

Syariah Prosecutor or the Syariah prosecutor, the court may either direct a new trial or adjourn the trial for such period as may be necessary: Syariah Criminal Procedure (Federal Territories) Act 1997 s 85; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 85; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 85; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 85.

**[400.517] Separate charges for distinct offences** The general rule is that for every distinct offence<sup>1</sup> there must be a separate charge and every separate charge must be tried separately<sup>2</sup>. The exceptions to this general rule are as follows:

- (1) when a person is accused of committing offences of the same kind<sup>3</sup> within a period of 12 months from the date the first offence was committed, whether in respect of the same person or not, he may be charged and tried in the same trial for any number of them not exceeding three<sup>4</sup>;
- (2) when a person is accused of committing a series of acts which are so connected together as to form the same transaction<sup>5</sup>, the person may be charged and tried in one trial for every such offence<sup>6</sup>;
- (3) if the acts alleged constitute offences falling within two or more separate definitions<sup>7</sup> of offences, the person accused of them may be charged with and tried in the same trial for each of such offences<sup>8</sup>;
- (4) if several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one or more of such acts<sup>9</sup>;
- (5) if a single act or series of acts is of such a nature that it is doubtful which of the several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once, or he may be charged in the alternative with having committed any one of such offences and may be tried at once<sup>10</sup>;
- (6) where more than one person is accused of the same offence or of different offences committed in the same transaction, or when one person is accused of committing an offence and another with abetment of or attempt to commit the same offence, they may be charged and tried together<sup>11</sup> or separately<sup>12</sup> as the court<sup>13</sup> thinks fit<sup>14</sup>.

<sup>1</sup> For the meaning of 'offence' see [400.519] note 1.

<sup>2</sup> Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 88; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 88; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003)

s 88; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 88.

As to the meaning of 'charge' see [400.513]; and as to the trial of criminal cases see [400.525] and following.

- 3 Offences are considered to be of the same kind when they are punishable under the same provisions of any law for the time being in force: Syariah Criminal Procedure (Federal Territories) Act 1997 s 89(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 89(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 89(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 89(2).
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 89(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 89(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 89(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 89(1).
- 5 Eg when a person is accused of an offence of false doctrine, he may have committed the act of *nikah batin*, declaring himself to be an Imam Mahdi and arguing that it is not obligatory for a Muslim to perform daily prayers. These acts are a series of acts which are so connected together as to form the same transaction: see *Pendakwa Mahkamah Syariah Perak v Shah Pandak Othman* (1991) 8 JH 99.
- 6 Syariah Criminal Procedure (Federal Territories) Act 1997 s 90(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 90(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 90(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 90(1).
- 7 Eg where a person is accused of participating in a beauty pageant contest, this can amount to the offence of not complying with the *fatwa* given by the *Mufti* and also of dressing indecently in public.  
For the meaning of '*fatwa*' see [400.069]. As to *muftis* see [400.070].
- 8 Syariah Criminal Procedure (Federal Territories) Act 1997 s 90(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 90(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 90(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 90(2).
- 9 Syariah Criminal Procedure (Federal Territories) Act 1997 s 90(3); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 90(3); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 90(3); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 90(3).
- 10 Syariah Criminal Procedure (Federal Territories) Act 1997 s 91; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 91; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 91; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 91.

Where it is doubtful what offence has been committed and the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged, he may be convicted of the offence which he is proven to have committed although he was not charged with it: Syariah Criminal Procedure (Federal Territories) Act 1997 s 92; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 92; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 92; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 92.

- 11 See eg *Pendakwa Syarie Kelantan v Mat Rabim And Nik Azimah* (1994) 10 JH 110; *Pendakwa v Abd Talib bin Harun* (1996) 10 JH 150.
- 12 See eg *Basbirah bt Abdullah v Pendakwa Jabatan Agama Islam, Wp* (1990) 7 JH 203.
- 13 As to syariah courts see [400.024] and following.
- 14 Syariah Criminal Procedure (Federal Territories) Act 1997 s 95; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 95; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 95; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 95.
- As to attempt and abetment see [400.417] and [400.418] respectively.

## (7) THE JURISDICTION OF COURTS IN TRIALS

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#### PARA

- [400.518] Ordinary place of trial
- [400.519] Accused triable in place where act is done or where consequence ensues
- [400.520] Place of trial where an act is an offence by reason of relation to other offence
- [400.521] Where scene of offence is uncertain
- [400.522] When doubt arises, Chief Syariah Judge to decide

**[400.518] Ordinary place of trial** Every offence must ordinarily be tried by a court<sup>1</sup> within the local limits of whose jurisdiction it was committed<sup>2</sup>.

- 1 As to syariah courts see [400.024] and following.
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 67; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 67; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 67; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 67.

As to the jurisdiction of courts generally see [400.029] and following.

**[400.519] Accused triable in place where act is done or where consequence ensues** When a person is accused of the commission of any offence<sup>1</sup> arising from anything done or of any consequence which has ensued, such offence may be tried by a court<sup>2</sup> within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued<sup>3</sup>.

- 1 Unless the context otherwise requires, 'offence' means any act or omission made punishable by any written law prescribing offences against precepts of the religion of Islam and over which the court has jurisdiction: Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 2(1); Syariah Criminal

Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 2(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 2(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 2(1).

- 2 As to syariah courts see [400.024] and following.
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 68; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 68; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 68; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 68.

As to the jurisdiction of courts generally see [400.029] and following.

**[400.520] Place of trial where an act is an offence by reason of relation to other offence** When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge<sup>1</sup> of the first-mentioned offence may be tried by a court<sup>2</sup> within the local limits of whose jurisdiction either act was done<sup>3</sup>.

- 1 As to charges see [400.513]-[400.517].
- 2 As to syariah courts see [400.024] and following.
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 69; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 69; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 69; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 69.

For example, a charge of abetment may be tried either by the court within the local limits of whose jurisdiction the abetment was committed or by the court within the local limits of whose jurisdiction the offence abetted was committed: Syariah Criminal Procedure (Federal Territories) Act 1997 s 69 Illustration; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 69 Illustration; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 69 Illustration; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 69 Illustration. As to abetment see [400.418].

As to the jurisdiction of courts generally see [400.029] and following.

**[400.521] Where scene of offence is uncertain** Where:

- (1) it is uncertain in which of several local areas an offence was committed;
- (2) an offence is committed partly in one local limit of jurisdiction and partly in another;
- (3) an offence is a continuing one and continues to be committed in more local limits of jurisdiction than one; or
- (4) it consists of several acts done in different local limits of jurisdiction,

the case may be heard by the court<sup>1</sup> having jurisdiction within any of the said local limits of jurisdiction<sup>2</sup>.

- 1 As to syariah courts see [400.024] and following.

2. Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 70; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 70; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 70; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 70.

As to the jurisdiction of courts generally see [400.029] and following.

### [400.522] When doubt arises, Chief Syariah Judge to decide

Whenever any doubt arises as to the court<sup>1</sup> by which any offence should<sup>2</sup> be tried the Chief Syariah Judge<sup>3</sup> may decide by which court the offence will be tried<sup>4</sup>.

1. As to syariah courts see [400.024] and following.
2. Ie under the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) ss 67-70; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) ss 67-70; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) ss 67-70; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) ss 67-70. See [400.518]-[400.521].
3. As to the Chief Syariah Judge see [400.039].
4. Syariah Criminal Procedure (Federal Territories) Act 1997 s 71; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 71; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 71; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 71.

## (8) CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS

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PARA

- [400.523] Cognisance of offences by judge  
 [400.524] Sanction to prosecute from Chief Syariah Prosecutor

**[400.523] Cognisance of offences by judge** A judge<sup>1</sup> may take cognisance of an offence (1) upon receiving a complaint<sup>2</sup>; (2) upon his own knowledge and with evidence to support that such offence has been committed; (3) upon any person being brought before him in custody without process accused of having committed an offence which such judge has jurisdiction to try<sup>3</sup>.

When a judge takes cognisance of an offence under head (2) above, the accused or, when there are several accused, any one of them will be entitled to require that the case will not be tried by such judge but will be tried by another judge<sup>4</sup>.

- 1 As to Syariah court judges see [400.038]-[400.046].
- 2 As to complaints to the Syariah Court Judge see [400.497].
- 3 Syariah Criminal Procedure (Federal Territories Act 1997 (Act 560) s 72(1)(a)-(c); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 72(1)(a)-(c); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 72(1)(a)-(c); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 72(1)(a)-(c).
- 4 Syariah Criminal Procedure (Federal Territories Act 1997) s 72(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 72(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 72(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 72(2).

### [400.524] Sanction to prosecute from Chief Syariah Prosecutor

Prosecution for certain offences<sup>1</sup> can only be instituted with the sanction of the Chief Syariah Prosecutor<sup>2</sup>.

- 1 Ie under the Syariah Criminal Offences (Federal Territories) Act 1997 (Act 559) s 4, 8, 9, 12, or 13. See also the Syariah Criminal Offences Enactment 1992 (Negeri Sembilan)(No 4 of 1992) s 49-52, 55, 56, 71, 80-97, 100, 101, 104, 105 or 106; the Syariah Criminal Offences Enactment (Selangor) 1995 (No 9 of 1995) s 4, 8, 9, 12 or 13. See also [400.455], [400.465], [400.467], [400.473], [400.475] respectively.
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 73; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 73; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 73; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 73.

As to the appointment of the Chief Syariah Prosecutor see [400.047].

## (9) TRIAL

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#### PARA

- [400.525] Procedure
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**[400.525] Procedure** A trial is one of the most important stages in an action since it involves not only the parties to the action but also the judge<sup>1</sup>, the witness as well as the court officers. A trial is a crucial

task undertaken by the judge as he has the responsibility of delivering a decision at the end of the trial<sup>2</sup>. In delivering the decision, the judge is required to deliver a just decision<sup>3</sup>.

When the accused is brought before the court<sup>4</sup>, a charge containing the particulars of the offence of which he is accused, must be framed, read and explained to him and he must be asked whether he is guilty to the offence charged or claims to be tried<sup>5</sup>. If the accused pleads guilty and the judge is satisfied with his plea<sup>6</sup>, he will be convicted of the offence<sup>7</sup>. However, if the accused refuses to plead or does not plead or claims trial, the court must proceed to hear the complainant, if any, and to take all such evidence as may support the prosecution case<sup>8</sup>. When the court thinks it necessary it may obtain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution through the judge<sup>9</sup>.

The accused or his *peguam Syarie*<sup>10</sup> has the right to cross-examine all the witnesses for the prosecution through the judge<sup>11</sup>. Upon taking all the evidence<sup>12</sup>, the court is of the opinion that no case against the accused has been made out, the court will record an order of acquittal<sup>13</sup>. If when such evidence has been taken, the court is of the opinion that there are grounds for presuming that the accused has committed the offence charged or some other offence which such court is competent to try and which in its opinion it ought to try, it may consider the charge recorded against the accused and decide whether it is sufficient and, if necessary, may amend the charge<sup>14</sup>. The charge if amended must be read to the accused as amended and he must be asked whether he is guilty or has any defence to make<sup>15</sup>. If the court is of the opinion that there exists a *prima facie* case against the accused, the accused will be called upon to enter his defence, and will, while he is making his defence, be allowed to recall and cross examine any witness through the judge<sup>16</sup>. If the accused puts in any written statement, the court must file it with the record<sup>17</sup>. If the accused applies to the court to issue a summons for compelling the attendance of any witness, whether he has or has not been previously examined in the case, for the purpose of examination or cross-examination or the production of any document or other thing, the court will issue a summons unless it considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice; and such ground must be recorded by it in writing<sup>18</sup>. Finally, if the court finds the accused not guilty, the court must record an order of acquittal<sup>19</sup>. However, if the court finds the accused guilty or if a plea of guilty has been accepted and recorded, the court must pass a sentence<sup>20</sup>.

During a trial, the prosecution need not open the case but may forthwith produce their evidence<sup>21</sup>. When the accused is called upon to enter his defence, he or his *peguam Syarie* may open his case by stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution,

and if the accused gives evidence or witnesses are examined on his behalf, may sum up his case<sup>22</sup>. The prosecution will have the right of reply on the whole case when the accused has adduced evidence<sup>23</sup>.

In any trial before a judge of a Syariah subordinate court in which it appears at any stage of the proceedings that from any cause, the case is one which in the opinion of such judge ought to be tried by a Syariah High Court or if before or during such trial, an application is made by the Chief Syariah Prosecutor<sup>24</sup>, the judge must stay the proceedings and transfer the case to the Syariah High Court and must record such order upon the proceedings<sup>25</sup>.

- 1 As to Syariah court judges see [400.038]-[400.046].
- 2 Whenever any judge, after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction therein and is succeeded by another judge who has and who exercises such jurisdiction, the judge so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself, or he may re-summon the witnesses and recommence the trial: Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 108; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 108; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 108; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 108. In any trial the accused may, when the second judge commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard: Syariah Criminal Procedure (Federal Territories) Act 1997 s 108 proviso (a); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 108 proviso (a); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 108 proviso (a); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 108 proviso (a). The appropriate appeal Court may, whether there be an appeal or not, set aside any conviction had on evidence not wholly recorded by the judge before whom the conviction was had, if such court is of the opinion that the accused has been materially prejudiced thereby, and may order a new trial: Syariah Criminal Procedure (Federal Territories) Act 1997 s 108 proviso (b); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 108 proviso (b); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 108 proviso (b); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 108 proviso (b).
- 3 The Quran 38:26.
- 4 As to syariah courts see [400.024] and following.
- 5 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(a); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(a); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(a); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(a). As to charges see [400.513]-[400.517].
- 6 With regard to the conditions that must be satisfied before a plea (*iqrar*) can be accepted see [400.586]. See also *Mokhtar bin Pangat v Pendakwa Jabatan Agama Islam, Wilayah Persekutuan* (1990) 7 JH 203.
- 7 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(b); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(b); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(b); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(b). However, before a plea of



- guilty is recorded, the court must ascertain that the accused understands the nature and consequence of his plea and intends to admit, without qualification, the offence alleged against him: Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(b) proviso; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(b) proviso; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(b) proviso; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(b) proviso.
- 8 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(c); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(c); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(c); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(c).
  - 9 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(d). See also the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(d); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(d); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(d).
  - 10 As to *peguam Syarie* see [400.052]-[400.057].
  - 11 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(e); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(e); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(e); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(e).
  - 12 It is referred to in the Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(c)-(e); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(c)-(e); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(c)-(e); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(c)-(e).
  - 13 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(f); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(f); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(f); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(f).
  - 14 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(h); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(h); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(h); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(h).
  - 15 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(i); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(i); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(i); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(i).
  - 16 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(j); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(j); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(j); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(j).
  - 17 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(k); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(k); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(k); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(k).
  - 18 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(l); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(l); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(l); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(l).

- 19 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(m)(i); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(m)(i); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(m)(i); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(m)(i).
- 20 Syariah Criminal Procedure (Federal Territories) Act 1997 s 96(m)(ii); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 96(m)(ii); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 96(m)(ii); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 96(m)(ii).
- 21 Syariah Criminal Procedure (Federal Territories) Act 1997 s 98(a); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 98(a); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 98(a); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 98(a).
- 22 Syariah Criminal Procedure (Federal Territories) Act 1997 s 98(b); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 98(b); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 98(b); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 98(b).
- 23 Syariah Criminal Procedure (Federal Territories) Act 1997 s 98(c); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 98(c); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 98(c); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 98(c).
- 24 The Chief Syariah Prosecutor will have control and direction of all criminal prosecutions and proceedings: Syariah Criminal Procedure (Federal Territories) Act 1997 s 181; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 181; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 185; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 181.

Prosecutions before the Syariah High Court will be conducted by the Chief Syariah Prosecutor or a Syariah Prosecutor: Syariah Criminal Procedure (Federal Territories) Act 1997 s 183(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 183(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 187(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 183(1).

Prosecutions before the Syariah subordinate court may be conducted by (1) the Chief Syariah Prosecutor or a Syariah prosecutor; (2) a religious enforcement officer authorised in writing by the Chief Syariah Prosecutor to act on his behalf; or (3) a complainant as permitted by the court: Syariah Criminal Procedure (Federal Territories) Act 1997 s 183(2)(a)-(c); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 183(2)(a)-(c); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 187(2)(a)-(c); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 183(2)(a)-(c).

As to the appointment of the Chief Syariah Prosecutor see [400.047].

- 25 Syariah Criminal Procedure (Federal Territories) Act 1997 s 101; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 101; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 101; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 101.

As to the Syariah courts see [400.024] and following.

### **[400.526] Procedure where there are previous convictions**

Where the accused is charged with an offence committed after a previous conviction for any offence, the following procedure must be observed: