*

Order for registration of marriage solemnized contrary to law

Presumption of death

Appointment of guardian of property of a minor

Order for joint guardianship of property of a minor

Order for variation of power of guardian of property of a minor

Order for removal of guardian of property of a minor

Leave for disposal of a minor's property

Leave to support a minor out of income of his property

Order for use of capital property to support a minor

Prohibition order relating to a minor's property

Injunction restraining the taking of a child out of Malaysia

Order to set aside, and an injunction restraining, the disposal of property to defeat claim for maintenance

Injunction against molestation by spouse or former spouse

Recognition of marriage contracted outside the State (Acknowledgement of paternity)

Confirmation of acknowledgement of paternity by woman in *'iddah*  
(Distribution of estate)

THIRD SCHEDULE

(Sections 2 and 247(2))

**FORM MS 1**

SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 4)

**GENERAL TITLE**

IN THE SYARIAH SUBORDINATE/HIGH COURT AT .....

IN THE STATE OF .....

(1).....No.....of 20.....

Between

(2)..... *Plaintiff*  
*Applicant*

and

(3)..... *Defendant*  
*Respondent*

Notes:

- (1) Nature of proceedings (e.g. Summons; Application; *etc.*)
- (2) Name; if under disability or in representative capacity, give particulars of representation.

*Example:*

- (a) *A B administrator of C.D. deceased;*
- (b) *A B an infant, by C.D. his guardian ad litem.*

**FORM MS 2**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 8(a))

**SUMMONS**

(General Title)

To ..... (the abovenamed defendant)

of .....

You are hereby summoned to appear either in person or by your Peguam Syarie before the Syariah .....

Court at ..... on ..... the ..... day of ..... 20 ..... at ..... a.m./p.m., to answer a claim against you by the abovenamed plaintiff, particulars whereof are set out in the statement of claim endorsed hereon.

Take notice that in default of attending the Court on the day and time appointed, the Court may proceed to hear and determine the case in your absence.

And take notice that if you wish to defend the claim against you, you must file in this Court and serve on the plaintiff a defence in the prescribed form before the abovementioned date or appear in Court on that date.

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Judge/Registrar*

(Endorsement on back of above)

**STATEMENT OF CLAIM**

(in numbered paragraphs)

To .....

.....

the abovenamed defendant residing at .....

Dated this ..... day of ..... 20 .....

.....  
*Plaintiff (or Peguam Syarie for the Plaintiff)*



**FORM MS 3**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001  
(Section 13(1))  
**APPLICATION**  
(General Title)

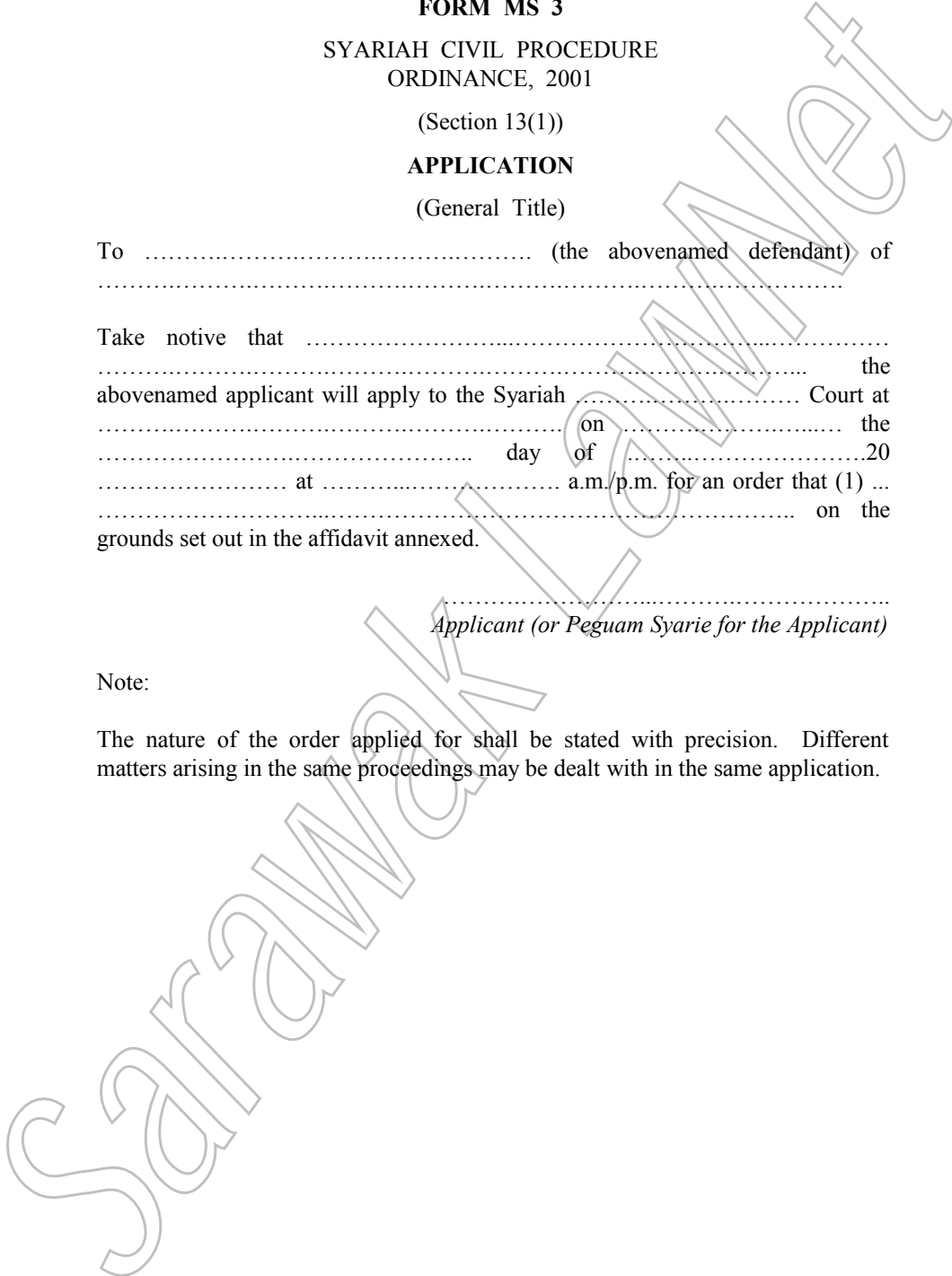
To ..... (the abovenamed defendant) of  
.....

Take notice that ..... the  
abovenamed applicant will apply to the Syariah ..... Court at  
..... on ..... the  
..... day of .....20  
..... at ..... a.m./p.m. for an order that (1) ...  
..... on the  
grounds set out in the affidavit annexed.

.....  
*Applicant (or Peguam Syarie for the Applicant)*

Note:

The nature of the order applied for shall be stated with precision. Different matters arising in the same proceedings may be dealt with in the same application.



**FORM MS 4**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 31(2))

**APPLICATION FOR LEAVE TO SUE/DEFEND AS  
A POOR PERSON**

(General Title)

I ..... make oath and say—

1. I reside at .....  
.....  
and am a .....

*(state occupation)*

\*2.—(1) I have a just claim against .....  
.....  
of .....

for (here state concisely the claim and cause of action and all the material facts of the case).

(2) I desire to bring an action against the said .....  
but am unable to pay the Court fees therefore because (state the reason why applicant is unable to pay the Court fees).

\*3.—(1) I am a defendant in this action and have a good defence to this action on the following grounds (state concisely the grounds of defence).

[I have a just counterclaim against the plaintiff for (state concisely the counterclaim and all material facts relating thereto)]

(2) I am unable to pay the Court fees for my defence (or counterclaim) because (state the reason why applicant is unable to pay the Court fees).

4. I apply for leave to \*sue the said .....  
/defend (and bring a counterclaim in) this action as a poor person.

Sworn at .....

this ..... day of ..... 20 .....

.....  
*Signature of Applicant*

Before me,

.....  
*Judge/Registrar*

Order,

Leave to sue/defend (and to bring counterclaim as a poor person  granted  refused) this

..... day of ..... 20 .....

.....  
*Judge*

\* Delete where not applicable.

Sarawak Lawnet

**FORM MS 5**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 34(2))

**WAKALAH OR MEMORANDUM OF APPOINTMENT  
OF PEGUAM SYARIE**

(General Title)

I .....  
the abovenamed plaintiff (or defendant) N.R.I.C. No. ....  
..... of .....  
hereby appoint ..... of  
Messrs. .... to represent me and to  
act on my behalf in this case and to appear in the proceedings relating to it.

Dated this ..... day of ..... 20 .....

.....  
*Plaintiff/Defendant*

I ..... hereby accepts the  
aforesaid appointment.

Dated this ..... day of ..... 20 .....

.....  
*Peguam Syarie*

Before me,

.....  
*Judge/Registrar*

This *wakalah* or memorandum is filed by Messrs .....  
on behalf of the plaintiff (or defendant) of .....

**FORM MS 6**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001  
(Section 36(1))

**NOTICE OF CHANGE OF *PEGUAM SYARIE***  
(General Title)

To the Registrar,

Take notice that I ..... the abovenamed  
plaintiff (or defendant) of .....

have appointed .....  
(*name of new Peguam Syarie*)

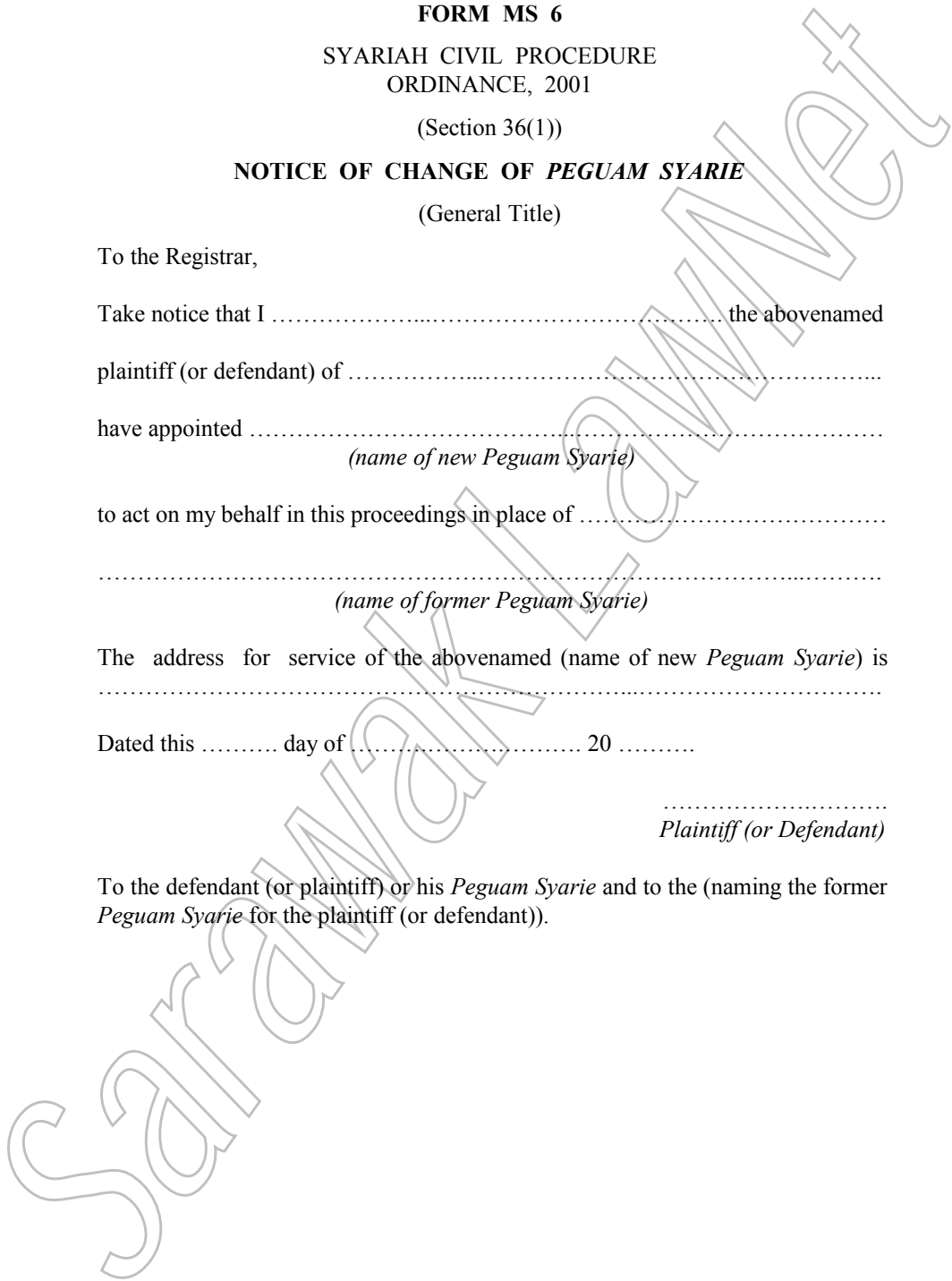
to act on my behalf in this proceedings in place of .....  
.....  
(*name of former Peguam Syarie*)

The address for service of the abovenamed (*name of new Peguam Syarie*) is  
.....

Dated this ..... day of ..... 20 .....

.....  
*Plaintiff (or Defendant)*

To the defendant (or plaintiff) or his *Peguam Syarie* and to the (naming the former  
*Peguam Syarie* for the plaintiff (or defendant)).



**FORM MS 7**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 37)

**NOTICE OF DISCHARGE OF  
PEGUAM SYARIE**

(General Title)

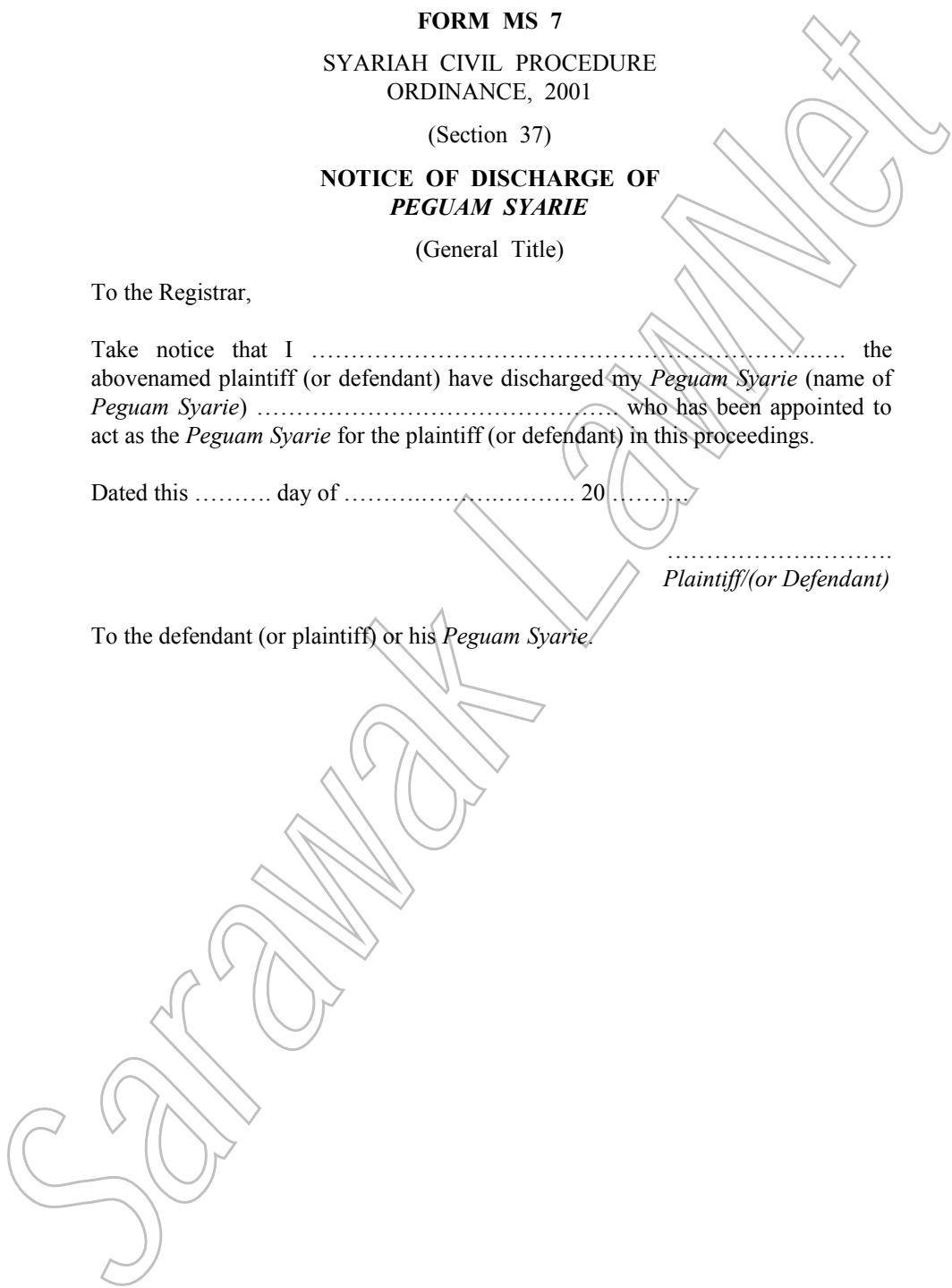
To the Registrar,

Take notice that I ..... the  
abovenamed plaintiff (or defendant) have discharged my *Peguam Syarie* (name of  
*Peguam Syarie*) ..... who has been appointed to  
act as the *Peguam Syarie* for the plaintiff (or defendant) in this proceedings.

Dated this ..... day of ..... 20 .....

.....  
*Plaintiff/(or Defendant)*

To the defendant (or plaintiff) or his *Peguam Syarie*.



**FORM MS 8**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001  
(Section 38)

**NOTICE OF WITHDRAWAL OF PEGUAM SYARIE**  
(General Title)

To the Registrar,

Take notice that I .....

*Pegum Syarie* for the plaintiff (or defendant) hereby withdraw and cease to be *Pegum Syarie* acting for the said plaintiff (or defendant) in the abovementioned proceedings.

Dated this ..... day of ..... 20 .....

.....  
*Pegum Syarie*

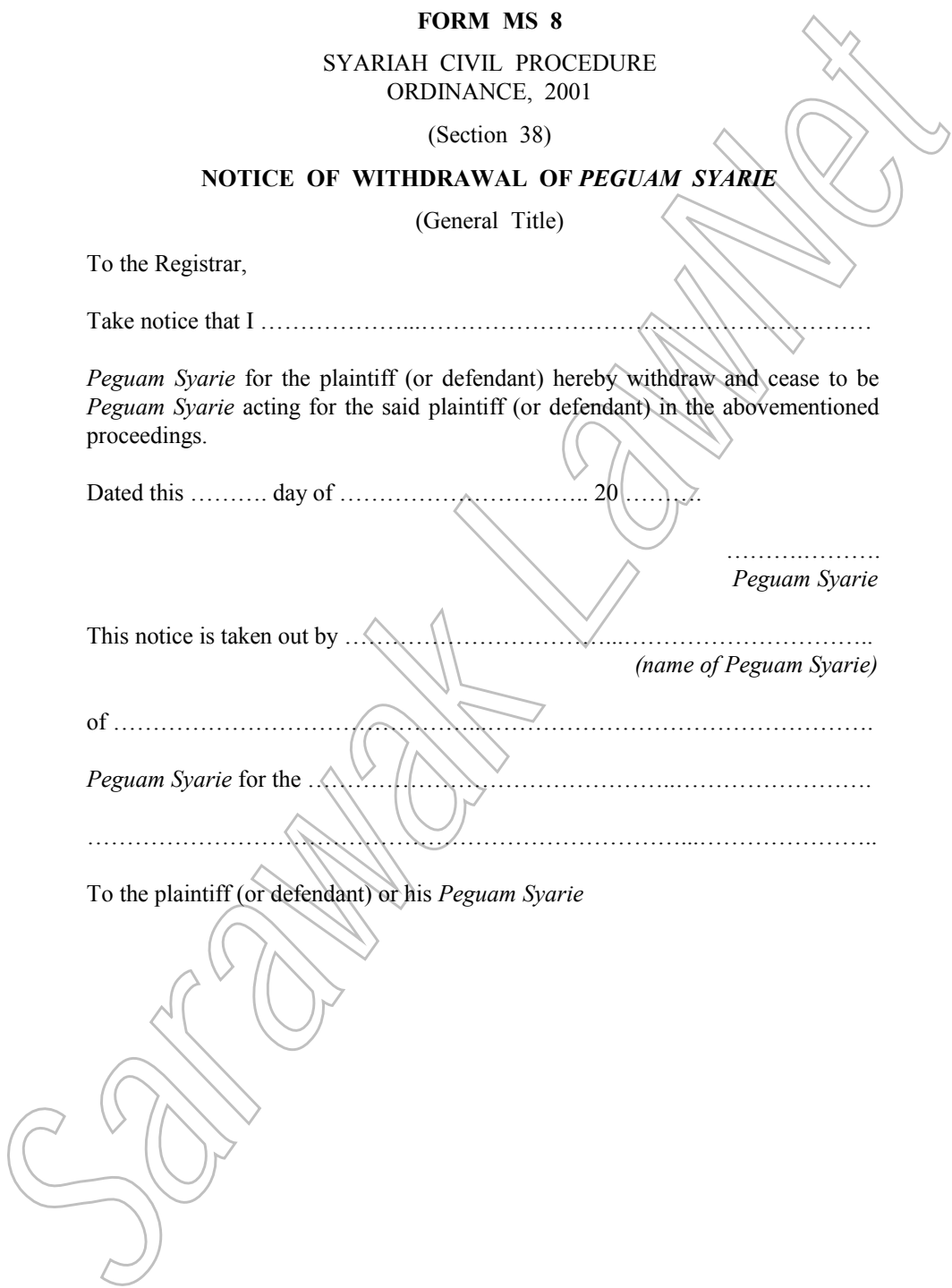
This notice is taken out by .....  
(*name of Pegum Syarie*)

of .....

*Pegum Syarie* for the .....

.....

To the plaintiff (or defendant) or his *Pegum Syarie*



**FORM MS 9**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 57(1))

**NOTICE BY CLAIMANT OF PROPERTY  
TAKEN IN EXECUTION**

(General Title)

Take notice that I .....

of .....

claim the following property that have been taken in execution in this action at  
(state address) on the ..... day of ..... 20 .....

(State the money, goods or other movable property claimed and the grounds for the  
claim).

Dated this ..... day of ..... 20 .....

.....  
*Claimant*

My address for service is .....

.....

To the bailiff and the execution creditor (or *Peguan Syarie* for the execution  
creditor).

SarawakLawNet



**FORM MS 10**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 57(2))

**NOTICE BY BAILIFF OF PROPERTY TAKEN IN EXECUTION**

(General Title)

Take notice that .....

of .....

have claimed the following property (specify the property claimed)

.....

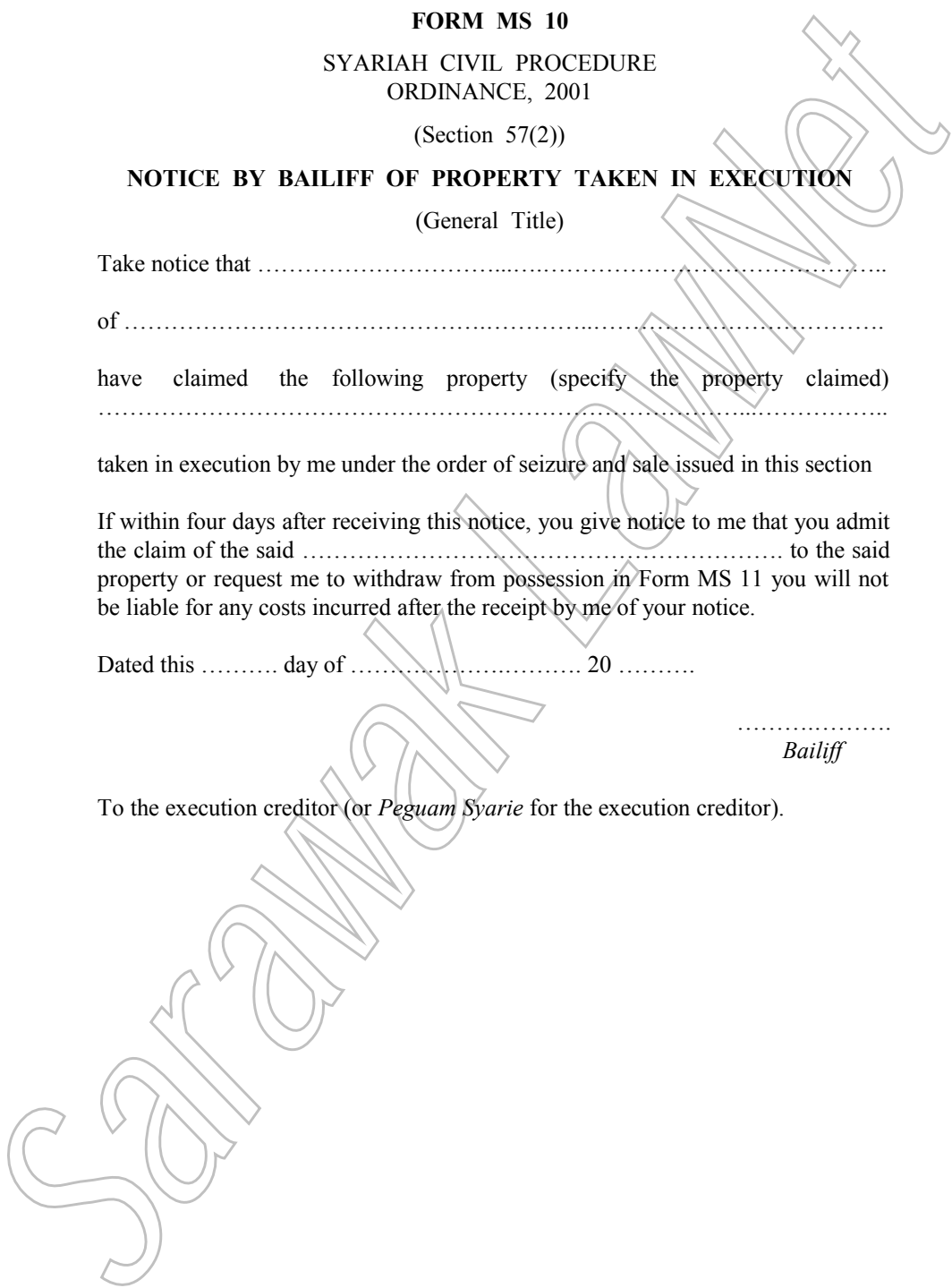
taken in execution by me under the order of seizure and sale issued in this section

If within four days after receiving this notice, you give notice to me that you admit the claim of the said ..... to the said property or request me to withdraw from possession in Form MS 11 you will not be liable for any costs incurred after the receipt by me of your notice.

Dated this ..... day of ..... 20 .....

.....  
*Bailiff*

To the execution creditor (or *Peguam Syarie* for the execution creditor).



**FORM MS 11**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 57(2))

**NOTICE BY EXECUTION CREDITOR OF  
PROPERTY TAKEN IN EXECUTION**

(General Title)

Take notice that I admit (or dispute) the claim of .....

.....

to the property seized by you (or I request you to withdraw from possession) under  
the order of seizure and sale issued in this action.

Dated this ..... day of ..... 20.....

.....  
*Execution Creditor*  
*(or Peguam Syarie for*  
*the Execution Creditor)*

Sarawak LawNet

**FORM MS 12**

**SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001**

(Section 58(1))

**APPLICATION FOR AN INTERPLEADER SUMMONS  
BY BAILIFF**

(General Title)

1. On the ..... day of ..... 20 .....  
gave me notice that he claimed the following property (specify the property  
claimed) taken by me in execution under the order of seizure and sale issued in this  
action.

2. On the ..... day of ..... 20 ..... I notified the  
execution creditor of the said claim. He does not admit the claim and has not  
requested me to withdraw from possession of the property claimed.

3. I value the property claimed at approximately RM ..... I claim no  
interest in the subject matter in dispute other than for commission fees and  
expenses of execution.

I do not in any manner collude with any of the parties herein.

I apply for an interpleader summons to be issued.

Dated this ..... day of ..... 20 .....

.....  
*Bailiff*

Interpleader Summons to issue returnable the ..... day of ..... 20  
..... at ..... a.m./p.m.

Dated this ..... day of ..... 20 .....

.....  
*Registrar*

**FORM MS 13**  
**SYARIAH CIVIL PROCEDURE**  
**ORDINANCE, 2001**  
(Section 58(1))  
**APPLICATION FOR APPEAL**  
**BY PERSON UNDER LIABILITY**

Affidavit in support

I .....of ..... (if in an action, the abovenamed defendant) make oath and say as follows:

1. (If in an action) This action is brought to recover (state what) claimed by the plaintiff but I have received a claim adverse to that of the plaintiff from .....

..... of .....

(or, if no action), I have received adverse claims from .....

..... of .....

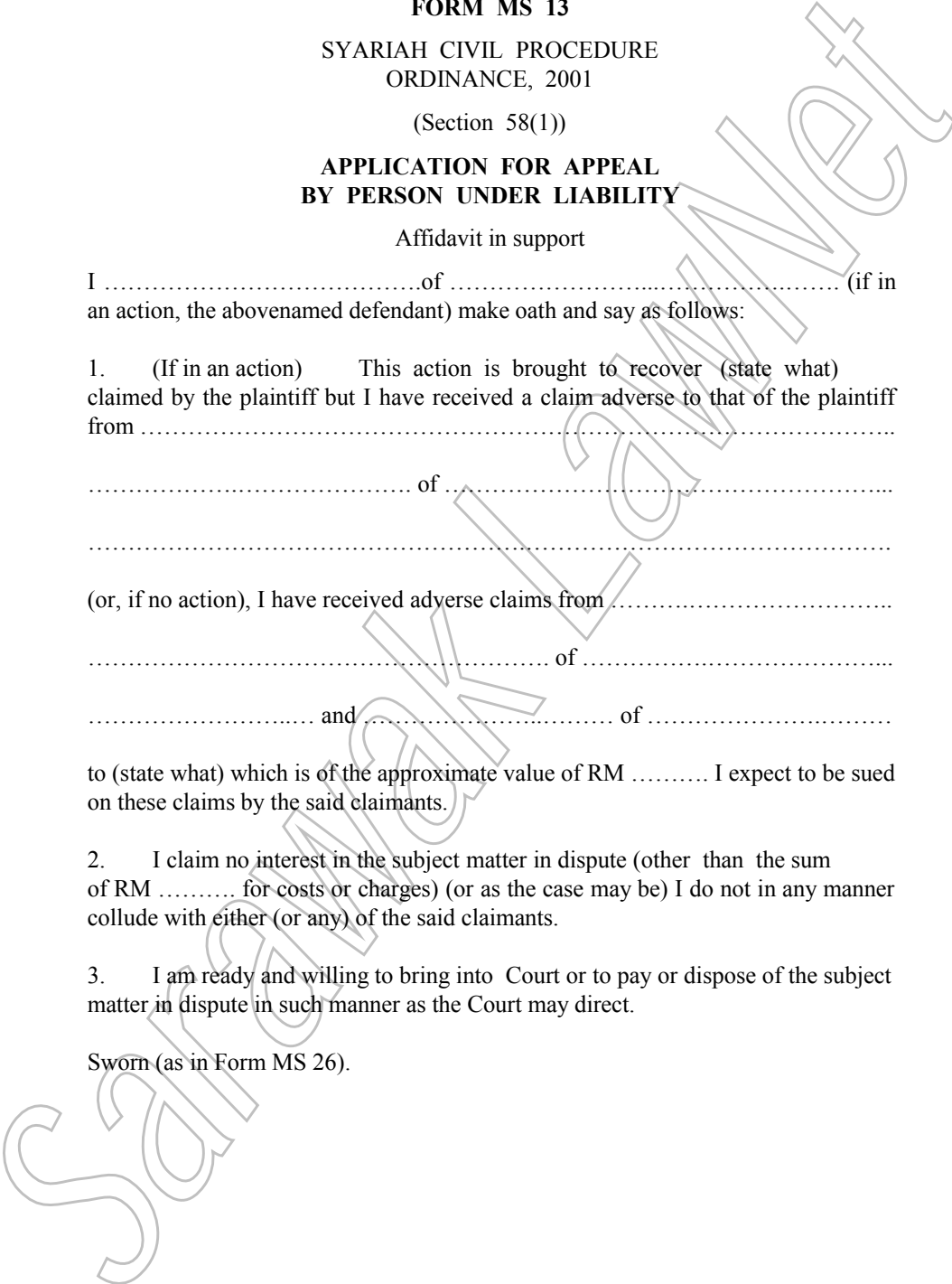
..... and ..... of .....

to (state what) which is of the approximate value of RM ..... I expect to be sued on these claims by the said claimants.

2. I claim no interest in the subject matter in dispute (other than the sum of RM ..... for costs or charges) (or as the case may be) I do not in any manner collude with either (or any) of the said claimants.

3. I am ready and willing to bring into Court or to pay or dispose of the subject matter in dispute in such manner as the Court may direct.

Sworn (as in Form MS 26).



**FORM MS 14**  
 SYARIAH CIVIL PROCEDURE  
 ORDINANCE, 2001  
 (Section 59(2))  
**INTERPLEADER SUMMONS**  
 (General Title)

(a) *To Execution Creditor*

To .....  
of .....

Whereas the above claimant has made a claim to certain property taken in execution under process issued out of this Court at your instance:

You are hereby summoned to appear before the Syariah .....  
..... Court at ..... on .....

the ..... day of ..... 20 ..... at ..... a.m./p.m. when the said claim will be adjudicated upon and such order made thereon as the Court shall think just.

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Registrar*

Entered No. .... of 20 .....

*Clerk*

(b) *The Claimant*

To ..... of .....  
..... You

are hereby summoned to appear before the Syariah ..... Court at ..... on ..... the ..... day of ..... 20 ..... at ..... a.m./p.m. to support a claim made by you to ..... certain property taken in execution under process issued out of this Court at the instance of the execution creditor and in default of you then establishing such claim the said property will be dealt with under the said process as property of the execution debtor.

116

*CAP. 44*

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Registrar*

Entered No ..... of 20 .....

*Clerk*

Saravak LawNet

**FORM MS 15**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 62(3))

**JUDGMENT (OR ORDER) ON INTERPLEADER SUMMONS**

(General Title)

Upon this Interpleader Summon (or Summons) coming up for hearing before the Honourable .....

on ..... the ..... day of ..... 20 ..... and upon hearing the evidence adduced and what was alleged by the parties (or their *Peguan Syarie*)

(Insert the appropriate Operative Part)

(Operative Parts)

(a) *Under execution*

It is adjudged touching the claim of ..... to (specify the property) (or to the proceeds of sale) (or value) of (specify the property) taken in execution under process issued out of this Court at the instance of ..... execution creditor, that the said/(specify the property) (or proceeds of sale) (or value) (or part of the said property) namely (specify same) is/are (not) the property of the claimant.

And it is ordered that the said ..... do pay to the said ..... the sum of RM ..... for costs (and the sum RM ..... for extra expenses of execution and keeping in possession occasioned by the claim).

(Insert direction as to disposal of any money in Court.)

(b) *In a pending action*

It is this day adjudged touching the claims of the plaintiff and the claimant to ..... (part of) the subject matter of this action that the claim of the plaintiff (or claimant) is valid and that the claimant (or plaintiff) has no claim thereto.

And it is further adjudged that the plaintiff (or claimant) do recover against the defendant the sum of RM ..... of debt and RM ..... for costs amounting together to the sum of RM .....

(And it is ordered — here insert any order for delivery of the property).

And it is further adjudged that the plaintiff (or claimant) do recover the sum of RM ..... from the claimant (or plaintiff) for costs ..... (add if any costs awarded to the defendant against the plaintiff or claimant):

And it is further adjudged that the defendant do recover the sum of RM ..... for costs from the plaintiff (or claimant).

(If the claimant fails to appear and an order is made barring his claim, proceed as follows:

And the claimant not appearing, it is declared that the said ..... and all persons claiming under him be forever barred as against ..... the plaintiff and all persons claiming under him).

(c) *In any other case*

It is this day adjudged (here set out the judgment determining the claim as between the applicant and any claimant who appears or, if all the claimants appear, the judgment determining the rights and claims of all parties and any order as to payment, or delivery of the property and costs) .....

(If any claimant fails to appear and an order is made barring his claim, proceed as follows:

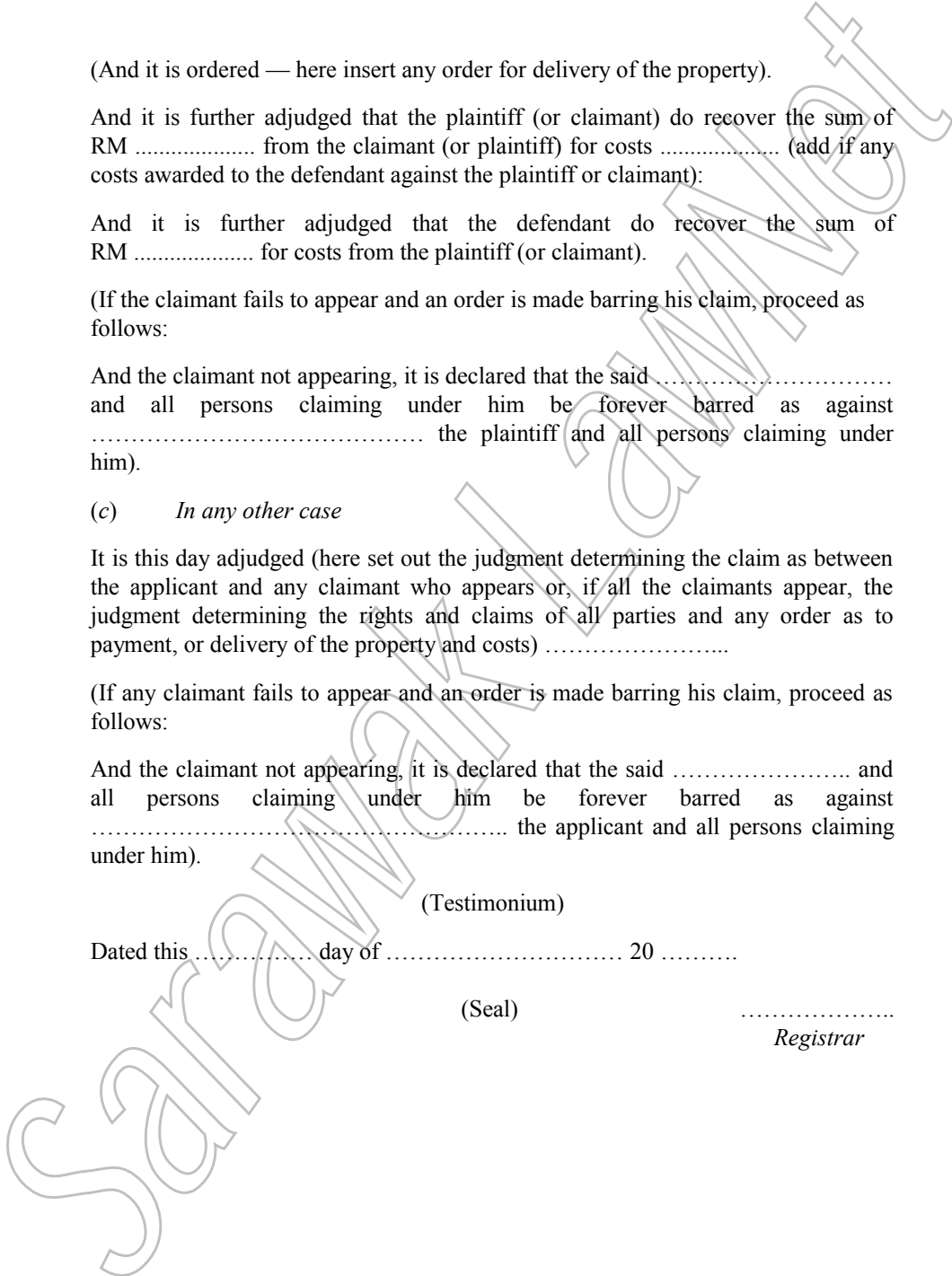
And the claimant not appearing, it is declared that the said ..... and all persons claiming under him be forever barred as against ..... the applicant and all persons claiming under him).

(Testimonium)

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Registrar*





**FORM MS 16**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 64(3))

**DEFENCE**

(General Title)

(Set out in numbered paragraphs the admissions or denials of the material allegations in the statement of claim, each allegation being, so far as convenient, contained in a separate paragraph, e.g.)

1. The defendant admits that .....  
as alleged in paragraph ..... of the statement  
of claim but denies that .....
2. As to paragraph ..... of the  
statement of claim the defendant says that .....
3. Further or in the alternative the defendant says that .....
4. If (which is denied) the plaintiff .....  
the defendant says that .....
5. Except hereinbefore expressly admitted the defendant denies each  
and every allegation of fact contained in paragraph ..... (paragraphs  
..... to .....) of the statement of claim as  
if the same were set forth herein and specifically traversed.

**COUNTERCLAIM**

1. The defendant repeats paragraph ..... and  
claims RM ..... being the balance of the amount due as  
aforesaid after deducting the plaintiff's claims.

Dated this ..... day of ..... 20 .....

.....  
*Defendant (or Peguam Syarie for the Defendant)*

**FORM MS 17**  
**SYARIAH CIVIL PROCEDURE**  
**ORDINANCE, 2001**

(Section 92(1))

**NOTICE OF HEARING OF ACTION TRANSFERRED**  
**FROM SYARIAH HIGH COURT TO SYARIAH**  
**SUBORDINATE COURT**

(General Title)

Take notice that Syariah High Court Summons/Application No. .... of 20  
..... has been transferred to this Court and numbered as  
Summons/Application No. .... of 20 ..... and that you are required to  
attend the Syariah Subordinate Court at ..... on .....  
..... the ..... day of  
..... 20 ..... at ..... a.m./p.m. for  
such directions as to further conduct of the proceedings.

Dated this ..... day of ..... 20 .....

.....  
*Registrar of the Syariah*  
*High Court*

To:

Each party (or *Peguam Syarie* for each party)

The Registrar,

Syariah Subordinate Court.

**FORM MS 18**

**SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001**

(Section 93)

**NOTICE OF TRANSFER OF ACTION TO SYARIAH HIGH  
COURT FROM SYARIAH SUBORDINATE COURT**

(General Title)

Take notice that this action has been transferred to the Syariah High Court pursuant to an order of that Court.

Dated this ..... day of ..... 20 .....

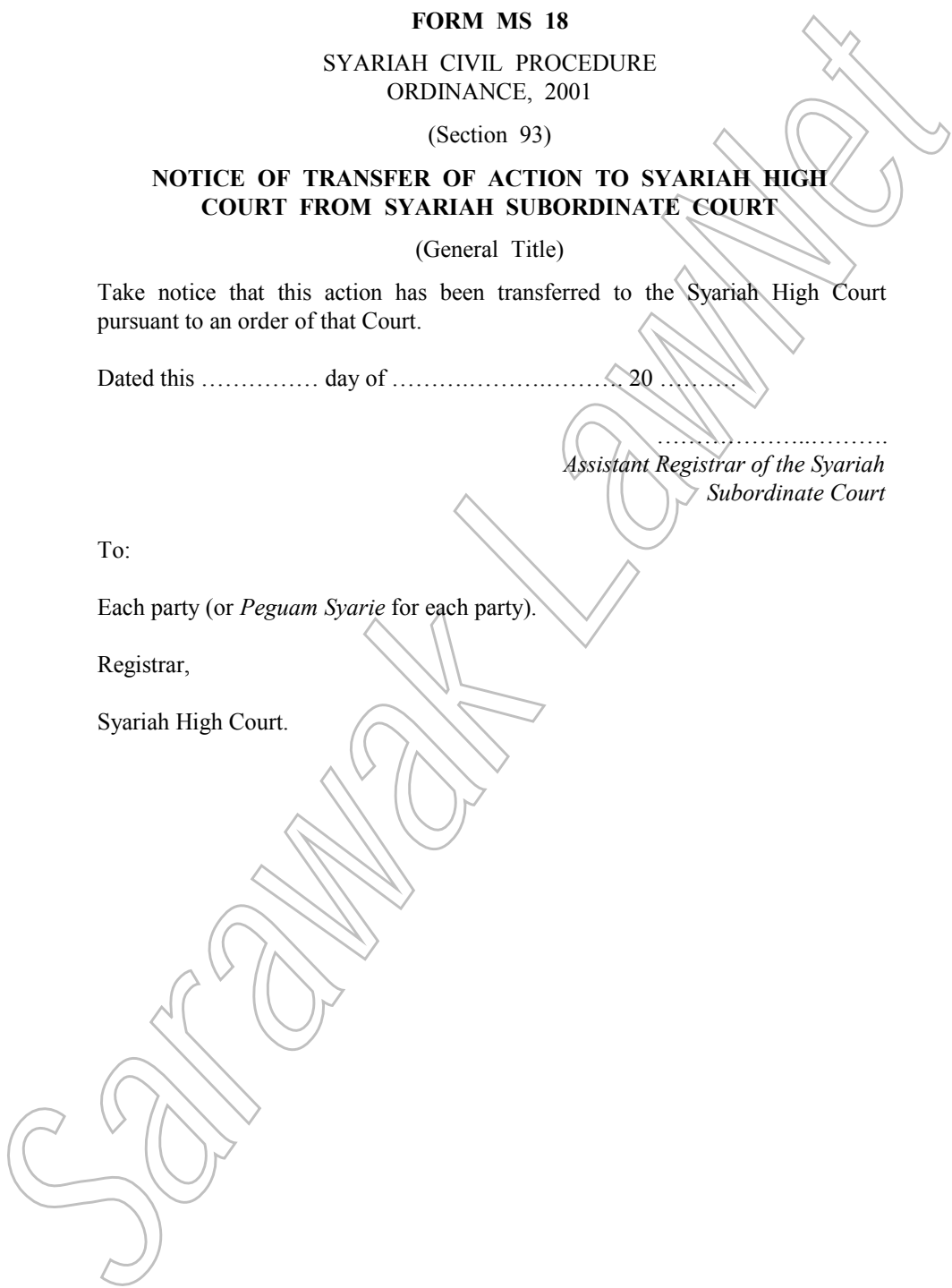
.....  
*Assistant Registrar of the Syariah  
Subordinate Court*

To:

Each party (or *Peguan Syarie* for each party).

Registrar,

Syariah High Court.



**FORM MS 19**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001  
(Section 95(1))  
**NOTICE OF DISCONTINUANCE**  
(General Title)

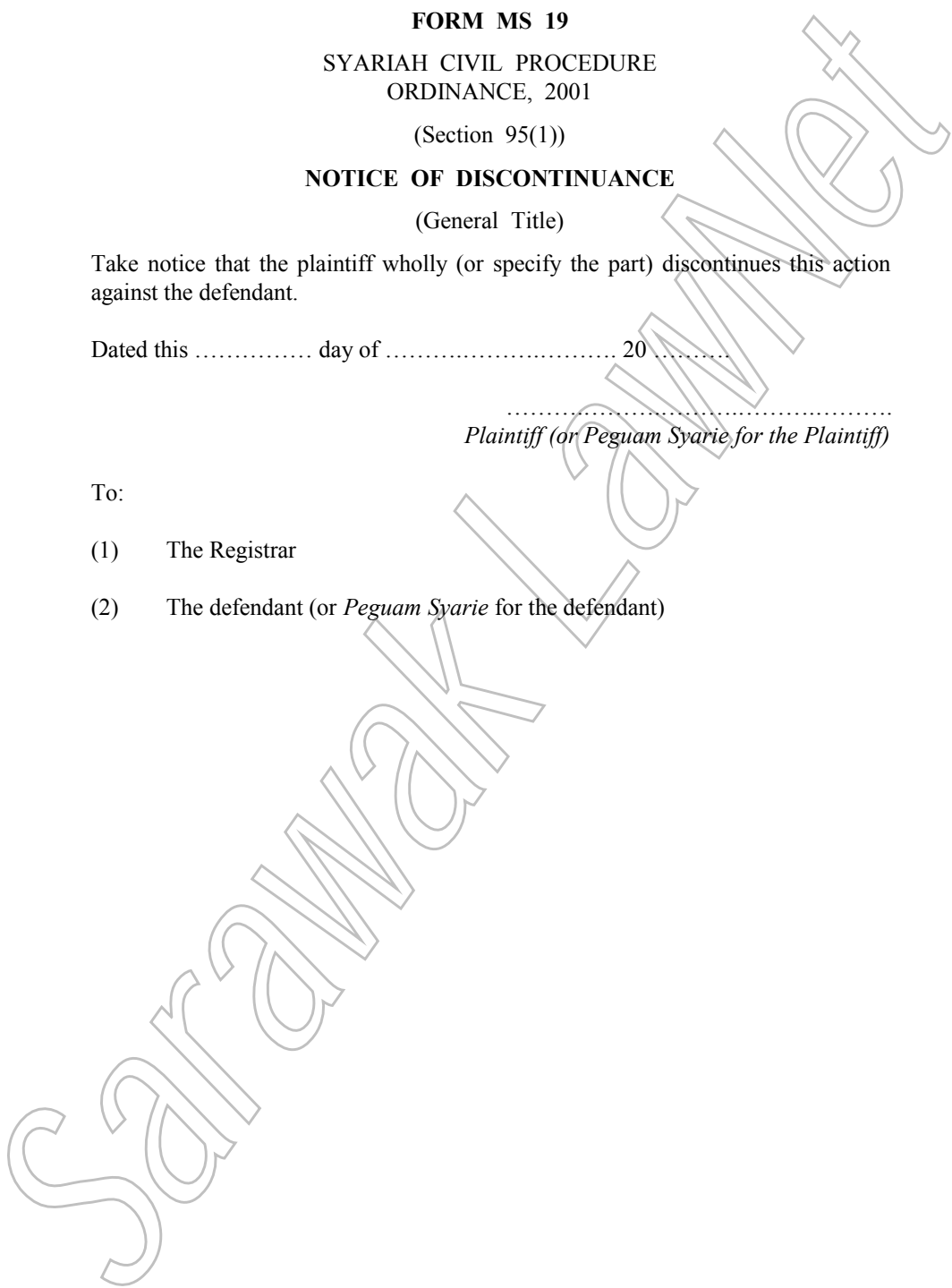
Take notice that the plaintiff wholly (or specify the part) discontinues this action against the defendant.

Dated this ..... day of ..... 20 .....

.....  
*Plaintiff (or Peguam Syarie for the Plaintiff)*

To:

- (1) The Registrar
- (2) The defendant (or *Peguam Syarie* for the defendant)



**FORM MS 20**  
 SYARIAH CIVIL PROCEDURE  
 ORDINANCE, 2001  
 (Section 102(1))  
**REQUEST FOR ISSUE OF SUBPOENA**  
 (General Title)

To the Registrar

Syariah ..... Court.

Please issue a subpoena to the witness whose name and particulars are as follows:

Witness's name in full : .....

N.R.I.C. No. : .....

Occupation : .....

Address : .....

for the purpose \*of giving evidence/producing document/ giving evidence and producing document.

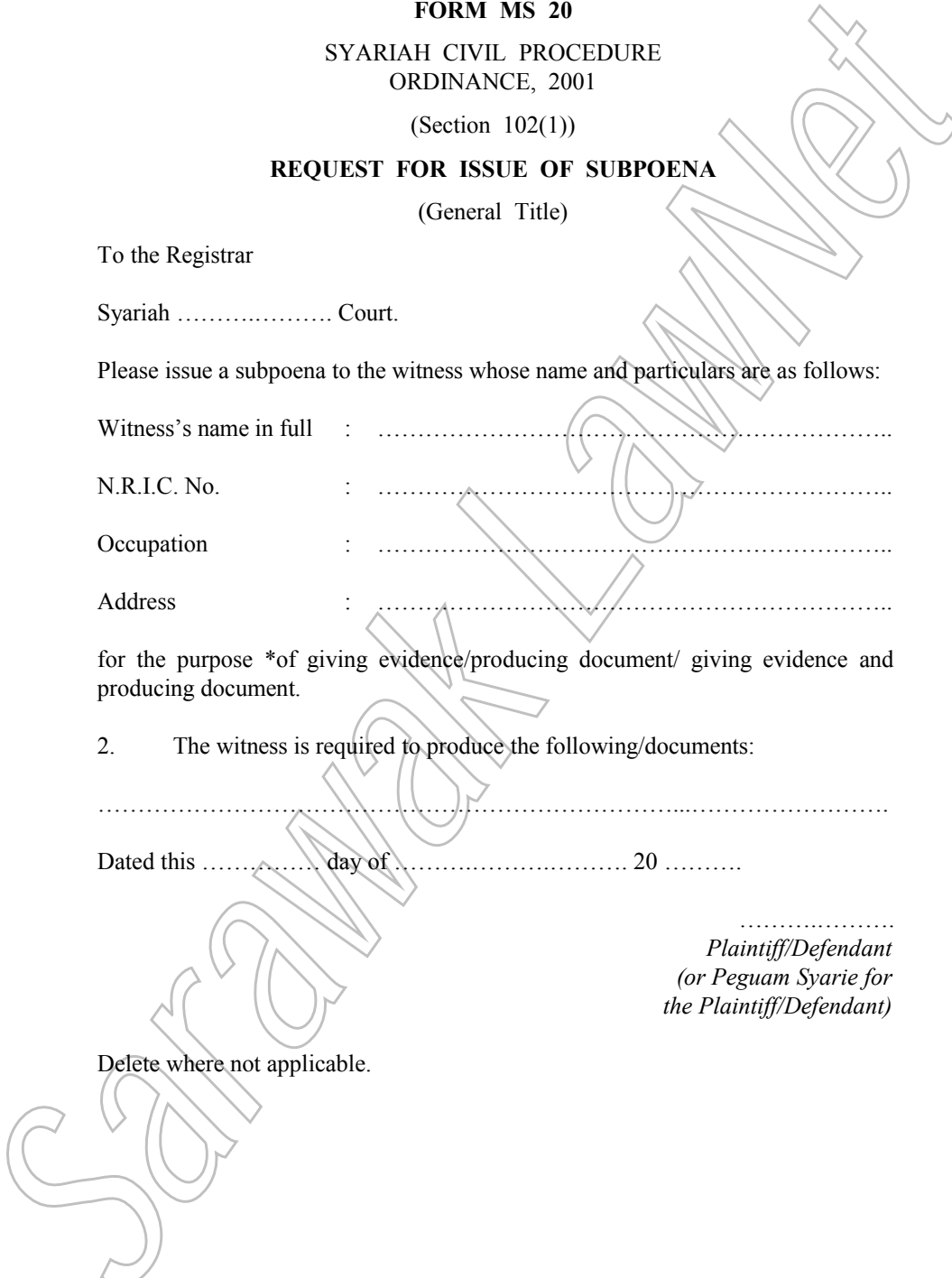
2. The witness is required to produce the following/documents:

.....

Dated this ..... day of ..... 20 .....

.....  
*Plaintiff/Defendant*  
 (or *Peguam Syarie for*  
 the *Plaintiff/Defendant*)

Delete where not applicable.



**FORM MS 21**  
**SYARIAH CIVIL PROCEDURE**  
**ORDINANCE, 2001**  
(Section 102(3))  
**SUBPOENA TO GIVE EVIDENCE**  
(General Title)

To .....

of .....

You are hereby summoned to attend before the Syariah .....

Court at ..... on ..... the ..... day of  
..... at ..... a.m./p.m. and so from day to  
day until the end of the above proceedings, to give evidence on behalf of the  
..... in the said proceedings.

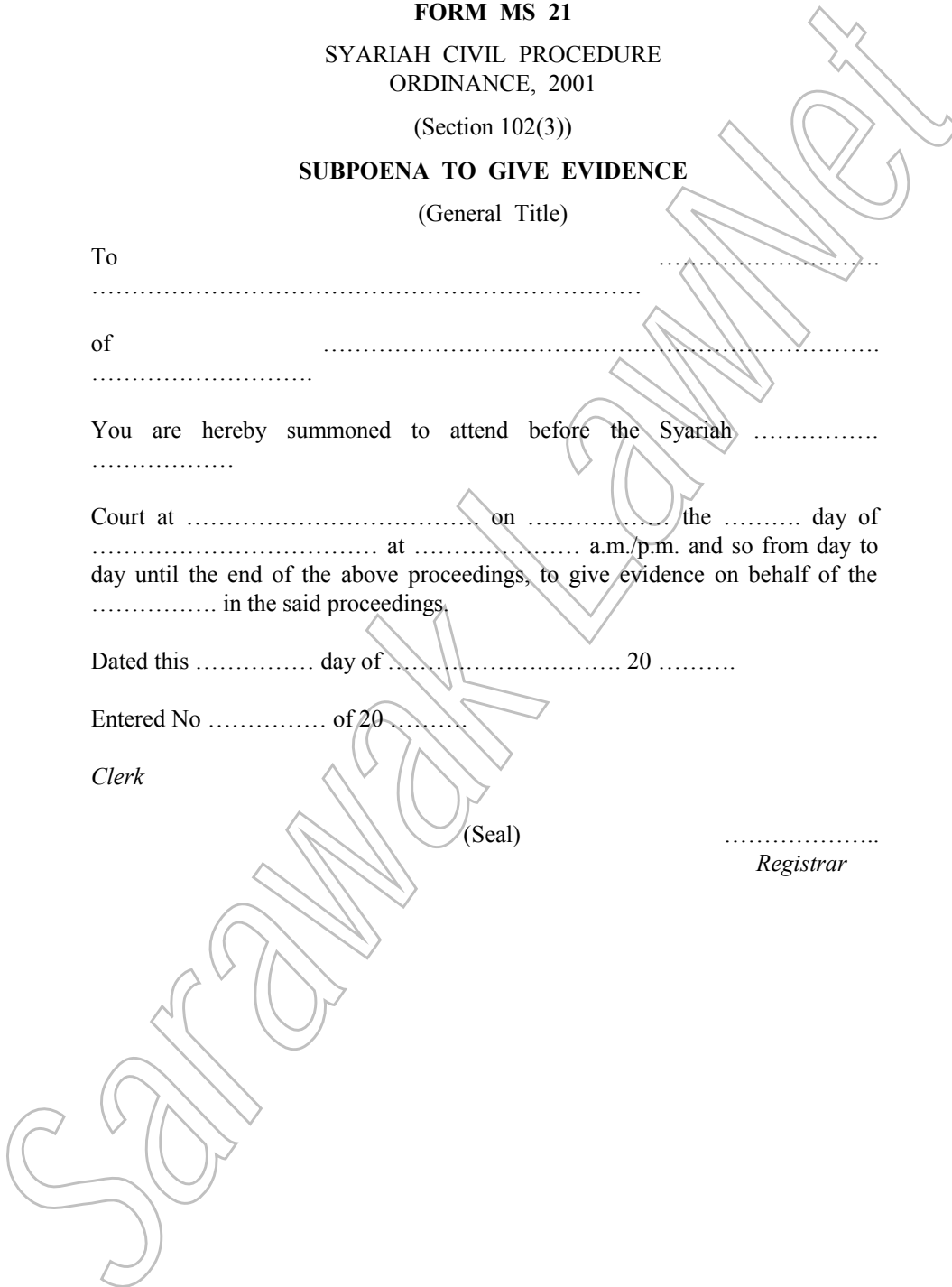
Dated this ..... day of ..... 20 .....

Entered No ..... of 20 .....

Clerk

(Seal)

.....  
*Registrar*



**FORM MS 22**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 102(3))

**SUBPOENA TO PRODUCE DOCUMENT**

(General Title)

To .....

of .....

You are hereby summoned to attend either in person or by an agent before the Syariah .....

Court at

..... at ..... the ..... day of

..... 20 ..... at a.m./p.m. and so from day to day until the end of the above proceedings to produce the following documents:

.....

.....

on behalf of the ..... in the said proceedings.

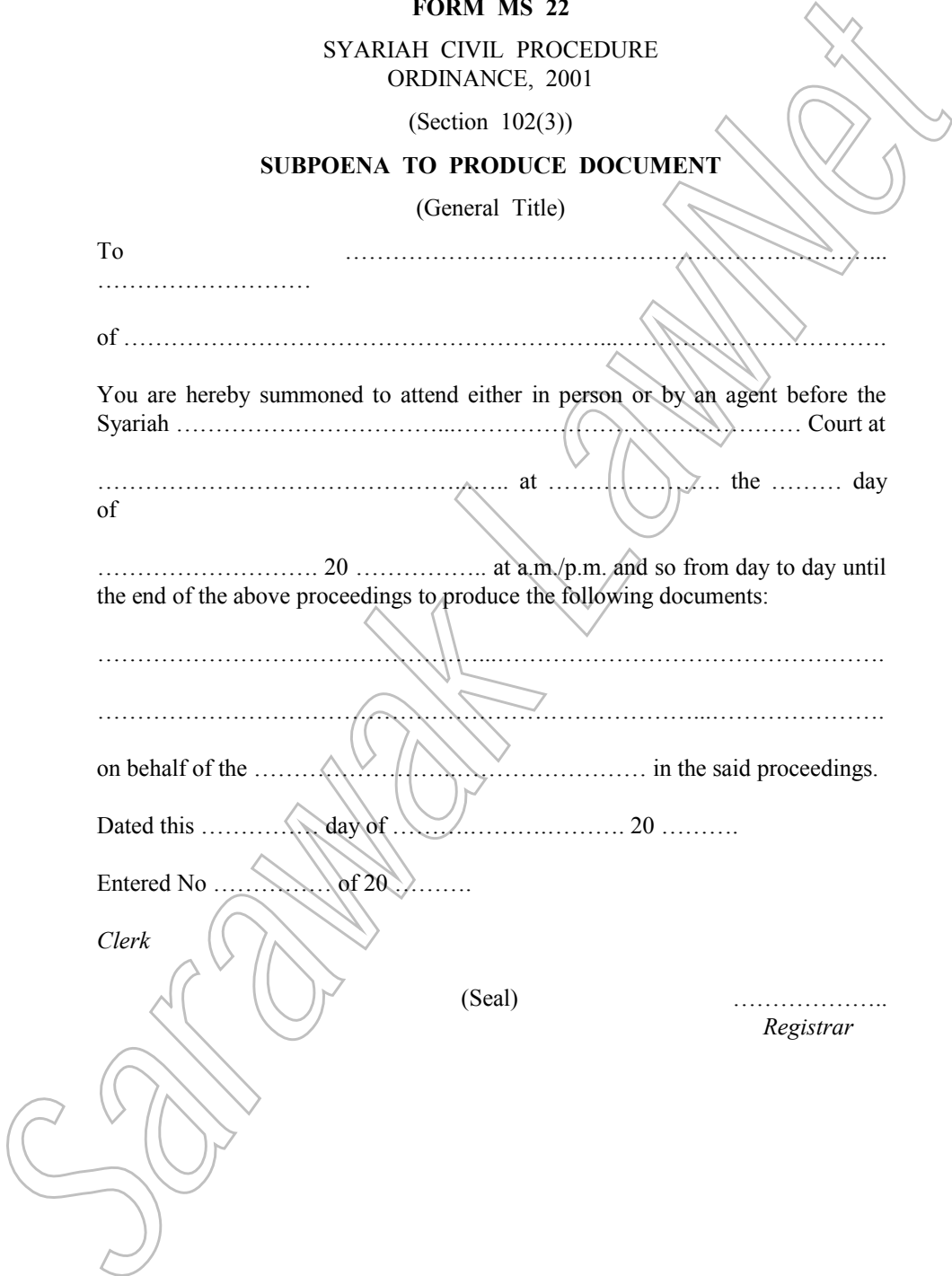
Dated this ..... day of ..... 20 .....

Entered No ..... of 20 .....

*Clerk*

(Seal)

.....  
*Registrar*



**FORM MS 23**  
**SYARIAH CIVIL PROCEDURE**  
**ORDINANCE, 2001**  
(Section 102(3))  
**SUBPOENA TO GIVE EVIDENCE AND**  
**PRODUCE DOCUMENTS**  
(General Title)

To .....

of .....

You are hereby summoned to attend in person before the Syariah .....  
Court at ..... on ..... the day of ..... at  
..... a.m./p.m. and so from day to day until the end of the above  
proceedings to give evidence and produce the following documents:

.....  
on behalf of the .....  
in the said proceedings.

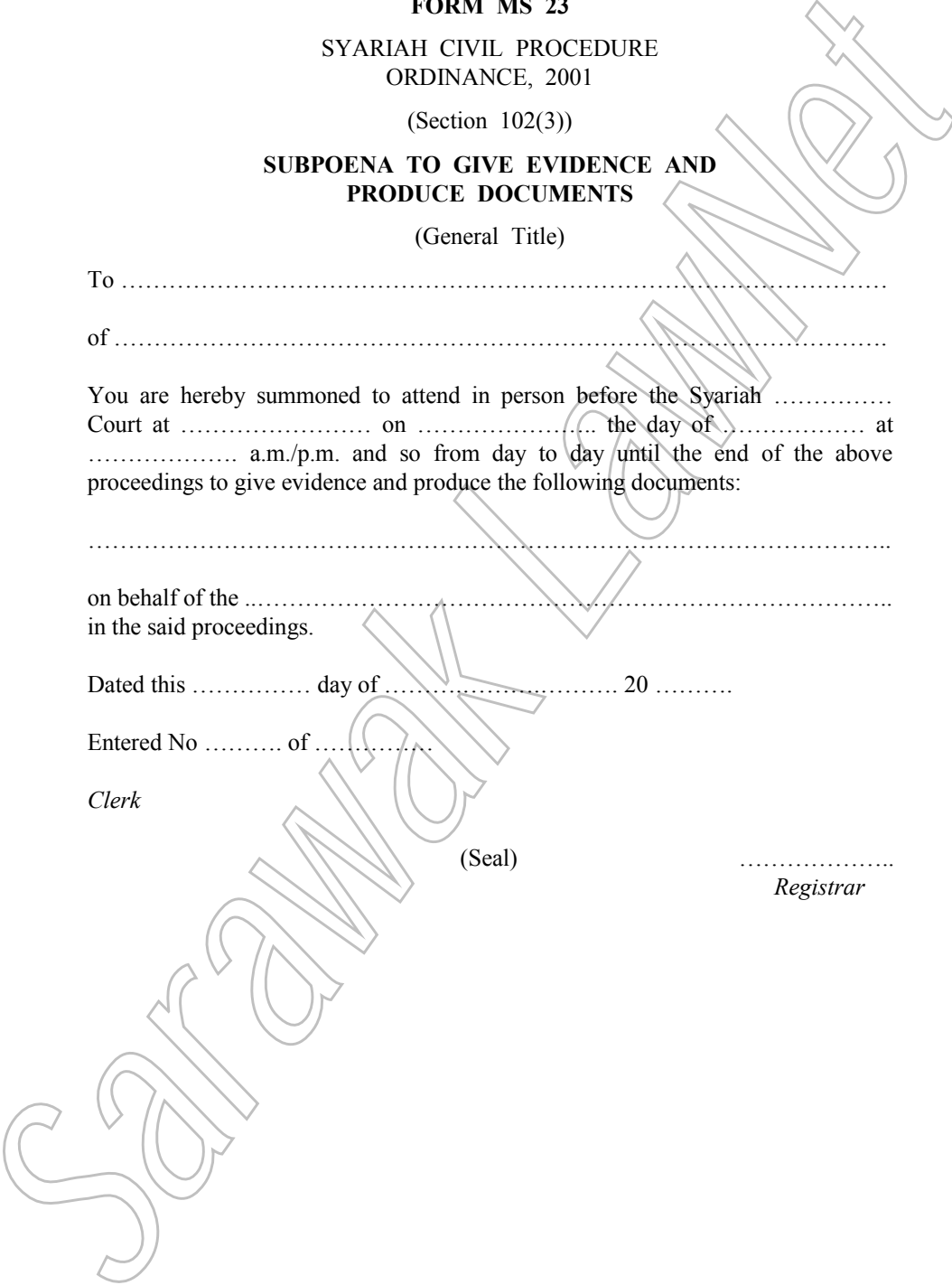
Dated this ..... day of ..... 20 .....

Entered No ..... of .....

Clerk

(Seal)

.....  
Registrar





**FORM MS 24**

**SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001**

(Section 109(1))

**AFFIDAVIT FOR AN ORDER FOR THE PRODUCTION OF  
A PERSON IN PRISON**

(General Title)

I .....

of .....

make oath and say as follows:

1. That the above action is fixed for hearing in the Syariah .....  
Court at ..... on ..... the ..... day of .....  
20 ..... and that ..... now a prisoner  
confined in the prison/place of detention at ..... will be a  
material witness for me at the hearing (or is party to the action)-

2. That I am advised and verily believe that I cannot safely proceed to the  
hearing of this action without the evidence of the said .....  
(or my evidence).

3. I hereby apply for an order under section 30 of the Prisons Act 1995  
that the said ..... may be brought before the Court.

4. I hereby undertake to pay the costs of conveyance of the said .....  
in safe custody to and from the Court and of maintenance of him and the officers  
in charge of him while attending the Court.

Sworn (as in Form MS 26).

**FORM MS 25**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 109(3))

**ORDER TO PRODUCE PERSON IN PRISON**

(General Title)

To the officer in charge of the

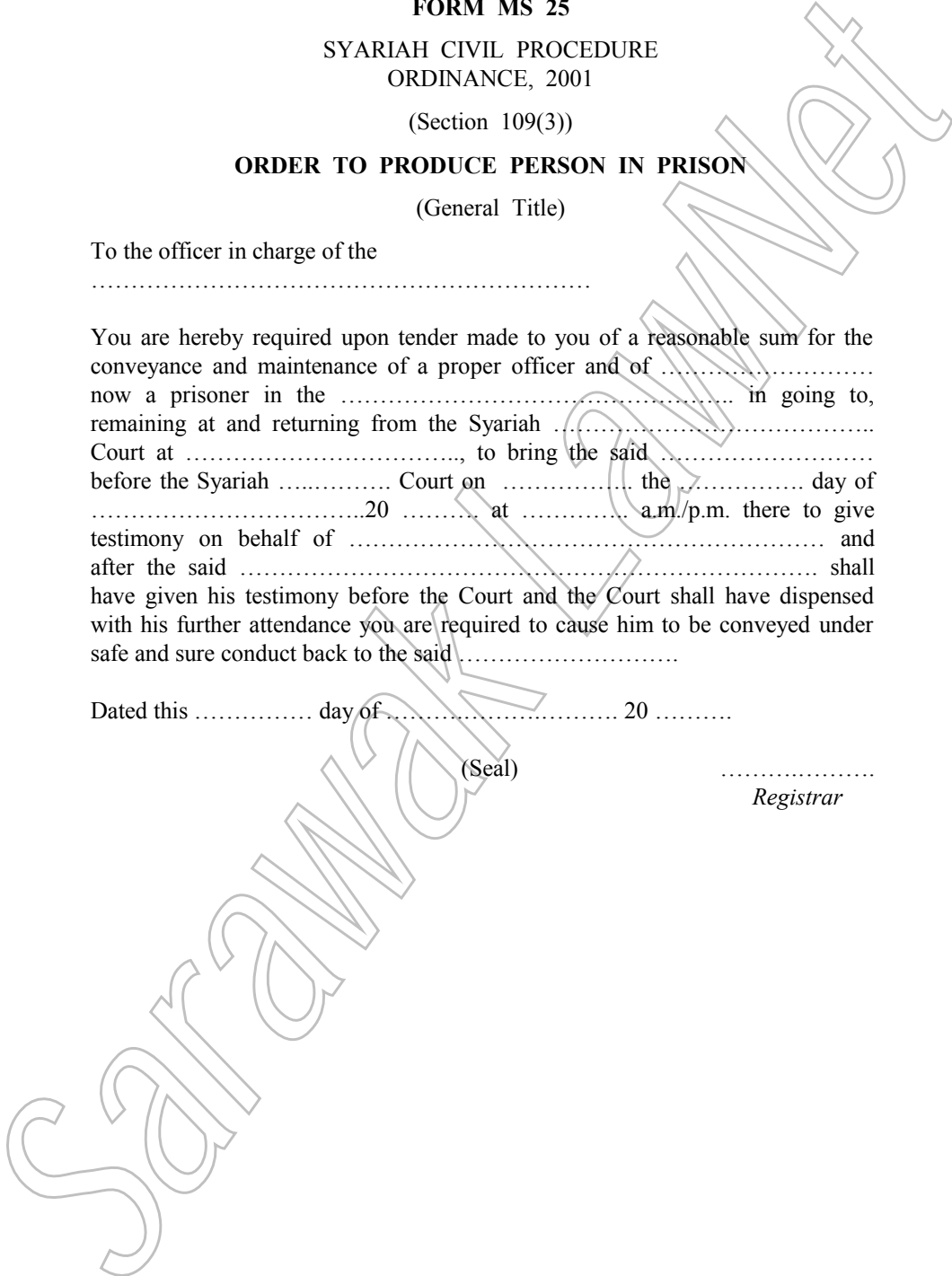
.....

You are hereby required upon tender made to you of a reasonable sum for the conveyance and maintenance of a proper officer and of ..... now a prisoner in the ..... in going to, remaining at and returning from the Syariah ..... Court at ....., to bring the said ..... before the Syariah ..... Court on ..... the ..... day of .....20 ..... at ..... a.m./p.m. there to give testimony on behalf of ..... and after the said ..... shall have given his testimony before the Court and the Court shall have dispensed with his further attendance you are required to cause him to be conveyed under safe and sure conduct back to the said .....

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Registrar*



**FORM MS 26**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 113(1))

**FORM OF AFFIDAVIT**

(General Title)

I (name, address and description of deponent) make oath and say as follows:

(State the facts to be deposed in numbered paragraphs in the affidavit)

1. ....
2. ....
3. ....
4. ....

Sworn on this ..... day of ..... 20 .....

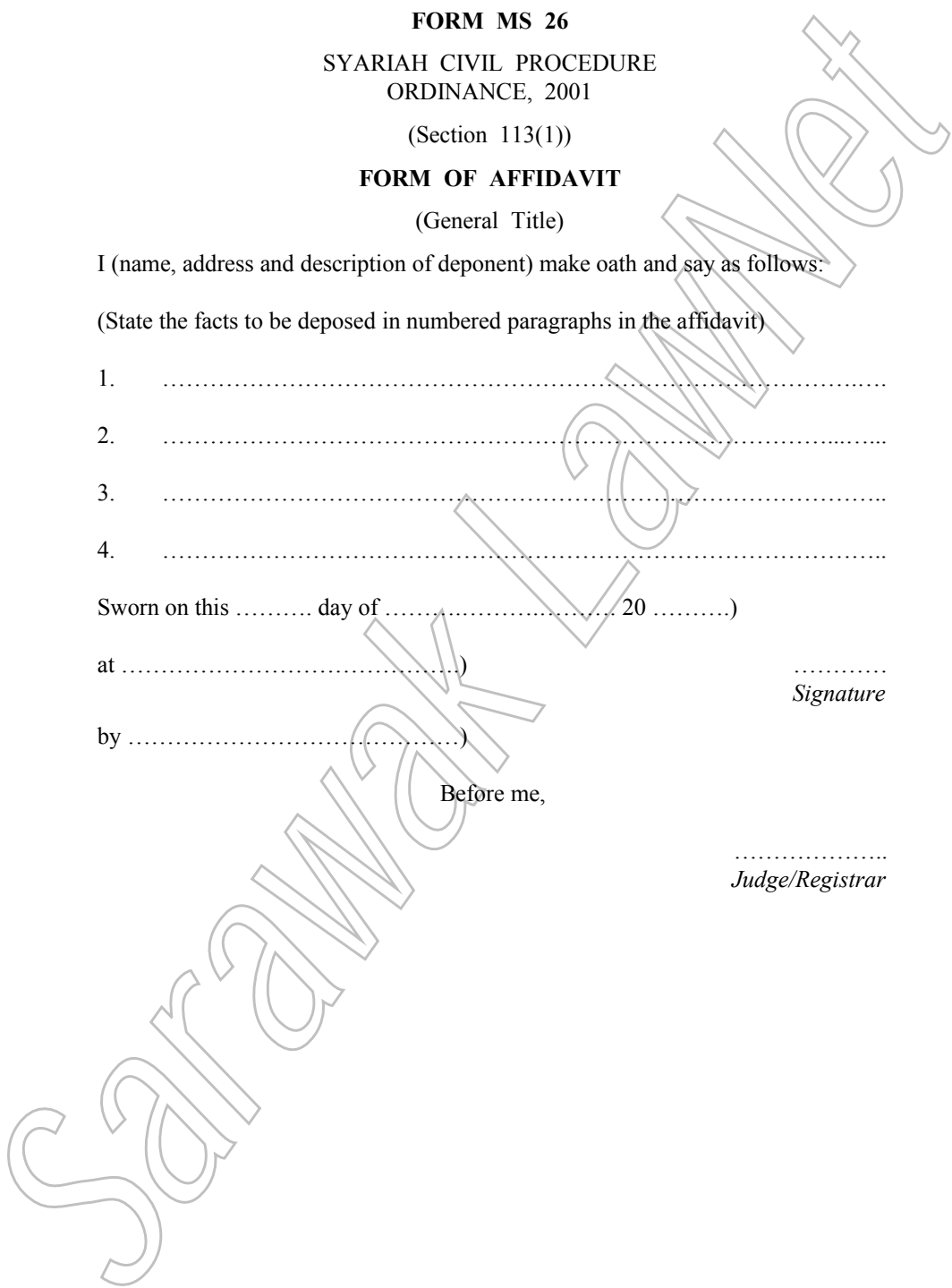
at .....

.....  
*Signature*

by .....

Before me,

.....  
*Judge/Registrar*



**FORM MS 27**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 114(2))

**IDENTIFICATION OF EXHIBIT**

(General Title)

This is the exhibit marked “.....”

referred to in the affidavit of .....

sworn before me this ..... day of ..... 20 .....

.....  
*Judge/Registrar*

Sarawak LawNet

**FORM MS 28**

SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 135(3))

**ORDER/JUDGMENT**

(General Title)

(STATE TYPE OF ORDER/JUDGMENT)

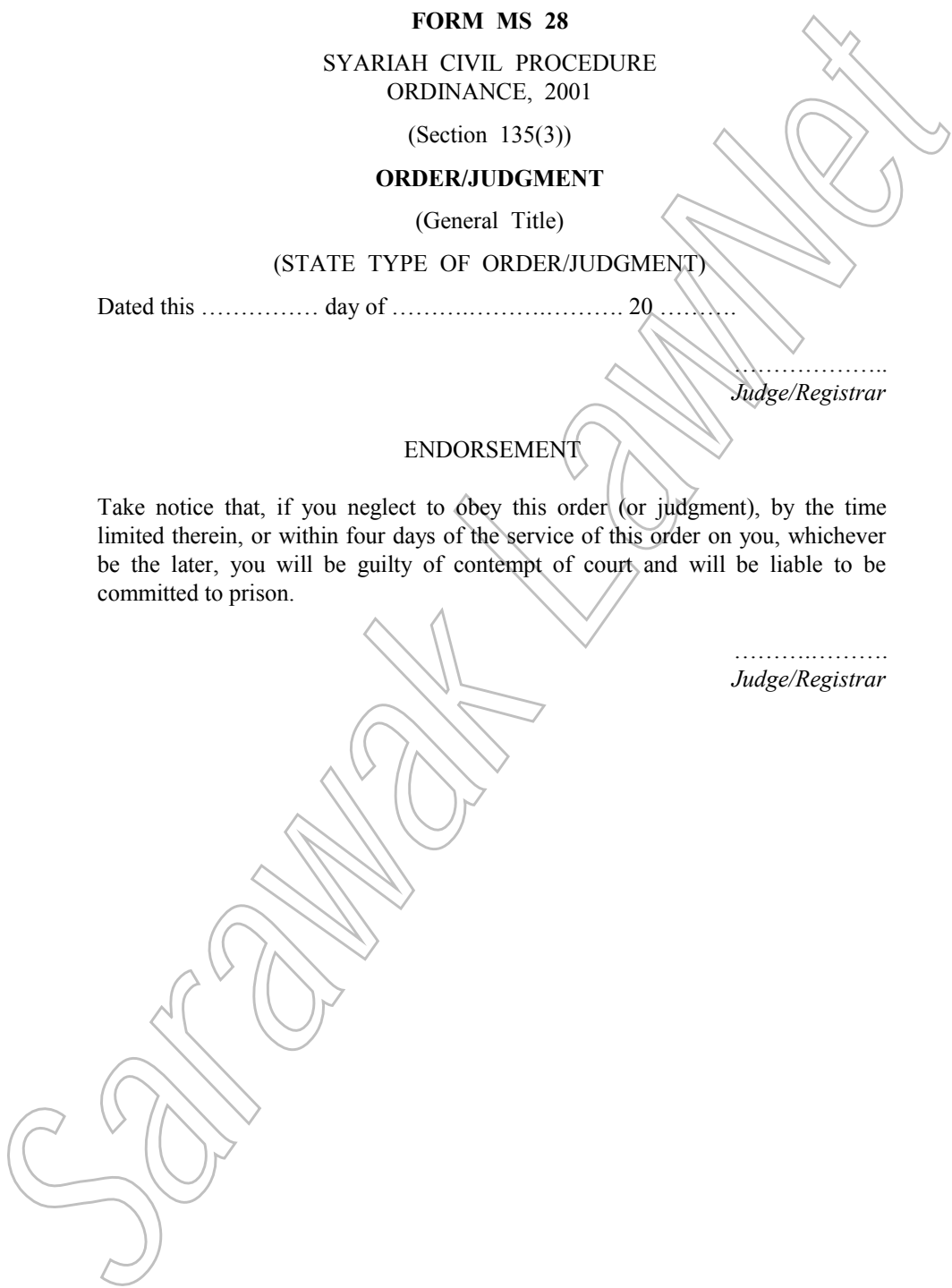
Dated this ..... day of ..... 20 .....

.....  
*Judge/Registrar*

**ENDORSEMENT**

Take notice that, if you neglect to obey this order (or judgment), by the time limited therein, or within four days of the service of this order on you, whichever be the later, you will be guilty of contempt of court and will be liable to be committed to prison.

.....  
*Judge/Registrar*



**FORM MS 29**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 139(2))

**NOTICE OF APPEAL**

(General Title)

Take notice that ..... the abovenamed plaintiff (or defendant) being dissatisfied with the decision of the Syariah ..... Court at ..... given on the ..... day of ..... 20 ..... appeals to the Syariah ..... Court against the whole of the said decision (or such part of the said decision) as decides that,

(set out details)

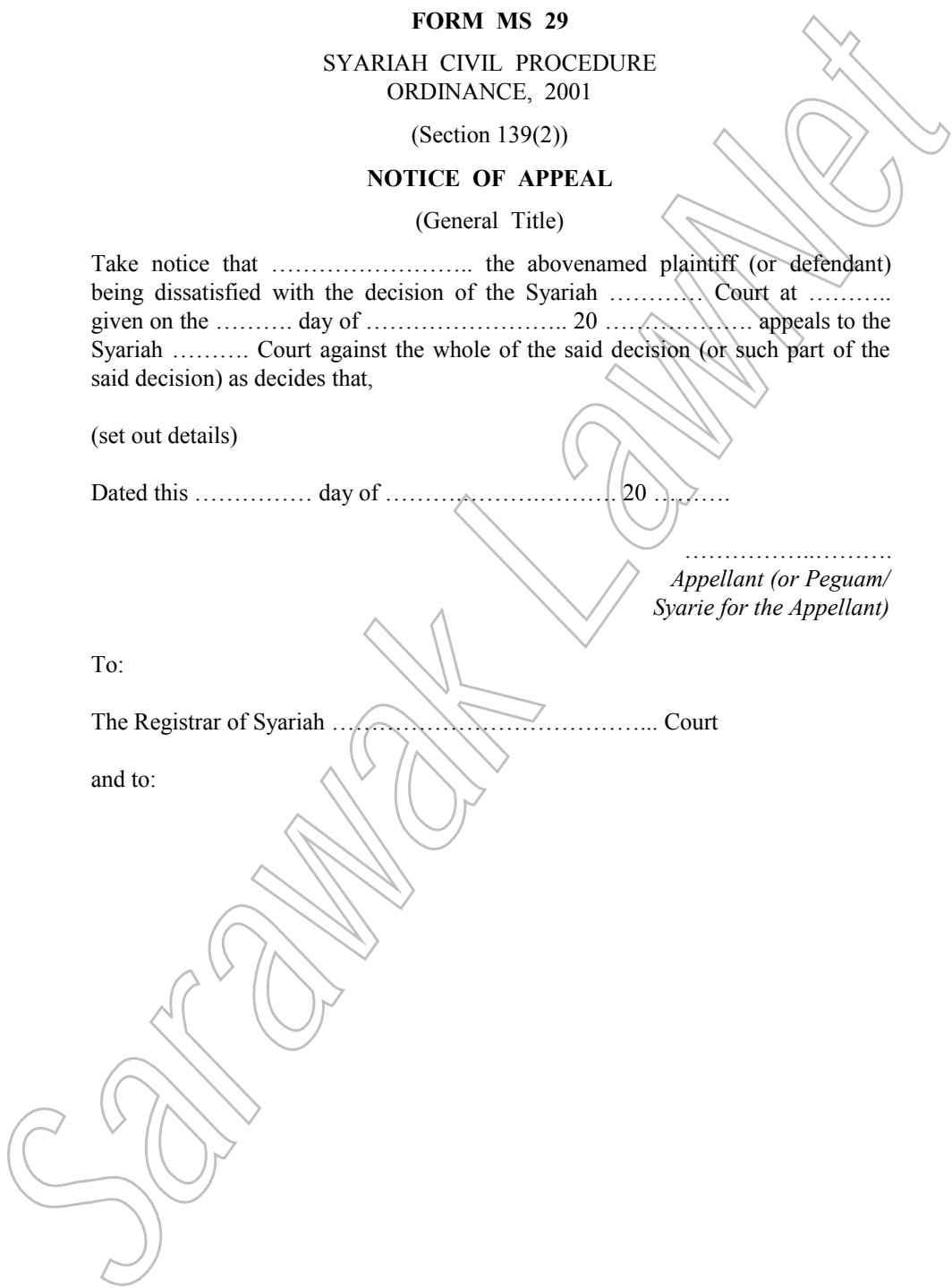
Dated this ..... day of ..... 20 .....

.....  
*Appellant (or Peguam/  
Syarie for the Appellant)*

To:

The Registrar of Syariah ..... Court

and to:



**FORM MS 30**

**SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001**

(Section 139(6))

**NOTICE THAT CERTIFIED COPIES OF NOTES  
OF EVIDENCE AND JUDGMENT ARE READY**

(General Title)

Take notice that the certified copies of notes of evidence and judgment are ready and that a sum of RM ..... is liable to be paid by you as to the costs of preparing the certified copies.

To:

.....

.....

Dated this ..... day of ..... 20 .....

.....  
*Judge/Registrar*

Sarawak LawNet

**FORM MS 31**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 140)

**NOTICE OF COUNTER APPEAL**

(General Title)

Take notice that, on the hearing of the above appeal, the respondent abovenamed will contend that the decision of the Syariah ..... Court given on the ..... day of ..... 20 ..... ought to be varied on the following grounds:

(Set out in numbered paragraphs

- (a) the nature of the relief claimed; and/or
- (b) the grounds relied upon)

Dated this ..... day of ..... 20 .....

To the Registrar and the appellant.

.....  
*Respondent (or Peguam  
Syarie for the Respondent)*



**FORM MS 32**

SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 143(2))

**NOTICE THAT APPEAL RECORD IS READY**

(General Title)

Take notice that the appeal record in the abovementioned proceedings is ready and that a sum of RM ..... is liable to be paid by you for the cost of preparing such record.

To:

Dated this ..... day of ..... 20 .....

.....  
*Judge/Registrar*

Sarawak LawNet

**FORM MS 33**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 151(4))

**REQUEST FOR ORDER OF DELIVERY OF MOVABLE PROPERTY**

(General Title)

To the Registrar,

.....

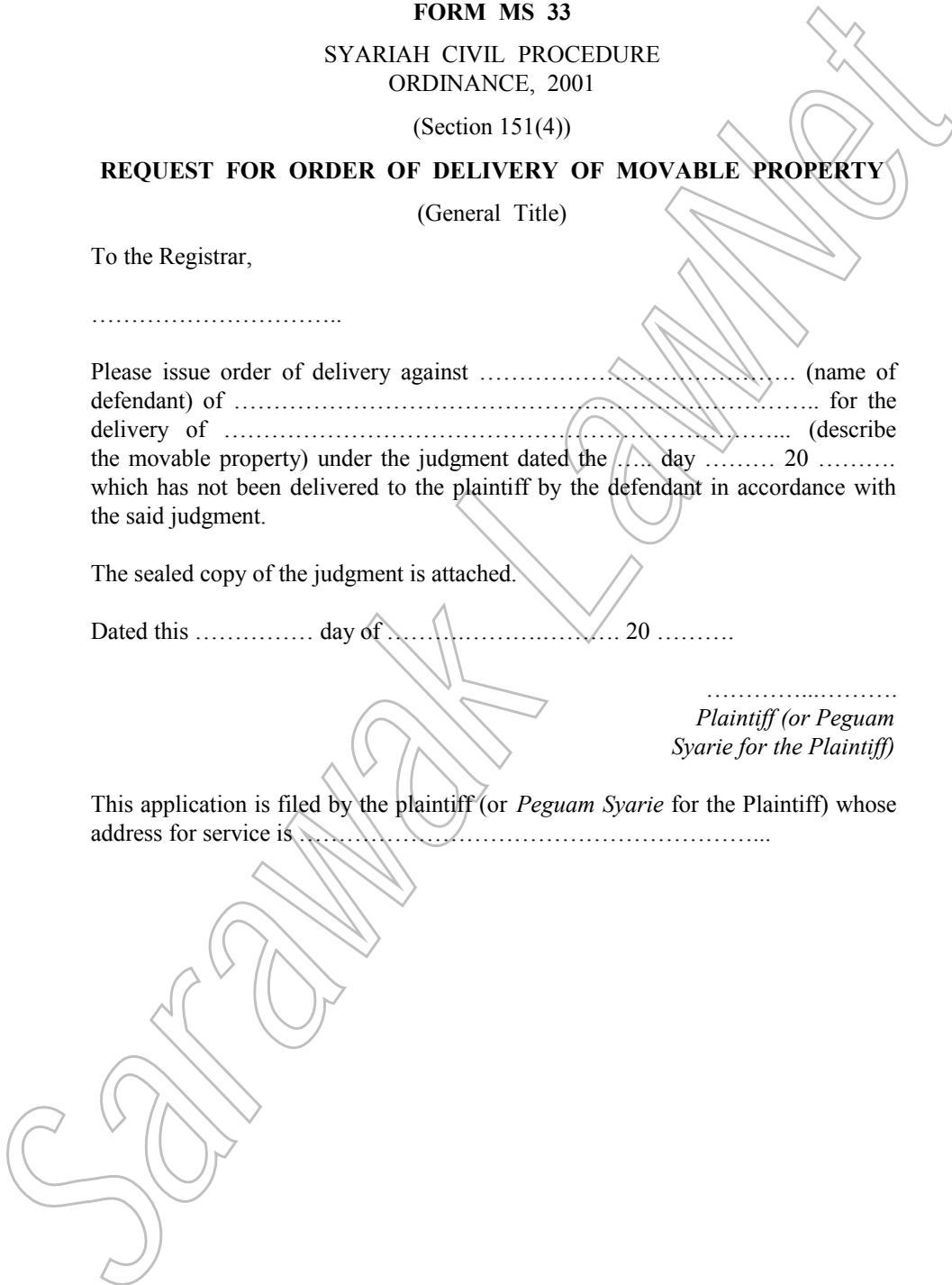
Please issue order of delivery against ..... (name of defendant) of ..... for the delivery of ..... (describe the movable property) under the judgment dated the ..... day ..... 20 ..... which has not been delivered to the plaintiff by the defendant in accordance with the said judgment.

The sealed copy of the judgment is attached.

Dated this ..... day of ..... 20 .....

.....  
*Plaintiff (or Peguam Syarie for the Plaintiff)*

This application is filed by the plaintiff (or *Peguam Syarie* for the Plaintiff) whose address for service is .....



**FORM MS 34**

**SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001**

(Section 152(3))

**APPLICATION TO FIX TIME**

(General Title)

To ..... defendant (or *Peguan Syarie* for the defendant)

Take notice that .....

the abovenamed applicant intends to apply to the Syariah ..... Court at.....

on ..... the ..... day of ..... 20 ..... at .....  
a.m./p.m. for an order to fix time for-

.....

.....

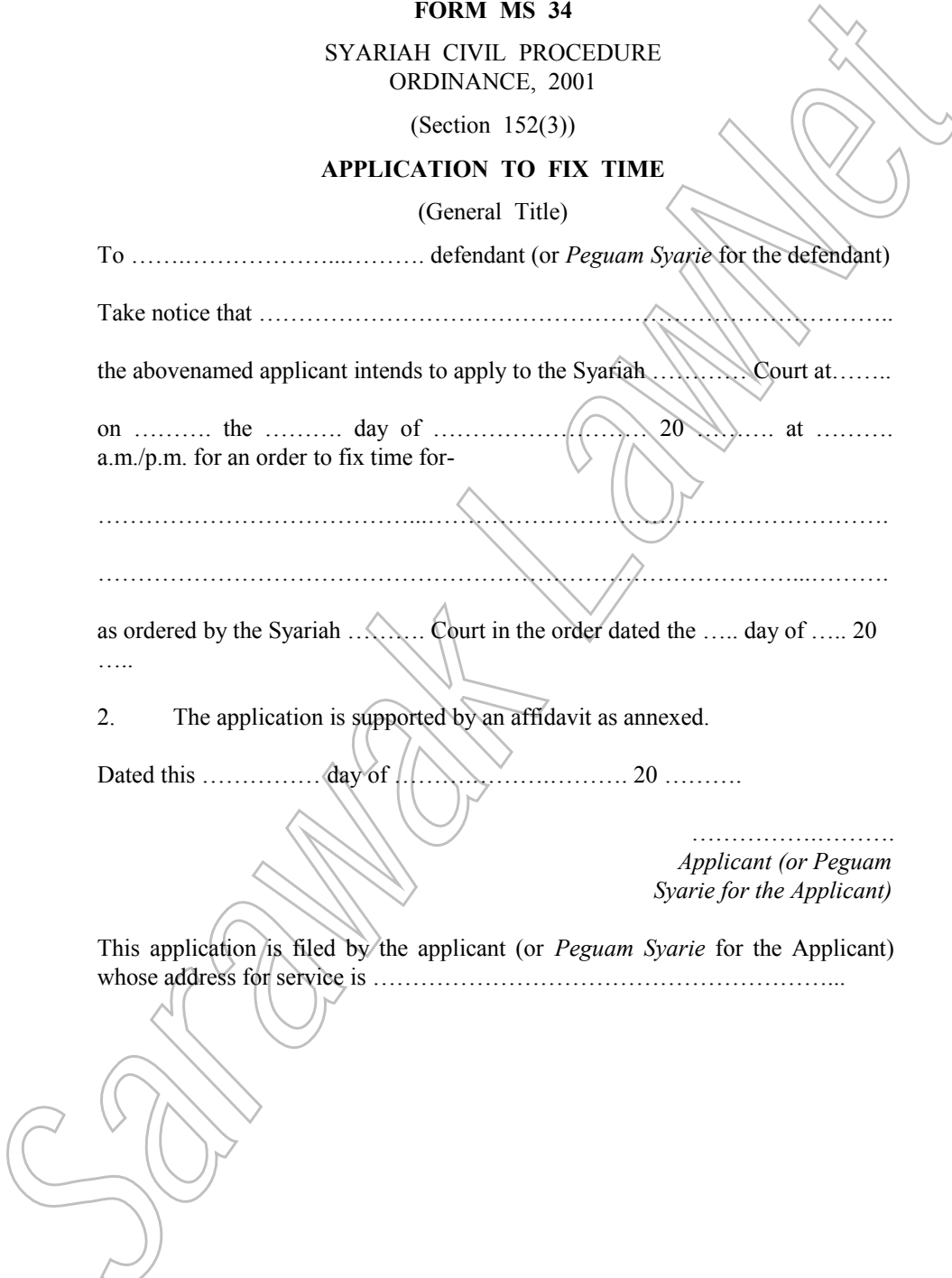
as ordered by the Syariah ..... Court in the order dated the ..... day of ..... 20  
.....

2. The application is supported by an affidavit as annexed.

Dated this ..... day of ..... 20 .....

.....  
*Applicant (or Peguan  
Syarie for the Applicant)*

This application is filed by the applicant (or *Peguan Syarie* for the Applicant)  
whose address for service is .....



**FORM MS 35**  
**SYARIAH CIVIL PROCEDURE**  
**ORDINANCE, 2001**  
 (Section 155)  
**ORDER FOR EXECUTION**  
 (General Title)

To the Bailiff,

Upon the application of the judgment creditor, ..... you are hereby ordered to execute the judgment dated the ..... day of ..... 20 ..... obtained by the judgment creditor against the judgment debtor for which the particulars are as follows:

- Amount of judgment .....
- Costs .....
- Costs of this order .....
- Amount to be paid .....
- Date of order granting leave to execute .....

and you shall execute the said Judgment by any of the following methods:

- (1) .....
- )
- (2) .....
- )
- (3) .....
- )

and that after paying the prescribed fees and the expenses of execution (including costs of request for leave of execution and costs of execution), to bring into Court any money levied and to forthwith return this order to the Court.

Dated this ..... day of ..... 20 .....

.....  
*Registrar*

**FORM MS 36**

**SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001**

(Section 160(a)(i))

**ORDER FOR EXECUTION BY SEIZURE AND SALE  
(ATTACHMENT OF SHARES, ETC.)**

(General Title)

To ..... (judgment  
Debtor) of .....

Pursuant to the order for execution made against you in these proceedings on the  
.... day of ..... 20 ..... in respect of the sum of RM  
..... then due, it is hereby ordered that the \*shares/stocks/debentures/bonds  
specified in the Schedule hereto and standing in your name be and are hereby  
attached and taken in execution of the said order.

And take notice that the authority, corporation, officer or person having charge of  
the register is hereby prohibited from allowing any transfer of the said  
\*shares/stocks/debentures/bonds without the leave of the Court and is hereby  
required to pay all interests or dividends due thereon into Court to the credit of  
these proceedings until further order of the Court.

SCHEDULE

.....  
*Judge/Registrar*

\* *Delete where not applicable*

**FORM MS 37**  
**SYARIAH CIVIL PROCEDURE**  
**ORDINANCE, 2001**  
 (Section 161(2)(a))

**HIWALAH NOTICE**  
 (General Title)

Upon the execution order dated the ..... day of ..... 20 .....

It is ordered that all debts due or accruing due from the abovenamed *muhal 'alaih* to the abovenamed judgment debtor (in the sum of RM ..... ) be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the Syariah ..... Court on the ..... day of ..... 20 ..... for the sum (or to answer an order made in the Syariah ..... Court on the ..... day of ..... 20 ..... ordering payment by the said judgment debtor to the abovenamed judgment creditor of the sum) of RM ..... (debt and RM ..... costs) (together with the costs of the *hiwalah* proceedings) on which judgment (or order) the sum of RM ..... remains due and unpaid.

Take notice also that all transactions to dispose or discharge made after the service of this notice are invalid and you are liable to damages and cost to the judgment creditor.

If you dispute your liability under this notice, you shall within seven days from the date of service of this notice file a notice of objection of liability herein to the Court.

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Judge/Registrar*

To the abovenamed *muhal 'alaih* and judgment debtor.

**Notice of Objection**

Take notice that I ..... the abovenamed *muhal 'alaih* hereby object to the liability imposed upon me by this notice on the following grounds:

.....  
*Muhal 'alaih (or Peguam Syarie*  
*for the Muhal 'alaih)*

This notice is filed by the *muhal 'alaih* (or *Peguam Syarie* for the *muhal 'alaih*) whose address for service is .....

**FORM MS 38**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001  
(Section 161(2)(a))

**HIWALAH NOTICE (PROPERTY IN COURT)**  
(General Title)

Order for execution dated the ..... day of ..... 20 .....

To:

The Judge/Registrar

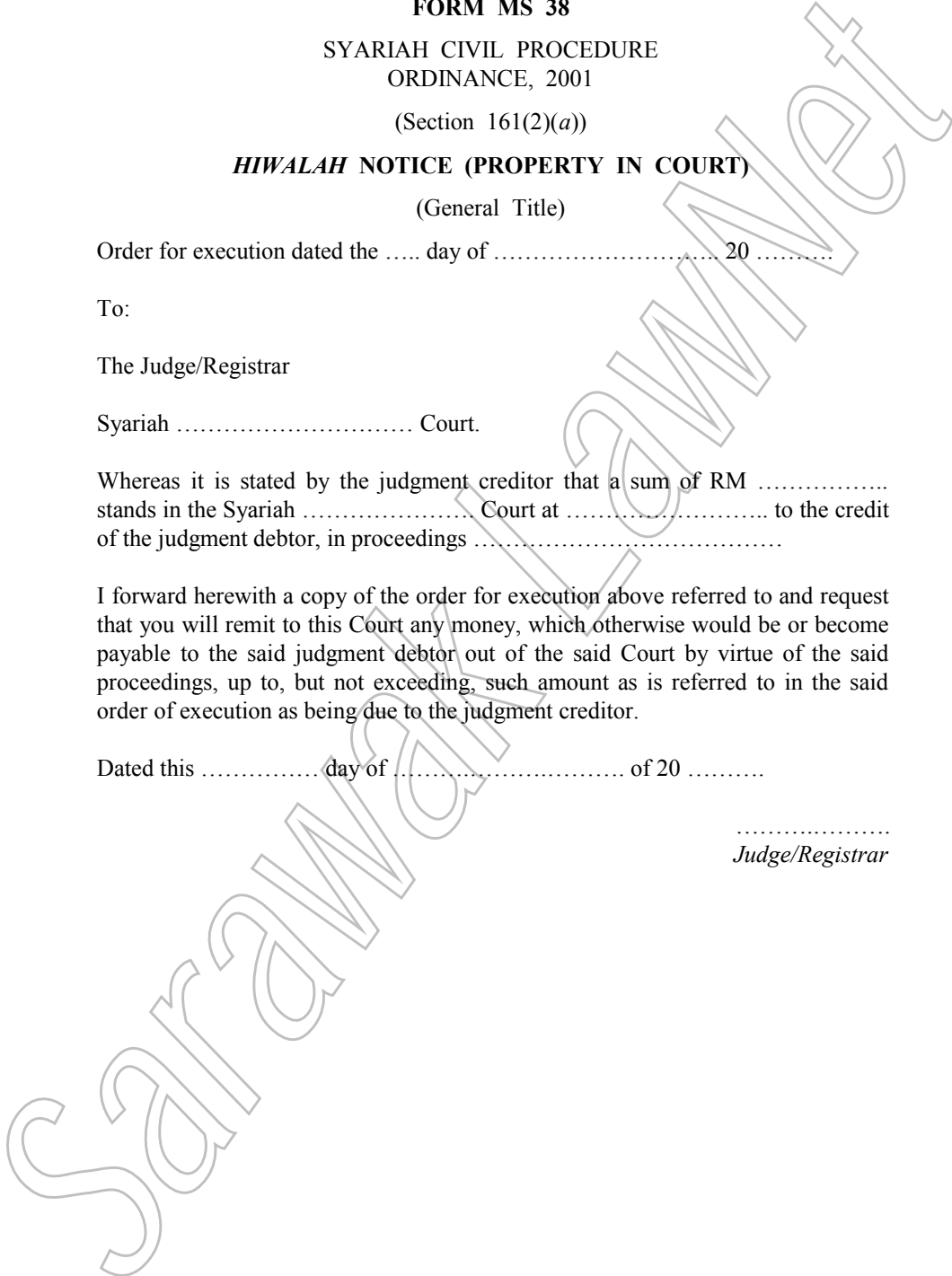
Syariah ..... Court.

Whereas it is stated by the judgment creditor that a sum of RM ..... stands in the Syariah ..... Court at ..... to the credit of the judgment debtor, in proceedings .....

I forward herewith a copy of the order for execution above referred to and request that you will remit to this Court any money, which otherwise would be or become payable to the said judgment debtor out of the said Court by virtue of the said proceedings, up to, but not exceeding, such amount as is referred to in the said order of execution as being due to the judgment creditor.

Dated this ..... day of ..... of 20 .....

.....  
*Judge/Registrar*



**FORM MS 39**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001  
(Section 161(2)(d))  
**HIWALAH SUMMONS**  
(General Title)

Order for execution dated the ..... day of ..... 20 ..... *Hiwalah*  
Notice dated the ..... day of ..... 20 .....

To

.....  
of ..... the *muhal*  
*'alaih*.

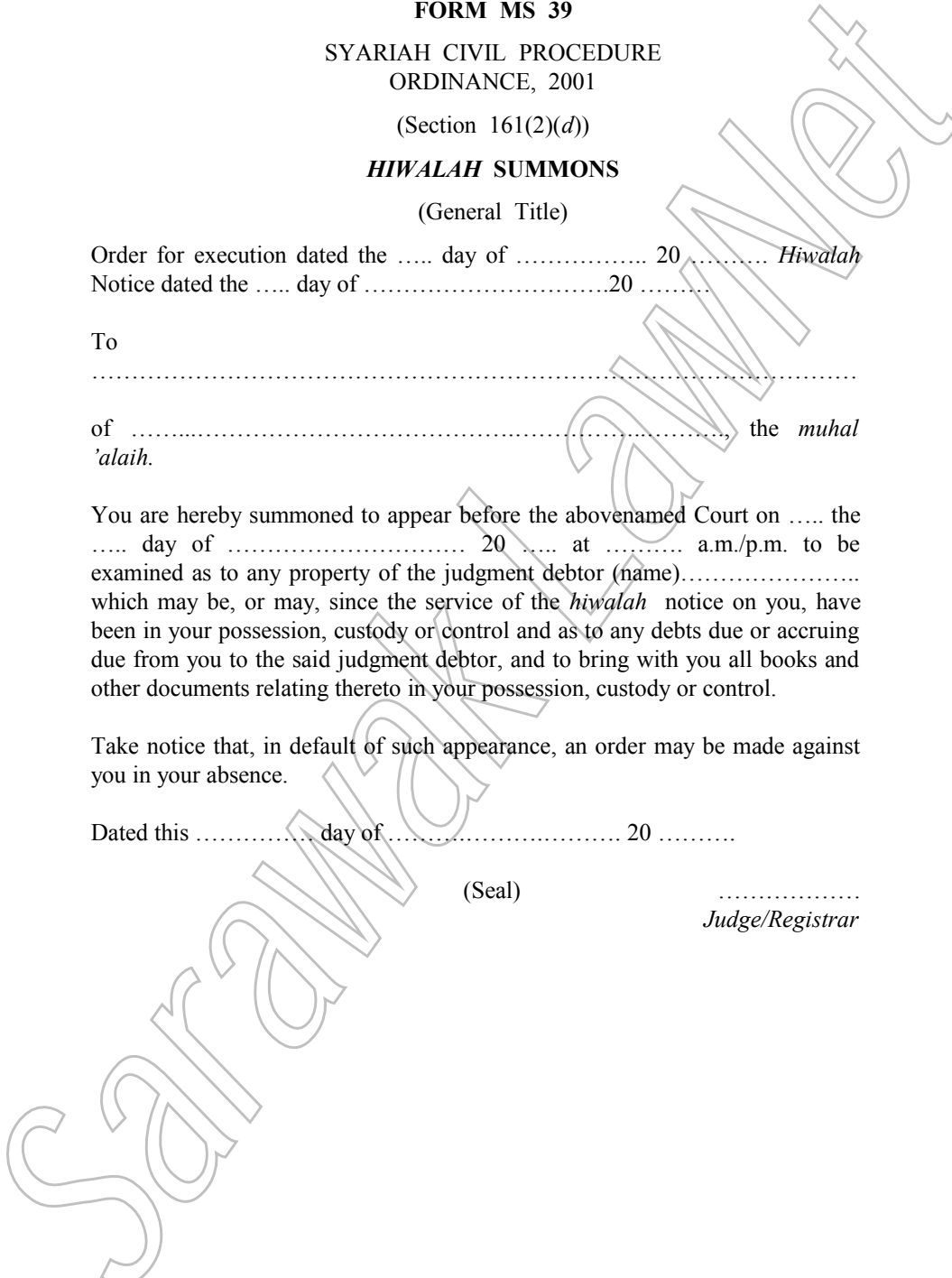
You are hereby summoned to appear before the abovenamed Court on ..... the  
..... day of ..... 20 ..... at ..... a.m./p.m. to be  
examined as to any property of the judgment debtor (name).....  
which may be, or may, since the service of the *hiwalah* notice on you, have  
been in your possession, custody or control and as to any debts due or accruing  
due from you to the said judgment debtor, and to bring with you all books and  
other documents relating thereto in your possession, custody or control.

Take notice that, in default of such appearance, an order may be made against  
you in your absence.

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Judge/Registrar*





**FORM MS 40**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 169(1))

**RETURN TO ORDER FOR EXECUTION**

(General Title)

Order for execution dated the ..... day of ..... 20 .....

Method of execution: (1)

Levy paid by execution debtor ..... RM .....

Particulars of property seized: (2)

Property sold on the ..... day of ..... 20 ..... by ..... for  
RM .....

Expenses of execution: (3)

Paid into Court:

to credit of judgment creditor .....

RM ..... (4) .....

do .....

do .....

do .....

Dated this ..... day of ..... 20 .....

.....  
*Bailiff*

Notes:

- (1) The method shall be one or more of those referred to in the order.
- (2) State in detail, identifying an inventory, if necessary.
- (3) State in detail.
- (4) Give particulars of any payments to the credit of other judgment creditors for whom the bailiff holds orders for execution.

**FORM MS 41**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 174)

**NOTICE OF SALE**

(General Title)

Notice is hereby given that the property seized at ..... on the .....  
day of ..... 20 ..... under order of seizure and sale No of  
will be sold by public auction on the ..... day of ..... 20 ..... at  
..... a.m./p.m. unless the amount to be levied and the fees and expenses of  
execution be sooner paid.

Dated this ..... day of ..... 20 .....

.....  
*Bailiff*

Sarawak LawNet

**FORM MS 42**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 176(2))

**REQUEST FOR JUDGMENT DEBTOR SUMMONS**

(General Title)

To the Registrar,

Please issue a Judgment Debtor Summons against (name and description of judgment debtor) of (address of judgment debtor) in respect of the judgment (or order) herein dated the ..... day of ..... 20 ..... which remains unsatisfied to the extent of RM .....

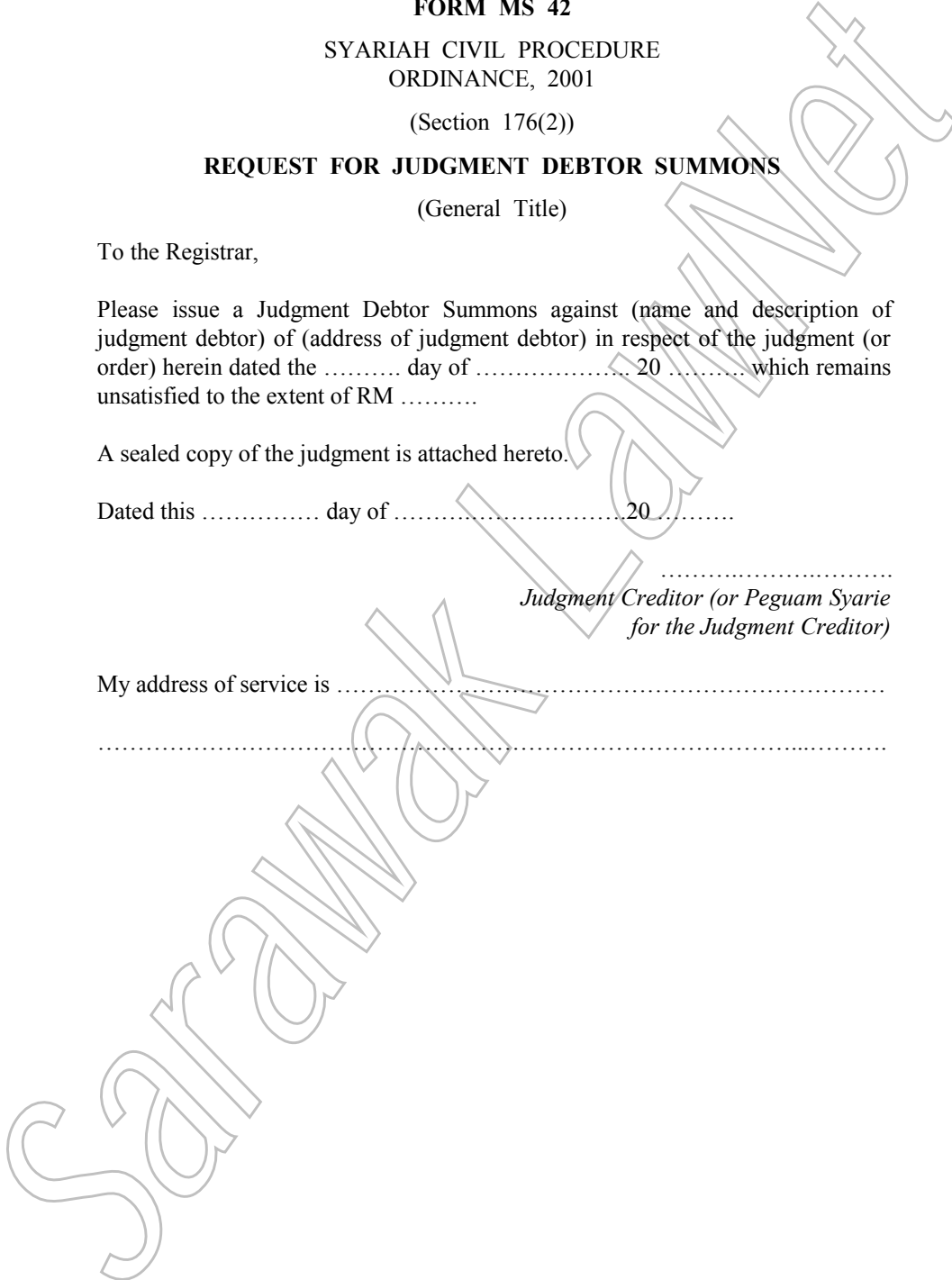
A sealed copy of the judgment is attached hereto.

Dated this ..... day of ..... 20 .....

.....  
*Judgment Creditor (or Peguam Syarie  
for the Judgment Creditor)*

My address of service is .....

.....



**FORM MS 43**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 177(1))

**(1) JUDGMENT DEBTOR SUMMONS**

(General Title)

To

.....

of

.....

the abovenamed judgment debtor.

You are hereby summoned to appear before the Syariah ..... Court  
at ..... on the ..... day of ..... 20 ..... at  
..... a.m./p.m. then and there to be examined respecting your ability to  
satisfy the judgment recovered against you in the above action on the .....  
day of ..... 20 ..... for RM ..... and RM ..... costs upon  
which judgment the sum of RM ..... is still due.

Take notice that if you do not so appear an order for your arrest may be issued  
or an order for payment made against you in your absence.

Dated this ..... day of ..... 20 .....

Entered No ..... of 20 .....

Clerk

(Seal)

.....  
Judge/Registrar

**(2) JUDGMENT DEBTOR SUMMONS AGAINST  
OFFICER OF CORPORATION**

To

.....

of

.....  
(an officer) of the abovenamed defendant corporation.

You are hereby summoned to appear before the Syariah .....  
..... Court at ..... on ..... the ..... day of .....  
20 ..... at ..... a.m./p.m. to be examined touching the liability of the  
abovenamed defendant corporation to satisfy the judgment (or order) recovered  
(or made) against the said corporation in the above action on the ..... day of  
..... 20 ..... for RM ..... and RM ..... costs upon  
which judgment (or order) the sum of RM ..... is still due.

Take notice that if you do not so appear an order for your arrest may be issued.

Dated this ..... day of ..... 20 .....

Entered No ..... of 20 .....

*Clerk*

(Seal)

.....  
*Judge/Registrar*

Sarawak Lawmy

**FORM MS 44**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001  
(Section 179(2))

**APPLICATION FOR JUDGMENT NOTICE**

I ..... of .....

..... the abovenamed plaintiff (or defendant) and judgment creditor apply for a judgment notice to be issued against the judgment debtor to show cause why he should not be committed to prison for default in payment.

(Particulars of judgment and judgment debtor)

- (a) Full name and address of judgment debtor.
- (b) Date and particulars of the order for payment in respect of which default has been made.
- (c) The total amount which has been paid since the date of such order.
- (d) The sum or instalment in respect of which default has been made.
- (e) The date on which the sum or instalment ought to have been paid according to the order.
- (f) The debtor's occupation, circumstances and means of payment as far as they are known to the applicant.

Dated this ..... day of ..... 20 .....

.....  
*Plaintiff (or Defendant)*

**AFFIDAVIT IN SUPPORT**

I, ..... the abovenamed judgment creditor make oath and say:

That the particulars stated above are to the best of my knowledge and belief in all respects true.

Sworn (as in Form MS 26).

**FORM MS 45**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 180(1))

**JUDGMENT NOTICE**

(General Title)

To the judgment debtor,

Take notice that you are required to attend the Syariah ..... Court at  
..... on ..... the ..... day of .....  
..... 20 ..... at ..... a.m./p.m. to show  
cause why you should not be committed to prison for having disobeyed the order  
of the Court dated the ..... day of ..... 20....., that is  
to say, in having made default in payment of the .....  
instalment due thereunder (or state the order disobeyed or not complied with)

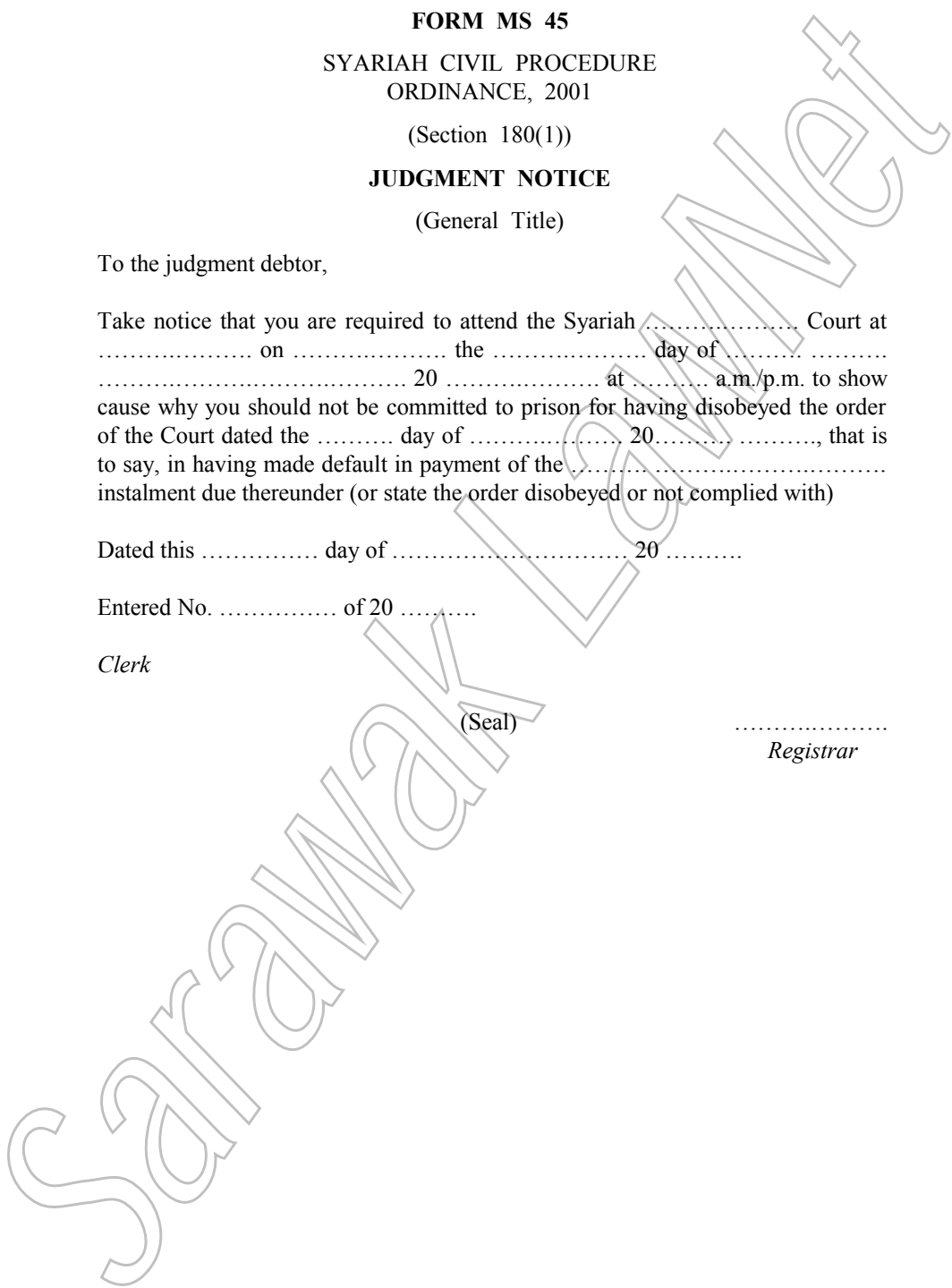
Dated this ..... day of ..... 20 .....

Entered No. .... of 20 .....

*Clerk*

(Seal)

.....  
*Registrar*



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CAP. 44

**FORM MS 46**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 182)

**ORDER OF COMMITTAL**

(General Title)

To the Bailiff,

Whereas an order was made by the Court on the ..... day ..... of  
..... 20 ..... whereby it was ordered that  
..... the abovenamed judgment debtor pay the judgment debt and costs  
by instalments of RM ..... a month:

And whereas he has made default in the payment of instalment amounting to RM  
.....:

You are hereby commanded to arrest the said ..... and to deliver him to  
the officer in charge of the ..... Prison there to be kept for the term of  
..... days from the arrest under this Order or until earlier payment of  
the instalment due amounting to RM.....

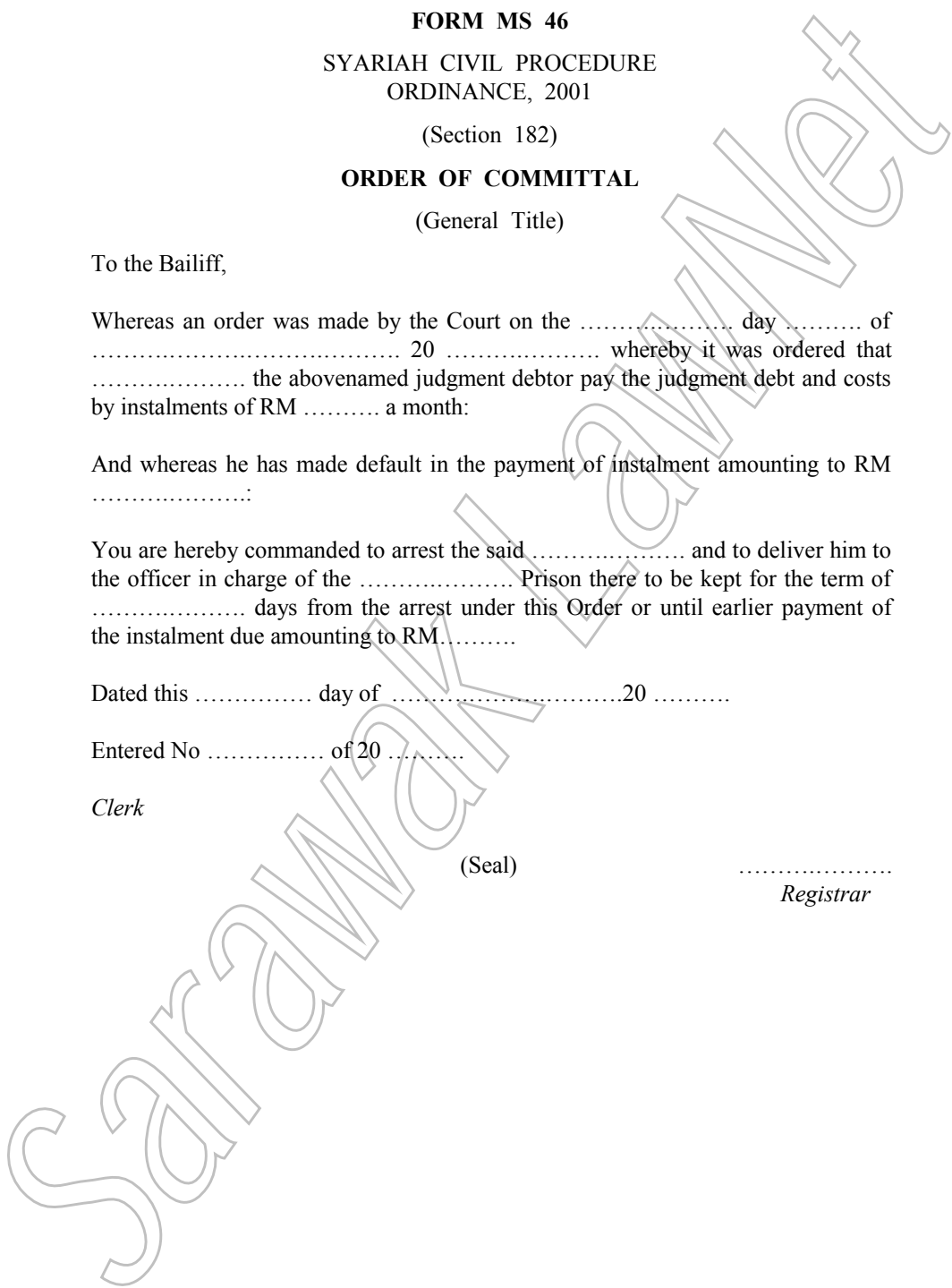
Dated this ..... day of .....20 .....

Entered No ..... of 20 .....

*Clerk*

(Seal)

.....  
*Registrar*





**FORM MS 47**

**SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001**

(Section 184(1))

**CERTIFICATE OF SATISFACTION**

(General Title)

I, ....., being the judgment creditor,  
hereby certify that the judgment debt in respect of which the judgment debtor  
..... is imprisoned has been satisfied and I request that the said .....  
..... be discharged from detention.

Dated this ..... day of ..... 20 .....

.....  
*Judgment Creditor (or  
Peguam Syarie for the Judgment Creditor)*

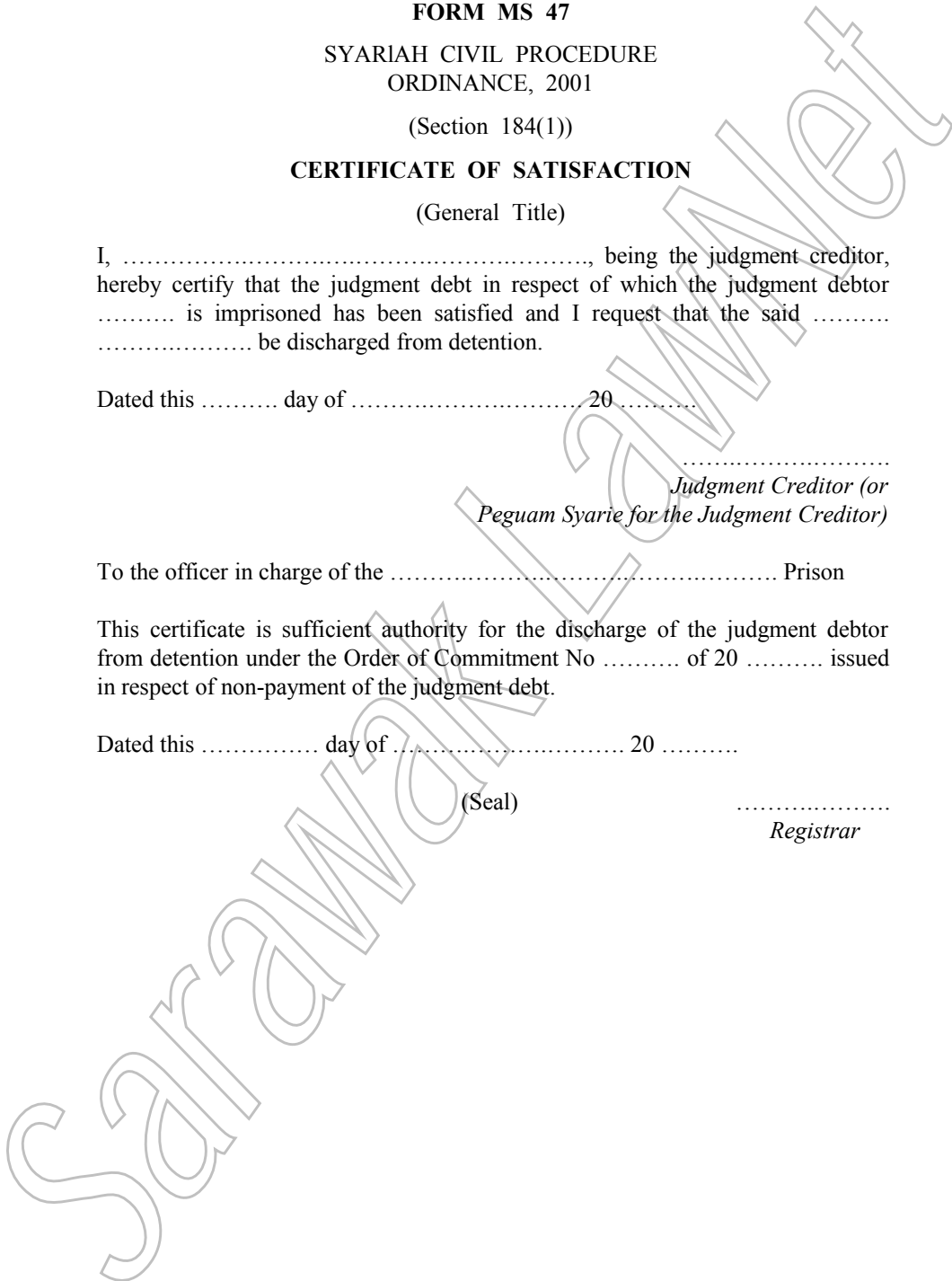
To the officer in charge of the ..... Prison

This certificate is sufficient authority for the discharge of the judgment debtor  
from detention under the Order of Commitment No ..... of 20 ..... issued  
in respect of non-payment of the judgment debt.

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Registrar*



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CAP. 44

**FORM MS 48**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 184(3))

**ORDER OF DISCHARGE**

(General Title)

To the officer in charge of the ..... Prison

Whereas it has been shown to be satisfaction of the Court that the judgment debtor has satisfied the judgment debt in respect of which he is imprisoned under an order of Commitment No ..... of 20 ..... dated the ..... day of ..... 20 ..... in the above action.

You are hereby directed to discharge from your custody the said judgment debtor for which this Order shall be your sufficient authority.

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Registrar*

Sarawak LawNet

**FORM MS 49**

SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 187(1))

**INTERLOCUTORY APPLICATION**

(General Title)

Take notice that the abovenamed plaintiff (or defendant) intends to apply to the Syariah ..... Court at ..... on ..... the ..... day of ..... 20 ....., at ..... a.m./p.m. for an order that (state nature of application).

The grounds of the application are:

- 1.
2. (State the grounds)
- 3.

Dated this ..... day of ..... 20 .....

Entered No ..... of 20 .....

*Clerk*

(Seal)

.....  
*Registrar*

This notice is taken out by the plaintiff (or defendant) of

(state address)

**FORM MS 50**  
SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 197(2))

**APPLICATION FOR INTERIM ORDER**

(General Title)

Take notice that the abovenamed plaintiff (or defendant) intends to apply to the Syariah ..... Court at ..... on ..... the ..... day of ..... 20 ..... at ..... a.m./p.m. for ..... an interim order that (state nature of application)

2. The grounds of the application are:

1.

2.

(State the grounds)

3.

3. This application is supported by an affidavit annexed.

Dated this ..... day of ..... 20 .....

Entered No ..... of 20 .....

Clerk

(Seal)

.....  
Registrar

To the defendant (or plaintiff).

This application is taken out by the plaintiff (or defendant) of (state address).

**FORM MS 51**

SYARIAH CIVIL PROCEDURE  
ORDINANCE, 2001

(Section 210(2))

**NOTICE OF APPEAL TO JUDGE IN CHAMBERS**

(General Title)

Take notice that the abovenamed plaintiff (or defendant) intends to appeal against the decision of the Registrar given on the ..... day of .....  
..... 20 ..... ordering (or refusing to order) (state in full the order appealed against).

Dated this ..... day of ..... 20 .....

.....  
*Plaintiff/Defendant (or Peguam Syarie  
for the Plaintiff/Defendant)*

And further take notice that you are required to attend before the Judge in Chambers on ..... the day of ..... 20 ..... at  
..... a.m./p.m. on the hearing of an application by the said plaintiff (or defendant) that (state the order sought to be obtained).

Dated this ..... day of ..... 20 .....

(Seal)

.....  
*Registrar*

To the defendant (or plaintiff).

**[List of Amendments]**

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*CAP. 44*

**LAWS OF SARAWAK**

**Chapter 44**

**SYARIAH CIVIL PROCEDURE ORDINANCE, 2001**

LIST OF AMENDMENTS

Amending Law	Short Title	In force from
Swk. L.N. 155/2004	Date of Commencement of the Ordinance	1.12.2004

