

- any of such police officers may execute such warrant: Syariah Criminal Procedure (Federal Territories) Act 1997 s 44(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 44(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 44(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 44(3).
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 44(1)(a)-(d); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 44(1)(a)-(d); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 44(1)(a)-(d); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 44(1)(a)-(d).
 - 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 45; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 45; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 45; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 45.
 - 5 As to Syariah court judges see [400.038]-[400.046].
 - 6 Syariah Criminal Procedure (Federal Territories) Act 1997 s 46; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 46; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 46; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 46.
 - 7 Syariah Criminal Procedure (Federal Territories) Act 1997 s 48; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 48; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 48; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 48.
 - 8 Syariah Criminal Procedure (Federal Territories) Act 1997 s 49(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 49(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 49(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 49(1).
 - 9 Syariah Criminal Procedure (Federal Territories) Act 1997 s 49(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 49(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 49(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 49(2). As to the manner provided see the text to note 11 below:
 - 10 It must be done with the consent of the occupant and in his presence: The Quran 24: 27-28; see the Syariah Criminal Procedure (Federal Territories) Act 1997 s 53; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 53; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 53; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 53.
 - 11 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 11(2); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 11(2); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 11(2); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 11(2). See also [400.502] text to note 3.
 - 12 Syariah Criminal Procedure (Federal Territories) Act 1997 s 52; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 52; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 52; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 52.

[400.504] Powers of seizure The Religious Enforcement Officer¹ is given a power to seize any article believed to be used in the commis-

sion of an offence². If any offensive weapon is seized, it must be delivered to the police³. A list of the articles seized must be prepared and signed by the officer who seized it⁴.

- 1 As to the appointment of Religious Enforcement Officers see [400.051].
- 2 See the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 15(1); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 15(1); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 15(1); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 15(1).
For the meaning of 'offence' see [400.519] note 1.
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 16; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 16; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 16; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 16.
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 15(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 15(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 15(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 15(2). See also [400.503] text to note 12.

(4) RIGHTS OF THE ARRESTED PERSON

CONTENTS

PARA

- [400.505] General
- [400.506] Right to be released on bail
- [400.507] Right to be defended
- [400.508] Right to know grounds of arrest
- [400.509] Right to be produced before the court without unnecessary delay

[400.505] General Though a person has been arrested¹, his rights will still be protected. He is presumed to be innocent until proven otherwise².

- 1 As to arrest see [400.500].
- 2 *Mejelle* (An English Translation of Majallah al-Ahkam al-Adliyyah and A Complete Code on Islamic Civil Law translated by C R Tyser and Others, Lahore) art 8.

[400.506] Right to be released on bail The concept of bail (*kafalah*) is recognised in Islam¹. The general principle is that an arrested person may be released on bail². Where a person is arrested pursuant to a warrant, he may be released on bail provided there is a direction indorsed in the warrant that if such person executes a bond

with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed must take such security and must release such person from custody³. When any person is arrested or detained without a warrant by a Religious Enforcement Officer⁴ or police officer or appears or is brought before a court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person must be released on bail by the Religious Enforcement Officer or police officer in charge of a police station or by any police officer not below the rank of Inspector or by such court⁵.

The amount of bond⁶ will be fixed with due regard to the circumstances of the case, but must not be excessive⁷. The Syariah High Court may direct the amount to be increased or reduced, whether or not there is an appeal on conviction⁸. Prior to a person being released on bail, a bond for a sum of money as the Religious Enforcement Officer or police officer or court thinks sufficient must be executed by one or more sufficient sureties⁹. When any person is required by any court or officer to execute a bond, such court or officer, may, except in the case of a bond for good behaviour, permit him to deposit a sum of money to such amount as the court may fix, in lieu of executing such bond¹⁰.

Immediately upon the bond being executed, the person must be released¹¹. However if, through mistake, fraud or otherwise, insufficient sureties have been accepted, the court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and on his failing to do so, may commit him to prison¹². Any of the sureties may apply for the bond to be discharged¹³, and upon such an application being made, the judge¹⁴ will issue a warrant of arrest against the person so released¹⁵ and order him to find other sufficient sureties and if he fails to do so, may commit him to prison¹⁶. Alternatively, the surety himself may bring the person for whom he is the surety before a judge who must thereupon discharge such surety's bond and call upon the person to find other surety and on his failing to do so, may commit him to prison¹⁷.

A person who is aggrieved by any order or refusal of the Syariah Subordinate Court with regard to bail, may appeal to the Syariah High Court; and may also appeal to the Syariah Appeal Court in the case of an order made by or a refusal of the Syariah High Court¹⁸.

1 The Quran 12:66; 12:72. See also Surah Yusuf: 66, 72.

2 Bail is a delivery or bailment of a person to his sureties, upon their giving sufficient security for his appearance: Blackstones Commentaries, Book IV, ch 22, 296. As to arrest see [400.500].

3 Syariah Criminal Procedure (Federal Territories) Act, 1997 (Act 560) s 33(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 33(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of

- 2003) s 33(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 33(1).
- 4 As to the appointment of Religious Enforcement Officers see [400.051].
 - 5 Syariah Criminal Procedure (Federal Territories) Act, 1997 s 185; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 185; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 189; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 185.
 - 6 Bond is an instrument under seal, whereby a person binds himself to do or not to do certain things: Mozley & Whitely *Law Dictionary* (11th Edn, 1993).
 - 7 Syariah Criminal Procedure (Federal Territories) Act 1997 s 186(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 186(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 190(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 186(1).
 - 8 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 186(2); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 186(2); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 190(2); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 186(2).
 - 9 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 187; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 187; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 191; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 187.
 - 10 Syariah Criminal Procedure (Federal Territories) Act 1997 s 198; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 198; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 202; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 198.
 - 11 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 188; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 188; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 192; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 188.
 - 12 Syariah Criminal Procedure (Federal Territories) Act s 189; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 189; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 193; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 189.
 - 13 Syariah Criminal Procedure (Federal Territories) Act 1997 s 190(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 190(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 194(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 190(1).
 - 14 As to Syariah court judges see [400.038]-[400.046].
 - 15 Syariah Criminal Procedure (Federal Territories) Act 1997 s 190(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 190(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 194(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 190(2).
 - 16 Syariah Criminal Procedure (Federal Territories) Act 1997 s 190(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 190(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 194(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 190(3).
 - 17 Syariah Criminal Procedure (Federal Territories) Act 1997 s 190(4); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 190(4); Syariah Criminal

Procedure (Negeri Sembilan) Enactment 2003 s 194(4); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 190(4).

- 18 Syariah Criminal Procedure (Federal Territories) Act 1997 s 191; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 191; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 195; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 191.

[400.507] Right to be defended An arrested person should always have the right to defend himself, either personally or through a legal representative. There are numerous *hadiths* which indicate that Islam recognises the right of the arrested person to defend himself¹. Islam also recognises the right of the arrested person to appoint a legal representative². The right of the arrested person to defend and be defended by a *peguam syarie*³ can be seen in the statutory provisions⁴.

- 1 Abu Dawud *Sunan Abu Dawud* (translated by Ahmad Hasan, 1984) Vol III, where it was stated: 'Ali said: The Apostle of Allah (PBUH) sent me to Yemen as a judge and I asked: Apostle of Allah. Are you sending me when I am young and have no knowledge of the duties of the judge? He replied: Allah will guide your heart and keep your tongue true. When two litigants sit in front of you, do not decide till you hear what the other has to say as you heard what the first had to say, for it is best that you should have a clear idea of the best decision. He said: I had been a judge (for long): or he said (The narrator is doubtful): I have no doubts about a decision afterwards'.

This tradition provides the procedure for making a decision in a legal case. One should not give judgement in haste. A judge should hear both the parties and what they have to say, and then deeply think over their statements so that the case becomes clear to him. He should not have doubt about his decision. His judgement should be unequivocal. As to the meaning of *hadith* see [400.189] note 3.

- 2 Abu Dawud *Sunan Abu Dawud* (translated by Ahmad Hasan, 1984) Vol III, where it was stated: 'Jabir B 'Abd Allah said: I intended to go (On expedition) to Khaibar. So I come to the Holy Prophet (PBUH), greeted him and said: I am intending to go to Khaibar. He said: When you come to my agent, you should get from him five wasaqs (of dates). If he asks you for a sign, then place your hand on his collar bones'. This tradition indicates the legality of working as an agent or attorney on behalf of some person.
- 3 Regarding the right to be defended by *peguam syarie*, this is related to the concept of *wakalab*, ie the accused person appoints someone as his representative. The duty of the wakil is to represent the parties in the litigation in order to assist the court to give a just decision. This is best illustrated in *Pendakwa Syarie Kelantan v Mat Rabim and Nik Azimah* (1987) JH 298, where two accused were charged for the offence of *khalwat*; they stated that they had been married in Thailand and produced two witnesses and a marriage certificate; however the prosecutor tried to argue that the certificate was a forged one; hence, in this case the two accused were given the right to defend themselves through their counsel. As to *peguam syarie* see [400.052]-[400.057].
- 4 See eg the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 104; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 104; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003

(No 13 of 2003) s 104; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 104.

[400.508] Right to know grounds of arrest A person who has been arrested has the right to know the grounds of his arrest¹.

- 1 See the Federal Constitution art 5(3); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 35; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 35; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 35.

As to arrest see [400.500].

[400.509] Right to be produced before the court without unnecessary delay The Religious Enforcement Officer or police officer must without unnecessary delay bring the person so arrested¹ before a Syariah Subordinate Court³.

- 1 As to arrest see [400.500].
- 2 See the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) ss 22(1), 36; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) ss 22(1), 36; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) ss 22(1), 36; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) ss 22(1), 36. See also [400.500] text to note 12.

As to Syariah Subordinate Courts see [400.025].

(5) SUMMONS

CONTENTS

PARA

- [400.510] Meaning of 'summons'
- [400.511] Service of summons
- [400.512] Effect of non-compliance of summons

[400.510] Meaning of 'summons' A summons is an order issued by the court requiring a person to appear before the court either to hear the charge made against him¹ or to provide evidence as a witness² or to produce documents or property relating to the case³.

- 1 See the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 28; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 28; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 28; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 28.

- 2 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 219; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 219; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 223; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 219.
- 3 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 42(1); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 42(1); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 42(1); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 42(1).

[400.511] Service of summons A summons must be served personally on the person summoned¹, or if the person cannot by exercise of due diligence² be found, the summons may be served by leaving a copy of the summons with some adult member of his family or with his servant residing with him³. Where personal service cannot be effected, the serving officer must affix a copy of the summons to some conspicuous part of the house or other place in which the person summoned ordinarily resides, and in such case the summons must be deemed to have been duly served⁴. The service of the summons may be proved by an affidavit⁵ which will be admissible as evidence⁶.

- 1 Which means the person summoned will be shown the original summons and a copy of the summons bearing the seal of the court will be delivered to him: Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 29(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 29(1); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 29(1); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 29(1).

As to summonses see **[400.510]**.

- 2 If all attempts have been made to find him.
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 29(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 29(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 29(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 29(3).
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 30;
- 5 As to affidavits see **[400.573]**.
- 6 Syariah Criminal Procedure (Federal Territories) Act 1997 s 31; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 31; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 31; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 31.

400.512] Effect of non-compliance of summons When the person is served with a summons¹ to appear before the court or to produce a document, he has an obligation to comply with the summons. If he fails to comply with the summons, the court can either issue a warrant of arrest for non appearance² or a search warrant for not producing the property or document as required³.

- 1 As to summonses see **[400.510]**.

- 2 See the Syariah Criminal Procedure (Federal Territories) Act (Act 560) s 38; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 38; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 38; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 38. See also *Rusidah binti Abdul Ghani v Pendakwa Jawi* (1412) JH 209.
- 3 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 44(1)(a); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 44(1)(a); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 44(1)(a); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 44(1)(a). As to when search warrants may be issued see [400.503].

(6) CHARGES

CONTENTS

PARA

- [400.513] Meaning of 'charge'
- [400.514] Form of charge
- [400.515] Effect of error on charge
- [400.516] Amendment or addition on charge
- [400.517] Separate charges for distinct offences

[400.513] Meaning of charge A person is deemed to make a charge when he claims a right or interest against another in a legal dispute. The definition of the word 'charge' is not to be found in any statutory provision. The ulama (Islamic scholars – 'alim (singular)) have provided several definitions for the word charge or claim in accordance to the *syariah*¹, which can be concluded to be words that are accepted by a judge². The purpose of making a charge or claim is for the claimant to obtain a known right from another person or to defend such right in a legal dispute³.

- 1 As to the meaning of '*syariah*' see [400.004].
- 2 As to Syariah court judges see [400.038]-[400.046].
- 3 'Ali Qura'ah, *Al Usul Al Qadaa'iyyah Fi Al Muraffah Al-Syar'iyyah*, Matba'ah Al-Nahdah, Egypt 1952 at 3.

[400.514] Form of charge Every charge¹ must state the offence² with which the accused is charged³. If the law which creates the offence gives it a specific name, that specific name may only be used to describe the offence in the charge⁴. If the offence does not have a specific name, the definition of the offence must be stated as to give the accused notice of the matter with which he is charged⁵. The law and provisions of the law against which the offence is said to have been

committed must also be mentioned in the charge⁶. In order to give clearer notice to the accused in relation to the matter with which he is charged, the charge must also state such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which the offence was committed⁷. If the particulars mentioned in the charge⁸ do not give sufficient notice to the accused of the matter with which he is charged, the charge must also contain particulars of the manner in which the alleged offence was committed⁹.

- 1 As to the meaning of 'charge' see [400.513].
- 2 For the meaning of 'offence' see [400.519] note 1.
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 78(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 78(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 78(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s.78(1).
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 78(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 78(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 78(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 78(2).
Eg the offence of *khalwat*: see [400.431], [400.432].
- 5 Syariah Criminal Procedure (Federal Territories) Act 1997 s 78(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 78(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 78(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 78(3).
- 6 Syariah Criminal Procedure (Federal Territories) Act 1997 s 78(4); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 78(4); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 78(4); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 78(4).
- 7 Syariah Criminal Procedure (Federal Territories) Act 1997 s 79; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 79; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 79; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 79.
- 8 Ie as mentioned in the Syariah Criminal Procedure (Federal Territories) Act 1997 ss 78, 79; Syariah Criminal Procedure (State of Malacca) Enactment 2002 ss 78, 79; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 ss 78, 79; Syariah Criminal Procedure (State of Selangor) Enactment 2003 ss 78, 79.
- 9 Syariah Criminal Procedure (Federal Territories) Act 1997 s 80; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 80; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 80; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 80.

[400.515] Effect of error on charge Any error in stating either the offence¹ or the particulars required to be stated in a charge, or an omission to state the offence or those particulars, will not be regarded as material unless the accused can prove that he was misled by such error or omission².

- 1 For the meaning of 'offence' see [400.519] note 1.
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 82; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 82; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 82; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 82.

As to the meaning of 'charge' see [400.513].

[400.516] Amendment or addition on charge Any amendment or addition to a charge¹ must be done prior to the pronouncement of the judgment² and must be read and explained to the accused³. If any amendment or addition is made, the accused person must be called and asked to plead and to state whether he is ready to be tried on the amended or added charge⁴.

- 1 If the offence stated in the amended or added charge is one for the prosecution of which previous sanction is necessary, the case must not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the amended or added charge is founded: Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 86; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 86; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 86; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 86. As to the offences which require sanction to prosecute see [400.524].

As to the meaning of 'charge' see [400.513].

- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 s 83(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 83(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 83(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 83(1).
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 83(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 83(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 83(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 83(2).
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 84(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 84(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 84(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 84(1).

If the accused declares that he is not ready, the court must duly consider the reasons he may give, and if proceeding immediately with the trial is in the court's opinion not likely to prejudice either the accused in his defence or the Chief Syariah Prosecutor or the Syariah prosecutor in the conduct of the case, the court may, in its discretion, after such amendment or addition has been framed or made, proceed with the trial as if the amended or added charge had been the original charge: Syariah Criminal Procedure (Federal Territories) Act 1997 s 84(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 84(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 84(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 84(2).

If the amended or added charge is such that proceeding immediately with the trial is likely, in the opinion of the court, to prejudice the accused or the Chief