

Halsbury's  
LAWS  
OF  
MALAYSIA

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2006 Reissue

14

Family Law

Syariah Law

# Halsbury's LAWS OF MALAYSIA

Volume 14

2006 Reissue

Family Law

Syariah Law

 LexisNexis®

2006

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LAWS OF MALAYSIA

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VOLUME 14 (2006 Reissue)  
FAMILY LAW  
SYARIAH LAW

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The law stated in this volume is in general that in force on  
18 September 2006, although subsequent changes have been  
included wherever possible

- 2 As to the quantum of punishment that may be inflicted on a person if he is found guilty of the offence see the Syariah Criminal Offences (Federal Territories) Act 1997 (Act 559) s 42; Syariah Criminal Offences Enactment 1997 (Johore) (No 4 of 1997) s 42; Criminal Offences in the Syarak Enactment 1996 (Penang) (No 3 of 1996) s 42; Syariah Criminal Offences Ordinance 2001 (Sarawak) (Cap 46) s 39; Syariah Criminal Offences Enactment 1995 (Selangor) (No 9 of 1995) s 38; Syariah Criminal Offences (Takzir) Enactment 2001 (Terengganu) (No 7 of 2001) s 49. See the Quran 2: 168, 172-173 and 6: 121 which provides guidance as to the types of food or drink that is lawful or unlawful to be consumed by Muslims.

## 5. SYARIAH CRIMINAL PROCEDURE

### (1) INTRODUCTION

#### CONTENTS

##### PARA

- [400.491] Scope of chapter  
 [400.492] Criminal jurisdiction of Syariah courts  
 [400.493] Transfer of criminal cases

**[400.491] Scope of chapter** This chapter will deal with the basic principles of Syariah criminal procedure and their application in the Syariah courts<sup>1</sup> in Malaysia<sup>2</sup>.

- 1 As to Syariah courts see [400.024] and following; and as to their criminal jurisdiction see [400.492].

Since the Syariah Criminal Procedure Enactments of the different States have been streamlined and are uniform, reference hereinafter will only be made to the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003).

- 2 See [400.494]-[400.563].

**[400.492] Criminal jurisdiction of Syariah courts** Syariah courts are conferred jurisdiction<sup>1</sup> in respect of offences against the precepts of the Religion of Islam by persons professing that religion or which may be prescribed under any written law. However, such jurisdiction may not be exercised in respect of any offence punishable with imprisonment for a term exceeding three years or with any fine exceeding RM 5,000 or with whipping exceeding six strokes or with any combination thereof<sup>2</sup>.



- 1 As to the jurisdiction of Syariah courts generally see [400.029] and following.
- 2 Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355) (revised 1988) s 2. See also the Federal Constitution Sch 9 List II, item 1; Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) s 46(2)(a), 47(2)(a).

**[400.493] Transfer of criminal cases** A judge<sup>1</sup> of the Syariah High Court may order that any particular criminal case be transferred to and tried before the Syariah High Court<sup>2</sup>; or that an accused person be tried in another Syariah Subordinate Court<sup>3</sup>, whenever it is made to appear to the judge:

- (1) that a fair and impartial trial cannot be had in any Syariah Subordinate Court;
- (2) that some question of law of unusual difficulty is likely to arise;
- (3) that a view of the place in or near which any offence<sup>4</sup> has been committed may be required for the satisfactory trial of the offence;
- (4) that an order under this provision will tend to the general convenience of the parties or witnesses; or
- (5) that such an order is expedient for the ends of justice, or is required by any provisions of the statute<sup>5</sup>.

An application for transfer must be made by motion supported by an affidavit<sup>6</sup> and must be made prior to the conclusion of the trial of the offence<sup>7</sup>. An accused making such an application must give to the Chief Syariah Prosecutor<sup>8</sup> a notice in writing of the application, together with a copy of the grounds on which it is made, and an order must not be made on the merits of the application unless at least 24 hours have elapsed between the notice being given and the application being heard<sup>9</sup>.

- 1 As to Syariah court judges see [400.038]-[400.046].
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 203(aa); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 203(aa); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 207(aa); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 203(aa).  
As to the Syariah High Court see [400.025].
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 203(bb); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 203(bb); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 207(bb); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 203(bb).  
As to Syariah Subordinate Courts see [400.025].
- 4 For the meaning of 'offence' see [400.519] note 1.
- 5 Syariah Criminal Procedure (Federal Territories) Act 1997 s 203(a)-(e); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 203(a)-(e); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 207(a)-(e); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 203(a)-(e).
- 6 Syariah Criminal Procedure (Federal Territories) Act 1997 s 204(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 204(1); Syariah Criminal