

**CHAPTER ONE**  
**CIVIL PERSONALITY**  
**(SHAKHSIYA MADANIYYA)**

**1. Question. — What is legal capacity?**

Answer. — The juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.<sup>1</sup>

**2. Q — Can capacity be restricted? If so, what are the restrictions?**

A — Yes, it can be restricted. The following circumstances, among others, modify or limit capacity to act: age, insanity, imbecility, the state of being a deaf-mute, the condition of death-illness (*maradhul-maut*), penalty, prodigality, absence, family relations, alienage, insolvency, and trusteeship. The consequences of these circumstances are governed by the Islamic Laws.<sup>2</sup>

**3. Q — How is personality acquired?**

A — Birth determines personality, but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born alive, however, briefly, at the time it is completely delivered from the mother's womb.<sup>3</sup>

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<sup>1</sup>Code of Muslim Personal Laws of the Philippines, Article 8.

<sup>2</sup>*Ibid.*, Art. 9.

<sup>3</sup>*Ibid.*, Art. 10.

**4. Q — How is personality extinguished?**

A — (1) Civil personality is extinguished by death. The effect of death upon the rights and obligations of a deceased person is determined by Islamic law, by contract, and by will.

(2) After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead.<sup>4</sup>

**5. Q — It is just stated above that after the absence of seven years a person shall be presumed dead and so his personality is extinguished, how can the provisions of Article 11 of the Code of Muslim Personal Laws of the Philippines be reconciled with the provisions of Article 98 of the same Code which I quote hereunder:**

**Art. 98. *Succession by absentee.* — The share of an heir who is missing or otherwise absent at the time of the death of the decedent shall be reserved.**

(a) Until he reappears and claims it;

(b) Until he is proven dead; or

(c) Until the lapse of ten years after which he shall be presumed dead by decree of the court.

**The just quoted provisions of the Code state among other things that it is only after the lapse of ten years that a person missing or absent shall be presumed dead by decree of the court. There really appears to be a conflict between the two provisions of the Code. What is the correct period after which a person missing or absent shall be presumed dead?**

A — It is true that the two provisions of that Code are incongruous to each other. The period of ten years mentioned in Art. 98 just quoted above is a view of Al

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<sup>4</sup>*Ibid.*, Art 11.

Imāmia, whereas the period of seven years mentioned in Art. 11 of the same Code is a compromised period arrived at after a lengthy discussion and debate on the reasonability of the different periods posed by the different schools of thought such as the period of four years presented by Imām Malik, the period of *ten* years advanced by Al Imāmia and the other periods supported by the other schools of thought stated in question and answer No. 7, *infra*. This is just one of the instances wherein the members of the Presidential Commission had exercised some form of *ijtihād*, albeit modest. Therefore, it is submitted that the correct period, after which a person missing or absent shall be presumed dead, is one that will be decreed by the Judge on the bases of the circumstances under which a person missing or absent is situated.

**6. Q — By the way, are the scholars ('Ulamā') unanimous that after ten years of absence, a person may be decreed by the court to be presumed dead?**

A — No, that is only the view of Al Imāmia for a person who has been missing not in war or other dangers.<sup>5</sup>

**7. Q — What are the views of the other schools of thought?**

A — The views of the other schools of thought are:

1. According to the school of Imām Abī Hanīfa, the person missing or absent shall be presumed dead by decree of the court after no one of his contemporaries is still living. Some of the disciples of the school said that he will be presumed dead after ninety years.

2. According to the school of Imām Malīk, after four years. This view is based actually on the saying of Caliph 'Omar (*may Allāh be pleased with him*): Any woman whose husband is missing and she does not know his whereabouts must wait for four years, there-

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<sup>5</sup>Al Sheik Muhammad 'Abdul Rahīm Al Kash Kī, *Al Mirāth Al Muqārīn*, (Baghdad: Dar Al Nathir, 1969), p. 36.

after, observe the ‘idda of four months and ten days and after that she can be married, narrated by Al Bukhari and Al Shafi‘i.

3. According to the school of Imām Shafi‘i, after the expiration of a period that no one of his kind may live, the Judge may decree his death.

4. Another view narrated by Imām Abī Hanīfa states that the period depends upon the discretion of the Judge. This view is supported by Imām Shafi‘i.

5. According to the school of Imām Ahmad, if he has been absent or missing in a dangerous situation, like war, his death can be decreed by the court after four years. However, if he is missing or absent under normal and peaceful situations, it depends upon the discretion of the court.<sup>6</sup> Personally, I will go with the view that gives more discretion to the court provided that no Islamic precept is at all violated considering the present tendency in the modern world and of the fact that the court is really in a better position to look into the truth of the matter after due hearing.

**8. Q — How can simultaneous death be resolved?**

A — If, as between two or more persons who are called to succeed each other, there is a doubt as to which of them died first, whoever alleges the death of one prior to the other shall prove the same; in the absence of such proof, it is presumed that they died at the same time and there shall be no transmission of rights from one to another. However, the successional rights of their respective heirs shall not be affected.<sup>7</sup>

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<sup>6</sup>*Ibid.*, pp. 35-39.

<sup>7</sup>*Ibid.*, Art. 12.

## CHAPTER TWO

### MARRIAGE

#### Section 1. Nature and Form

**9. Q — What is marriage?**

A — Marriage is not only a civil contract but a social institution. Its nature, consequences and incidents are governed by the Shari'a and not subject to stipulation, except that the marriage settlement may to a certain extent fix the property relations of the spouses.<sup>8</sup>

**10. Q — Why is marriage not only a civil contract but also a social institution?**

A — Marriage is not only a civil contract but also a social institution because its benefit is not only redounding to the interest of its contracting parties but also to individuals, family or nation.

**11. Q — Explain its benefit to individual, family or nation, please.**

A — 1. With regard to its benefit to individual — : We can readily say that it gives peace to every individual because if the relations of men and women are not sanctioned by marriage which is regulated by the Shari'a, we will surely find troubles in our midst as everybody will be eager to enjoy the human sexual sensibilities endowed to him or her by Allāh regardless of whomsoever he or she will meet on the road or in any other place. The beautiful may be overburdened and the ugly may have less clients. It will be funny because

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<sup>8</sup>*Ibid.*, Art. 14.

it will be a demonstration of the fact that what is beautiful for one may not be so for the others. Worse above all, some other men will aspire to take the wife of another. Still others will just run away with the daughter of anybody else. There will certainly be troubles everywhere in our society because no husband will bear to see his wife being used by another man and no father will tolerate to see his daughter being kidnapped by a stranger. On account of marriage allowed by Allāh and made it regulated by the Shari'a, husband and wife are loving each other, mutually helping and respecting one another and restfully contented. That is precisely the meaning of the verse of the Glorious Qur'an herein below quoted:

ومن آياته ان خلق لكم من انفسكم أزواجا لتسكنوا اليها وجعل بينكم  
سودة ورحمة ان في ذلك لآيات لقوم يتفكرون • (٢٠ : ٢١)

Which means: And among His signs  
Is this, that He created  
For you mates from among  
Yourselves, that ye may  
Dwell in tranquillity with them,  
And He has put love  
And mercy between your (hearts):  
Verily in that are signs  
For those who reflect.  
(S. XXX, 21, Qur'an)

2. With regard to its benefit to family — : It is an undeniable fact that the source of the family is marriage. The family is composed of the spouses and their offsprings. It may enlarge to include ascendants and descendants of far degrees. The relations between the spouses and their children in such a given marriage as well as the relations of the members of the family, however, enlarged and created out of the said marriage are governed by the Shari'a. If the spouses are faithful to each other in accordance with the intention of

Allah expressed in the above-quoted verse of the Glorious Qur'ān, the family emanating from their marriage will undoubtedly be a good family. The marriage therefore is a source of the family and redounding to its interest.

3. With regard to its benefit to the nation —: It is a fact that nations are created out of the families. The families are originated by a husband and a wife. If the families that compose the nation are good, the nation will certainly stand good internally and externally. However, the goodness of the members of the family will depend largely upon the orientations they grasped from their parents and their family environments.<sup>9</sup> Henceforth, marriage, as a source of the nation, is redounding to its benefit.

## Section 2. Classification of Marriage

**12. Q — How is marriage classified according to the circumstances under which the party entering into it is situated and how many are its classifications?**

A — Marriage is classified in accordance with the circumstances under which the person entering into it is situated and it is of five kinds as follows:

1. Obligatory (*Fardh*) marriage;
2. Compulsory (*Wājib*) marriage;
3. Prohibited (*Haram*) marriage;
4. Disliked but not forbidden (*Makrūh*) marriage;
5. Order without obligation (*Mubāh*) marriage.

**13. Q — When is marriage said to be obligatory (*Fardh*)?**

A — It is said to be obligatory (*Fardh*) when the person entering into it is financially capable of putting up the

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<sup>9</sup>Hussein Khalf Al Jabburī, *Al Zawaj; wa Bayān Ahkamihi fī Al Sharī'a Al Islāmia*, (Najf Al Ashraf, Iraq: Matba'atu Al Adab, 1972), pp. 8-10.

necessary expenses of marriage by paying the dower and such other rights of the wife. In addition, the man desiring to marry has no intention to fool the woman he desires to contract a marriage with and that he is certain to fall into fornication if he will not get married.

**14. Q — By the way, what are the requirements of an obligatory (*Fardh*) marriage?**

A — The requirements of an obligatory (*Fardh*) marriage are:

1. A man desiring to marry has the finance to put up all the expenses incidental to the marriage;
2. He has no apprehension at all to deceive the woman he desires to marry during the existence of conjugal relation;
3. He is certain to fall into fornication if he will not get married.

**15. Q — When is marriage said to be compulsory (*Wājib*)?**

A — It is said to be compulsory when all the above-mentioned requirements are present except that the man's apprehension to fall into fornication does not reach the stage of certainty (*yaqīn*).

**16. Q — Is there a difference between *wajib* and *fardh*?**

A — Majority of the 'Ulamā' are not distinguishing one from the other considering that both urge strict compliance. However, the school of thought (*Math-hab*) of Imām Abī Hanīfa differentiates the two terms, viz: *Wājib* is one of the compliance of which is enjoined and its non-compliance will not make a believer a nonbeliever;<sup>10</sup> whereas, *fardh* is one of the compliance of which is urged and its noncompliance will make a believer a nonbeliever.<sup>11</sup>

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<sup>10</sup>*Ibid.*, pp. 11-12.

<sup>11</sup>*Ibid.*, p. 12.



**17. Q — When is marriage said to be forbidden or prohibited (*Haram*)?**

A — It is said to be forbidden or prohibited (*Haram*) when the person contracting it is certain that by doing so he will be fooling the woman whom he will marry and it will therefore be a destruction to her if he marries her. What makes it prohibited is the expected destruction to be inflicted upon the woman. Very surely, anything that will destroy another unjustifiably will consequently be prohibited (*Haram*) or outlawed. In this instance, marriage is a cause of the destruction and so it is forbidden or outlawed.<sup>12</sup>

**18. Q — When is marriage said to be detested or disliked but not forbidden (*Makrūh*)?**

A — It is said to be detested or disliked but not forbidden (*Makrūh*) when the person entering into it fears that by doing so he will be fooling and beating the woman he desires to marry although his apprehension does not reach the stage of certainty (*yaqīn*).

**19. Q — When is marriage said to be allowed or ordered without obligation (*Mubah*)?**

A — It is said to be allowed or ordered without obligation (*Mubāh*) when the person entering into it has all the necessary qualities to contract and finance it and he is certain that by doing so he will not be fooling his wife and he further strongly believes that he will not fall into fornication even if he will not get married.<sup>13</sup>

**Section 3. Selection of Spouse****20. Q — Does the Shari'a or the Muslim Personal Law in particular urge the selection of a spouse? If so, why?**

A — Yes. The *Shari'a* urges the selection of spouse because Islām, as a way of life, wants the spouses to be in a

<sup>12</sup>*Ibid.*, p. 12.

<sup>13</sup>*Ibid.*, p. 13; Badrān Abū Al 'Ainain Badrān, *Al Zawāj wa Al Talāq fi Al Islām*, (Cairo: Dar Al Ta'lif Press, 1957), p. 92.

happy and a peaceful marriage life and this can only be achieved by proper selection of a spouse. When a person, therefore, is desiring to marry, he should not hurry it up. He should deliberate upon it very carefully and seriously. He should not only listen to the dictate of his heart. His head must be above his heart because he is actually selecting a life partner, a companion of his existence and a mother of his children who will rear them and help define for them the destiny of their lives in this world and the world of hereafter. It has been observed that troubles in a marriage life are usually caused by ill-selection of wives or husbands, as the case may be. Mistakes arise because sometimes men are persuaded by the beauty and wealth of a woman disregarding thereby her faith and character. It is equally true that women are often allured by the youthfulness and the richness of a man without considering his belief and behavior.<sup>14</sup>

**21. Q — How can a man make correct selection of a wife?**

A — He can only make correct selection of a wife by complying with the prophetic tradition herein below quoted:

تنكح المرأة لأربع : لجمالها ولحسبها ولدينها وفاؤها .  
الدين تربت يدك .

In this prophetic tradition, the Prophet (p.b.u.h.) is actually urging man to select a wife on the bases of her faith and character and distinguishing her from others who are with beauty, wealth and social standing. The Prophet (p.b.u.h.) has also said: This world is but enjoyable goods and its best good is the righteous woman. He further said:

Shall I tell you the best that a person may treasure? It is the righteous wife — when he looks at her she is happy, when he is not around, she takes care of herself and when he urged her to do something, she obeys.

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<sup>14</sup>*Ibid.*, p. 15.

If a person follows the direction of the Prophet (p.b.u.h.), he will not in anyway be misguided and he will therefore be living happily in this world and the world hereafter.

#### Section 4. Preliminary of Marriage

##### 22. Q — What is *khitba*?

A — *Khitba* is an Arabic term which literally means message and hypothetically means the expression of man's desire either directly or indirectly to marry a woman.

##### 23. Q — To whom is *khitba* prohibited and to whom is it allowed?

A — Firstly, it is prohibited to be made by a man to a woman whom he cannot lawfully marry because of permanent or temporary prohibition in marriage considering that it is a preliminary of the contract of marriage.

Secondly, it is likewise prohibited to be made to a woman to whom a *khitba* has been made ahead by another unless the latter withdraws his *khitba* or allows the other's *khitba*. The Prophet (p.b.u.h.) has said and I quote:

لا يخطب الرجل على خطبة أخيه حتى يترك الخاطب قبله أو يأذن له الخاطب .

which means: Man should not express *khitba* to the woman to whom a *khitba* has been presented by his friend ahead of him until the first expressor withdraws his *khitba* or permits it.<sup>15</sup> The Prophet (p.b.u.h.) also said:

لا يبيع الرجل على بيع أخيه ولا يخطب على خطبة أخيه إلا أن يأذن له .

which means: Man should not buy what his friend is buying and should not express *khitba* to whom his

<sup>15</sup>*Ibid.*, p. 19, See also Sahih al Bukhārī Sharho, Fath Al Bārri, Vol. 2.

friend has expressed *khitba* unless the latter permits it.<sup>16</sup>

Thirdly, with regard to making it with a woman who is observing her *'idda*, the following opinions are advanced:

1. In the case of a divorcee who is observing her *'idda* in a divorce *raj'ī*, the scholars of Islamic law are unanimous in prohibiting it to her considering that the marriage bond is not yet severed and her husband has still the right to reconcile with her without the benefit of a new contract of marriage.
2. In the case of a divorcee who is observing her *'idda* in an irrevocable divorce (*talāq bā'in kubrā*) the school of Hanafī prohibits the *khitba* to her either directly (*tāsrih*) or indirectly (*ta'rīdh*) because some of the effects of marriage are still present but the school of the majority of the scholars (*Jamhūr Al Fuqahā'*) allows indirect expression (*ta'rīdh*) but not direct expression (*tāsrih*) because according to them the marriage although is terminating but direct expression is offensive to the husband.<sup>17</sup>
3. In the case of a widow who is observing her *'idda*, the scholars are unanimous in only allowing indirect expression (*ta'rīdh*). They supported their opinion with the verse of the Glorious Qur'an herein below quoted:

ولا جناح عليكم فيما عرضتم به من خطبة النساء أو اكنتم في انفسكم  
علم الله انكم ستذكرونهن ولكن لا تواعدوهن سرا الا ان تقولوا قولا  
معروفا . ( ٢ : ٢٢٥ )

Which means:    There is no blame  
                          On you if ye make  
                          An offer of betrothal  
                          Or hold it in your hearts.  
                          God knows that ye

<sup>16</sup>*Ibid.*, p. 19, See also Sahih Muslim, Vol. 4.

<sup>17</sup>*Ibid.*, p. 17.

Cherish them in your hearts:  
But do not make a secret contract  
With them except in terms  
Honorable (S. II, 235, Qur'ān,  
Yusuf Ali).

A definite contract of remarriage or direct expression of love to her during her *'idda* is forbidden as obviously unseemly and hurting the family of a deceased husband and also any secrecy in such matters is likewise forbidden. It is not wise to bind her at a time when she is not fitted to exercise her fullest judgement on the matter. However, indirect expression (*ta'rīdh*) is permitted because circumstances may arise that an offer at that juncture may be to her interest. Anyway, it will be open for future consideration.<sup>18</sup>

**24. Q — What is the difference between *tasrīh* and *ta'rīdh*?**

A — The difference between the two terms is that there is said to be *tasrīh* when the expression to marry a woman is made direct and explicit to her, like when you tell her: I want to marry you. Whereas, *ta'rīdh* exists when the expression is made indirect to her like when you tell her: You are a good lady.

**25. Q — Is it permissible for a suitor to confront a woman with whom he made a *khitba*? If so, why?**

A — Yes. It is permissible because the *Sharī'a* wants the suitor and the suited to know the peculiarities of each other before the perfection of the marriage in order to adjust to one another safeguarding thereby happiness in their marriage life. The physical features of the parties can only be better appreciated by each other through actual confrontation. The appreciation cannot be achieved by just inquiring from third person or delegating one to do it for the other because it is a fact that what is beautiful for one may not be so for the

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<sup>18</sup>Principally taken from Yusuf Ali, p. 94, Commentary 268, Vol. 1.

other. This view is supported by the statement of the Prophet (p.b.u.h.) to Al Mug̃ira, the son of Sha'ba in whose behalf a woman is courted without actually seeing her and the Prophet (p.b.u.h.) told him:

• **انظر اليها فانه احرى ان يؤدم بينكما**

Which means: You see her because it is wiser to have confrontation between you.<sup>19</sup>

**26. Q — Is it also permissible for a woman to view or confront her suitor? If so, why?**

A — Yes. It is likewise permissible because it would be terrible for her to accept a man in marriage without a glance or a perusal at him by her. You just can imagine her situation if after the perfection of the marriage, her husband appears to be unacceptable to her. Remember that the power to divorce does not lie in her hand. The *Shari'a* does not want her to be forced to the wall.<sup>20</sup>

**27. Q — How and how often can the confrontation be held?**

A — The Islamic law does not specify the number of times of the confrontation but considering that some of the peculiarities of the parties, like her moral character and religious inclination, cannot be grasped by naked eyes on one occasion, the confrontation can be frequent within a reasonable time provided that it is always done in the presence of her close relative (*mahram*). Emphasis given that confrontation must only be done in the presence of her close relative (*mahram*) because the Prophet (p.b.u.h.) has said:

**من كان يؤمن بالله واليوم الآخر فلا يزلون بامرأة ليس منها ذو محرم منها فان شالهما الشيطان.**

which means: He who believes in Allah and the day of judgement should not stay alone with a woman who

<sup>19</sup>*Ibid.*, p. 21; See also Nail Al Auṭār, Vol. 6.

<sup>20</sup>*Ibid.*, p. 22.

is not accompanied by her *mahram* (a relative within a degree precluding marriage) because the third sitting with them is the satan (devil).<sup>21</sup>

**28. Q — What parts of the woman's body is the suitor permitted to see?**

A — The authorities in Islamic law differ. Majority of them allow him to see her face and two hands (*kaffain*) only because face will demonstrate the beauty of her creation, her physical features and health and the two hands will show her fatness or thinness. Some scholars in the Hanafi school also allow the two feet (*qadamain*) in addition. The popular (*Al Mash-hūr*) in the school of Al Imam Ahmad (may *Allāh be pleased with him*), allows him to see parts of her body that are usually protruding like the face, the shoulders (*raqba*), the two hands (*kaffain*) and the two feet (*qadamain*).

The *Zāhiria* allows him to see the protruding and the non-protruding but the most accepted rules permit him to see parts of her body that will necessitate to convince him to marry her. This is supported by a tradition (*hadīth*) narrated by Jābir (may *Allāh be pleased with him*), that the Prophet (p.b.u h.) has said:

إذا خطب احدكم المرأة فان استطاع ان ينظر منها ما يدعوه الى  
نكاحها فليقبل .

which means: If one of you courts a lady and he can see what will invite him to marry her, he should do it.<sup>22</sup> It is believed that the aforementioned *hadīth* permits the suitor to see parts of the woman's body that will invite him to marry her provided that it is always in the legal ways.

**29. Q — Can the *khitba* be rescinded by a party even against the will of the other party? Reason out.**

A — Yes, because the *khitba* is just a preliminary of a marriage contract. Henceforth, each party thereof has the

<sup>21</sup>*Ibid.*, p. 23.

<sup>22</sup>*Ibid.*, p. 21.

right to rescind it even against the will of the other party.

**30. Q — Suppose the suitor has given a gift to the woman during the process of *the khitba* and the *khitba* is unfortunately rescinded, will the gift be returned?**

A — The scholars or jurists have different opinions in this respect, to wit:

1. The Hanafī school maintains that because it is a gift it shall be governed by the law on gift. Therefore, the man has the right to demand its return except if its return is hindered by its destruction or by the change of its condition on account of addition attached to it. And so, if the gift is a gold and it remains in its state after the revocation of the *khitba*, the man has the right to demand its return even if the revocation is at his instance. If, on the other hand, the woman has sold it or lost it or the gift is a piece of cloth and it has been tailored or it is a food and it has been eaten, the man has no right anymore to demand its return, its payment or its change.<sup>23</sup>

2. The Shāfiī school exhorts that the man has all the right for its return regardless of its nature and at whose side the revocation of the *khitba* is initiated.<sup>24</sup>

3. The Mālikī school believes that if the revocation is at the instance of the suitor, he has no right for its return because she will be in double jeopardy for her being exposed to confrontation and for returning it. However, if the cancellation is initiated by her, the suitor has the right to demand for its return either by its nature, by its exchange or by its price because he will be doubly prejudiced by the loss of his money in the form of his gift and the missing of the *khitba*.<sup>25</sup>

It is believe that the Mālikī School's opinion in this particular aspect is more fair to both parties.

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<sup>23</sup>*Ibid.*, pp. 24-25.

<sup>24</sup>*Ibid.*, p. 25.

<sup>25</sup>*Ibid.*, p. 25.



**31. Q — Suppose the suitor has given an amount for the dower and the *khitba* is unfortunately rescinded, will the said amount be returned? Explain.**

A — Yes, it will be returned regardless of whoever initiated the revocation of the *khitba* because the right of a woman to a dower or a part of it can only be due by the contract of marriage. Unfortunately, the contract of marriage does not take place and so the right to a dower does not arise. If what she has received is a thing that remains in its state, the same shall be returned by itself. If it is destroyed, she has to change it if it is susceptible of change or else its price shall be paid.<sup>26</sup>

### Section 5. Essential Requisites of Marriage

**32. Q — Explain the essential requisites of marriage.**

A — The essential requisites of marriage are numerous. Some are called *arkān*, plural of *rukn* and some are named *shurūt*, plural of *shart*.

**33. Q — What is the difference between *rukn* and *shart*?**

A — The difference between the two terms is that *rukn* is an ingredient of a marriage. Its compliance perfects the validity of the marriage. Its absence therefore invalidates it. Whereas *shart* is one the presence of which may or may not affect the validity of the marriage.<sup>27</sup>

**34. Q — What are the essential requisites (*arkān*) of marriage?**

A — The essential requisites (*arkān*) of marriage are the offer (*ījāb*) and the acceptance (*qabūl*) only. Actually, in every contract there are four essential requisites (*arkān*), namely: the contracting parties, the object of the contract, the offer (*ījāb*) and the acceptance (*qabūl*)

<sup>26</sup>*Ibid.*, p. 24.

<sup>27</sup>Badran, *op. cit.*, p. 38.

but in the contract of marriage in particular there are only two essential requisites as mentioned above because the object of the contract is naturally within the contracting parties. As a matter of fact, the offer and the acceptance are coming from their pronouncements; hence, the reasonability of saying that the essential requisites (*arkān*) of marriage are concisely stated as the offer and the acceptance only.<sup>28</sup>

**35. Q — What did *ījāb* and *qabūl* mean?**

A — *ījāb* is an offer coming from anyone of the contracting parties and *qabūl* is an acceptance of an offer by a party to whom the offer is made.

**36. Q — Is it necessary that the offer (*ījāb*) shall come from the side of the bride and the acceptance (*qabūl*) shall likewise come from the side of the bridegroom?**

A — No. The offer (*ījāb*) may be presented by anyone of the contracting parties and the acceptance (*qabūl*) by the party to whom the offer is made.<sup>29</sup> Traditionally, the *ījāb* is given by the side of the bride and the *qabūl* is presented by the bridegroom. According to the schools of Hanafī and Shāfi'ī, the offer is one presented by a party who has the right of ownership of the thing to be offered even if it is presented after the acceptance. The acceptance is one that comes from the party to whom the thing is offered even if it is given ahead of the offer.<sup>30</sup>

**37. Q — In what language the *ījāb* and the *qabūl* shall be expressed?**

A — It shall be in the language that the contracting parties and the witnesses can understand to show that the consent of the parties are freely given. It may be in Arabic language or in any of the other languages.

<sup>28</sup>Al Jabbūrī, *op. cit.*, p. 27.

<sup>29</sup>Badrān, *op. cit.*, p. 38.

<sup>30</sup>Mansūr Bin Yurus Bin Idrīs, *Kashaf Al Qanā'*, (*Riyadh: Maktabat Al Nasr Al Hadītha*), Vol. 2, p. 3.

The scholars are unanimous in requiring to make it in a language expressive of *Al Tazwīj* or *Al Inkāh*.<sup>31</sup> The terms, *Al Tazwīj* and *Al Inkāh* are both signifying marriage.

**38. Q — What are the *shurūt* of marriage?**

A — The *shurūt* of marriage are divided into two, namely: (1) *Shurūt Inqād* which means the requirements of contract and (2) *Shurūt Sihha* which means the requirements of correctness.<sup>32</sup> The other authorities divided it into four, namely: *Shurūt Inqād*, *Shurūt Sihha*, *Shurūt Nafād* and *Shurūt Luzūm*.<sup>33</sup> Still another authority considers the *shurūt inqād* as essential requisites (*arkān*) of marriage.<sup>34</sup>

**39. Q — What are the requirements of contract of marriage (*shurūt inqād*)?**

A — The requirements of contract (*shurūt inqād*) of marriage are:

1. Those referring to the parties:
  - a) The contracting parties are of legal ages;
  - b) The contracting parties or their duly authorized representatives hear the offer (*ījāb*) and the acceptance (*qabūl*);
2. Those referring to the bride:
  - a) She must be a woman and not hermaphrodite;
  - b) She must not be within the prohibited degrees in marriage in relation to the bridegroom. Please refer to the prohibited degrees in marriage, *infra*.

<sup>31</sup>Badrān, *Ibid.*, p. 38; Al Jabburī, *op. cit.*, p. 28.

<sup>32</sup>Muhammad Zaid Al Ibyānī *Sharh Al Ahkām al Sharī'a fī Al Ahwal Al Shakhsia*, (Bairut-Bagdad: Maktabatu Al Nahdha), p. 16.

<sup>33</sup>Al Jabburī, *op. cit.*, p. 42; Badrān, *op. cit.*, p. 45.

<sup>34</sup>Muhammad Abū Zahra, *Al Ahwal Al Shakhsia*, (Cairo: Dar Al Fikr Al 'Arabie, 1957), p. 44.

3. Those referring to the contract itself:
  - a) The offer (*ijāb*) and the acceptance (*qabul*) should be pronounced by the parties in one place and occasion;
  - b) The offer and the acceptance should be responsive to each other;
  - c) The offeror must not have withdrawn the offer before the acceptor accepts it;
  - d) The contract of marriage is executory and not dependent on another consideration.<sup>35</sup>

**40. Q — What are the requirements for the correctness (*shurūt sihha*) of the contract of marriage?**

A — The requirements for the correctness (*shurūt sihha*) of the contract of marriage are:

1. The bride must not be one of those to whom marriage cannot lawfully be proposed by the bridegroom because of prohibited marriages. In other words, the bridegroom must not be a *mahram* of the bride;
2. The presence of two competent witnesses;
3. The marriage is permanent; *Mut'a* marriage is prohibited because of its nonpermanence or its being temporary;
4. Parental consent regardless of the age of the bride is a requirement in Mālikia, Shāfi'ia and Hanābila. In Hanafia and Ja'faria, it is not a requirement when the bride is of the age of puberty.<sup>36</sup>

**41. Q — Why is the presence of two competent witnesses required in marriage, *supra*?**

A — The presence of two competent witnesses is required in marriage because the Prophet (p.b.u.h.) has said:

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<sup>35</sup>Al Jabburī, *op. cit.*, pp. 42-46.

<sup>36</sup>*Ibid.*, pp. 49-64.

• لا نكاح الا بولي وشاهدي عدل •

which means: No marriage except with the (participation of) guardian (*wali*) and two competent witnesses.

It has to be considered in this connection that marriage does not only involve the parties but also the offsprings thereof. Witnesses are required therefore to protect the interest of the children and, of course, the spouses.

**42. Q — Is the presence of two competent witnesses required for the validity of the marriage or just for its announcement?**

A — The schools of Hanafī, Shāfi'i, Hanbalī and Zāhiria require it as an essential requisite for the validity of the marriage separate and distinct from the prophetic requirement of announcement. They based their argument on the prophetic tradition quoted here:

لا نكاح الا بولي وشاهدي عدل فان تغابروا فالسلطان ولي من لا ولي له

which means: No marriage except in the presence of a guardian and two competent witnesses. If they quarrel with one another, the duly constituted authority of the place is the guardian for those who have no guardian.<sup>37</sup>

The school of Al Imām Mālik maintains that witnesses during the celebration of marriage are not required for the validity of the marriage. Witnesses may be had during or even after the celebration of the marriage, provided that they are named before its consummation. However, if there will be no witnesses at all designated during or after the celebration of the marriage but before its consummation, the marriage shall be rendered invalid.<sup>38</sup>

<sup>37</sup>*Ibid.*, p. 51.

<sup>38</sup>Badran, *op. cit.*, p. 54.

You will please notice that the conflict of opinions of the aforesaid schools is just in the matter of the time of naming the witnesses. All of them are anyway requiring the designation of competent witnesses for the validity of the marriage. It is for this premise that I subscribe to the opinions that the presence of two competent witnesses is an essential requisite for the validity of the marriage. Therefore the essential requisites for the validity of the marriage are not only the *arkān* and the *shurūt inqād*, *supra* but also some of the *shurūt sihha*, *supra*.

**43. Q — Can there be so called secret marriage?**

A — It has been narrated that the Prophet (p.b.u.h.) prohibited secret marriage but the secret marriage we have is one where there are no two competent witnesses present. The marriage attended to by two competent witnesses is public one and not secret. What is prohibited therefore is the marriage not attended to by two competent witnesses because the Prophet (p.b.u.h.) has said: Announce marriage by inviting witnesses because if it is attended to by two competent witnesses, the announcement is accomplished.<sup>39</sup>

**44. Q — Who will be a competent witness to a marriage?**

A — A competent witness to a marriage must be:

1. of sound mind. An insane is disqualified.
2. of legal age. A child is disqualified.
3. free. A slave is disqualified.
4. a Muslim. If the contracting parties are Muslims, a non-Muslim is disqualified.
5. present during the pronouncements of the contracting parties or the representatives.
6. a male or two females. The two witnesses must be two males or one male and two females. However, the schools of Hanbalī and Shāfi'ī allowed

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<sup>39</sup>*Ibid.*, p. 54.

only two male witnesses in marriage on the bases of the prophetic tradition prohibiting women to be witnesses in marriage. They do not allow females to be witnesses in marriage much less to allow two females to take the place of one male.<sup>40</sup>

**45. Q — When shall witnessing take place.**

A — It must take place during the pronouncement of the offer (*ijāb*) and the acceptance (*qabūl*) by the contracting parties.<sup>41</sup>

**46. Q — What are the requirements for the execution (*shurūt nafād*) of the marriage?**

A — The requirements for the execution (*shurūt nafād*) of the marriage are:

1. The legal capacity of the contracting parties when he/she does the contract by him/her self or when he/she authorizes another to do it for him/her or by the guardian (*walī*) who must also be qualified to act as such;
2. Each of the contracting parties possesses the requirements of law to contract, be he/she a real party, guardian (*walī*) or representative.

Please take notice that the contract of marriage is valid after the compliance with its *arkān*, the *shurūt inqād* and the *shurūt sihha*. It may not only be executed if the aforesaid requirements of *shurūt nafād* are not met.<sup>42</sup>

**47. Q — What does *luzum* mean?**

A — *Luzūm* is an Arabic term which literally means permanence or necessity and technically means the keeping of the contract steady or making it meet the necessary requirements so that none of the parties thereof may cancel it after its conclusion. In other words, after

<sup>40</sup>*Ibid.*, p. 56.

<sup>41</sup>*Ibid.*, p. 58.

<sup>42</sup>Al Jabburī, *op. cit.*, pp. 65-66.

the compliance with the *shurūt lūzum*, it becomes permanent and it will not be revoked or cancelled except by death or by divorce. This will be clearly explained in the following situations:

1. If a man with legal capacity enters into a contract of marriage by himself or by his representative, the contract is valid and permanent provided that it complies with its *arkān* and *shurūt*, *supra* and no one has still the right to nullify it whether or not he marries a woman of his social standing or the dower is short, equal or above the proper dower.
2. In the case of the marriage of those below the age of puberty, in order to make it valid and permanent, the father or his representative or the paternal grandfather or his representative in the absence of a father must be the one to act as guardian in the marriage. In this instance, the parties who are below the age of puberty cannot nullify the marriage after reaching the age of puberty.
3. In the case of an insane or idiot, the son, the father or the grandfather must be the one to act as the guardian (*walī*) in marriage to make the contract valid and permanent (*iāzim*), otherwise the contract shall not be permanent (*lāzim*) and the party concerned may therefore nullify it after his or her recovery.
4. In the case of a woman who is of legal age, single or widow and she contracted a marriage by herself alone, according to Abī Hanīfā and Abī Yūsuf, the contract of marriage is executory. According to Al Imām Muhammad, it is dependent upon the will of the guardian (*walī*). According to Shāfiʿā and Mālik, it is invalid.
5. In the case of a slave woman, if a marriage is contracted for her by her master, she will remain slave to her master despite the marriage, but if she is freed thereafter, she will have the option to nullify the marriage or not. If she wants nullification, she can do so even without the presence of the Judge. In the case of a slave man, if the marriage is contracted for him by his master and thereafter freed him, he will not have the right to nullify the said marriage because the



power to divorce is in his hand. If he wants dissolution, he can just divorce her.

6. In the case of misrepresentation in the family background (*al nasab*) on the part of the bridegroom, if after the perfection of the marriage, his real family background is revealed, the wife has the right to nullify the marriage whether or not the husband's established relation (*al nasab*) is below or equal to her nasab because her consent has been vitiated.<sup>43</sup>

As we have just finished discussing the *arkān* and *shurūt* of marriage and before we take its essential requisites under the Code of Muslim Personal Laws of the Philippines, please take notice that there are blending of *shurūt* as follows:

- 1) Paragraph 1 (a) of *shurūt inqād* and paragraph 1 of *shurūt of nafād* both require the legal capacity of the contracting parties;
- 2) Paragraph 2 (b) of *shurūt inqād* and paragraph 1 of *shurūt sihha* both require that the bridegroom must not be a *mahram* of the bride.

**48. Q — We notice that the stipulation of dower is not required by the *arkān* and the *shurūt* of the marriage we have just discussed; is it not a requirement for the validity of the marriage?**

A — Yes. It is not a requirement for the validity of the marriage. It is an obligation of the husband to his wife required of him by Allah as an after effect of the perfection of the contract of marriage.

**49. Q — Can the marriage contracted expressly without a dower be valid? Explain.**

A — It depends upon the school (*math-hadb*) you are following. In the school of Hanafi, the marriage contracted expressly without a dower is valid but the wife shall be entitled with the proper dower (*maḥr-mithl*).

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<sup>43</sup>*Ibid.*, pp. 66-70.

In the school of Mālik, the marriage cannot be valid if it is contracted expressly without a dower of the bride. In the school of Shafī'i the marriage cannot be valid if there will be no dower at all before, during or after the celebration of the marriage. However, the schools of Mālik, Shafī'i and Hanbalī maintain that if the dower is not specified at all or the specification is not valid for any reason or reasons, the bride shall be entitled with the proper dower (*mahr mithl*).<sup>44</sup>

**50. Q — If the dower is not stipulated before the celebration of marriage, will it invalidate the marriage? Why? Explain.**

A — No, because the stipulation of the dower before the celebration of the marriage is not a requirement for the validity of the marriage. The contract of marriage can be valid even without specification of a dower before its celebration because the dower is not a *shart sihha*. It is just an offshoot of a valid contract of marriage. It would therefore be a sufficient compliance with the requirement that dower is specified or given either before, during or even after the celebration of the marriage.

**51. Q — State the essential requisites of marriage mentioned in the Code of Muslim Personal Laws of the Philippines.**

A — The aforesaid Code states the essential requisites of marriage in its Article 15 herein below quoted:

Art. 15. *Essential requisites.* — No marriage contract shall be perfected unless the following essential requisites are complied with:

- (a) Legal capacity of the contracting parties;
- (b) Mutual consent of the parties freely given;
- (c) Offer (*ījāb*) and acceptance (*qabūl*) duly witnessed by at least two competent persons after the

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<sup>44</sup>Al Ibyani, *op. cit.*, pp. 24, 104 and 112, Vol. 1.

proper guardian in marriage (*walī*) has given his consent; and

(d) Stipulation of customary dower (*mahr*) duly witnessed by two competent persons.

**52. Q — Is the stipulation of customary dower an essential requisite for the validity of marriage? Explain.**

A — Strictly speaking, it is not because the marriage can be valid even the dower is not stipulated. As a matter of fact, the Code itself in its Article 20 states and I quote:

Art. 20. *Specification of dower.* — The amount or value of dower may be fixed by the contracting parties (*mahr musamma*) before, during, or after the celebration of the marriage. If the amount or the value thereof has not been so fixed, a proper dower (*mahr-mithl*) shall, upon petition of the wife, be determined by the court according to the social standing of the parties.

A cursory glance of the just quoted provision of the Code will readily make the reader understand that the marriage can be valid even if the dower is not so stipulated or fixed before or during the celebration of the marriage. It would be sufficient compliance with the requirement of the *Sharī'a* if it is fixed even after the celebration of the marriage. Therefore, the stipulation of the dower is not an essential requisite for the validity of the marriage because it can be valid even without it. However, if ever it is not at all fixed or the fixation is not valid then proper dower (*mahr-mithl*) is by the natural course of the event shall be due to the wife. It is true that Article 20 of the Code amends paragraph "d" of Article 15 thereof in the sense that stipulation of customary dower is not an essential requisite of marriage. As a matter of fact, under the school of Mālik, Hanbalī and Shāfi'ī, the marriage cannot be valid without dower at all which dower may be fixed or stipulated before, during or after the celebration of marriage. Under the school of Hanafī, proper dower

(*mahr-mithl*) will be due to the wife even if it is agreed upon that the marriage is without dower at all.

**53. Q — What is the capacity to contract marriage?**

A — On the bases of the different books on *Sharīʿa*, the Code of Muslim Personal Laws of the Philippines states the capacity to contract marriage as follows:

Art. 16. *Capacity to contract marriage.* — (1) Any Muslim male at least fifteen years of age and any Muslim female of the age of puberty or upwards and not suffering from any impediment under the provisions of this Code may contract marriage. A female is presumed to have attained puberty upon reaching the age of fifteen.

(2) However, the *Sharīʿa* District Court may, upon petition of a proper *walī*, order the solemnization of the marriage of a female who, though less than fifteen but not below twelve years of age, has attained puberty.

(3) Marriage through a *walī* by a minor below the prescribed ages shall be regarded as betrothal and may be annulled upon the petition of either party within four years after attaining the age of puberty, provided no voluntary cohabitation has taken place and the *walī* who contracted the marriage was other than the father or paternal grandfather.

**54. Q — What is the effect of a marriage contracted by a father or paternal grandfather for a minor below the prescribed ages for marriage?**

A — The marriage contracted by a father or a paternal grandfather for a minor below the prescribed ages for marriage is valid and cannot be nullified by the minor upon reaching the age of puberty.<sup>45</sup> However, the *Shafiʿia* orders without obligation (*istohabba*) that the father or the paternal grandfather should not contract a marriage for her until she reaches the age of puberty.

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<sup>45</sup>Code of Muslim Personal Laws of the Phil., Art. 16 (3); Al Jabbūrī, *op. cit.*, p. 66.

**55. Q — Why is consent of a party to a marriage necessary?**

A — It is necessary because the Prophet (p.b.u.h) required it when he said:

لا تنكح الأيم حتى تستأمر ولا البكر حتى تستأذن .

which means: Do not give in marriage the widow until she orders and the virgin until she permits.

You must have noticed that the aforequoted prophetic tradition is actually urging us to observe the humanitarian principle in the matter of giving a woman into marriage. You will agree with me that it would really be unfair to force our daughter to live under the roof of marriage with a man whom she does not accept specially when her reason is well taken. We cannot afford to wear a clothing which does not fit us or does not call for our fancy and so how can we afford to force her to wear and live as a life partner of a man she does not like.

**56. Q — When is the consent of a party not freely given?**

A — The consent of a party is not freely given when it is vitiated by violence, intimidation, fraud, deceit or misrepresentation, etc.

**57. Q — Give examples where the consent of a party is vitiated by violence, intimidation fraud, deceit or misrepresentation.**

A — The consent of a party is vitiated by violence when it is obtained at the point of a gun. It is vitiated by intimidation when it is obtained under the influence of threat.

It is by fraud when it is obtained through cheating or tricking. It is by deceit when it is obtained by misleading him or her. It is by misrepresentation when it is obtained by making him or her believe that the other party is the son or daughter of a king and it turns out to be false. These are just examples.

**58. Q — Is there a particular form of marriage ceremony?**

- A — The Islamic law did not specifically define a particular form of marriage ceremony. However, the Code of Muslim Personal Laws of the Philippines states it as follows:

Art. 17. *Marriage ceremony.* — No particular form of marriage ceremony is required but the *ijāb* and the *qabūl* in marriage shall be declared publicly in the presence of the person solemnizing the marriage and two competent witnesses. This declaration shall be set forth in an instrument in triplicate, signed or marked by the contracting parties and said witnesses and attested by the person solemnizing the marriage. One copy shall be given to the contracting parties and another sent to the Circuit Registrar by the solemnizing officer who shall keep the third.

It is believed that the aforequoted provisions of the Code do not violate any precept of Islamic law. It just complies above all with the Islamic requirement for reducing into writing the transactions, specially those that will require future compliance and it is respectfully submitted that the contract of marriage is very much within that context.

**59. Q — Who has the authority to solemnize marriage?**

- A — Under Article 18 of the Code of Muslim Personal Laws of the Philippines, marriage may be solemnized:
1. By the proper *walī* of the woman to be wedded;
  2. Upon authority of the proper *walī* by any person who is competent under Muslim law to solemnize marriage; or
  3. By the judge of the *Shari'ā* Court or any person designated by the judge, should the proper *walī* refuse without justifiable reason to authorize the solemnization.

It is believed that this particular provision of the Code is sanctioned by the Islamic precepts.

**60. Q — In what instance the state may solemnize the marriage and what is the basis of its authority?**

A — The state may solemnize the marriage in the absence of a proper *walī* or should the proper *walī* refuse to solemnize or to authorize the solemnization without justifiable reason and the basis of its authority is the prophetic tradition herein below quoted:

لا نكاح الا بولي وشاهدي عدل فان تشاجروا فالسلطان ولي من لا ولي له .

which means: No marriage except in the presence of a guardian (*walī*) and two competent witnesses. If they quarrel with one another, the duly constituted authority of the state is the guardian (*walī*) of those who have no guardian.

**61. Q — Will there be specified place for solemnization of marriage?**

A — None. The Islamic law does not specify any particular place for solemnization of marriage.

**62. Q — Where shall we solemnize marriage?**

A — Marriage may be solemnized publicly in any suitable place agreed upon by the parties. However, regarding the announcement of marriage, the Prophet (p.b.u.h.) has said:

أعلنوا هذا النكاح واجعلوه في المساجد واضربوا عليه الدفوف .

which means: Announce this marriage and make it in the Mosques and beat tambourines for it.

Therefore, the solemnization of marriage in a Mosque is a compliance with the above-quoted prophetic tradition.

**63. Q — After having discussed the *arkān* and the *shurūt* of marriage as well as its essential requisites under the Code of Muslim Personal Laws of the Philippines, can you state briefly the essential requisites for the validity of the marriage?**

- A — If I may say and I do not like to bind anybody else, I will declare that the essential requisites for the validity of marriage are as follows:
1. Legal capacity of the contracting parties;
  2. Mutual consent of the parties freely given;
  3. Offer (*ījāb*) and acceptance (*qabul*) of the parties duly expressed;
  4. Presence and participation of at least two competent witnesses; and
  5. Solemnization of marriage by proper *walī* or by any competent person authorized to do so.

### Section 6. Prohibited Marriages

**64. Q — How many and what are the kinds of prohibited marriages?**

A — There are two kinds of prohibited marriages, namely: (1) permanent, and (2) temporary prohibited marriages.

**65. Q — When is prohibited marriage said to be permanent?**

A — It is said to be permanent when the prohibition is caused by consanguinity, affinity or fosterage.

**66. Q — When is it said to be temporary?**

A — It is said to be temporary when the cause of the prohibition is transitory.

**66-A Q — What can you say about the temporary marriage otherwise known as *Muʿa*?**

A — *Muʿa* is a temporary marriage contracted by a man and a woman for a day, a week a month or for any other specified period. This kind of marriage is unanimously prohibited by the Orthodox (*Sunnī*) Muslim Schools of Law (*Mathāhib*).



**67. Q — State the prohibition by consanguinity (*Tahrīm Bin Nasab*).**

A — No marriage shall be contracted between:

1. Ascendants and descendants of any degree;
2. Brothers and sisters, whether german, consanguine or uterine; and
3. Brothers or sisters and their descendants within the third civil degree.<sup>46</sup>

**68. Q — State the prohibition by affinity (*Tahrīm Bil-Musāhara*).**

A — 1. No marriage shall be contracted between:

a. Any of the spouses and their respective affinal relatives in the ascending or descending lines in any degree and in the collateral line within the third degree;

b. Stepfather and stepdaughter when the marriage between the former and the mother of the latter has been consummated;

c. Stepmother and stepson when the marriage between the former and the father of the latter has been consummated; and

d. Son or daughter and the widow, widower or divorcee of their respective ascendants.

2. The prohibition enumerated above applies even after the dissolution of the marriage creating the affinal relationship except in the case of collateral relatives.<sup>47</sup>

**69. Q — State the prohibition due to fosterage (*Tahrīm Bir-Radhā'a*).**

A — 1. No person may validly contract marriage with any woman who breastfed him for at least five times within two years after his birth.

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<sup>46</sup>*Ibid.*, Art. 24.

<sup>47</sup>*Ibid.*, Art. 25, with modification.

2. The prohibition on marriage by reason of consanguinity shall likewise apply to persons related by fosterage within the same degrees<sup>48</sup> except in the following two instances:

a) In the case of a sister of a son or a daughter by fosterage, the example of this is: "A" a man has a son "B" by fosterage and "B" has a sister "C" by consanguinity who has not been breastfed by the wife of "A". "A" can lawfully marry "C" because there exists no prohibition between them. It must be noticed that this is allowed in fosterage but prohibited in consanguinity because "C" will either be a daughter or a step-daughter of "A".

b) In the case of a mother of his sister by fosterage, the example of this is: "A" a man has a sister "B" by fosterage and "B" has a mother "C" either by consanguinity or by fosterage. "A" can lawfully marry "C" because no prohibition exist between them. It should be noted that if the relation between "A" and "B" is by consanguinity, "A" would have been prohibited from marrying "C" because "C" will either be his (A's) mother or stepmother.<sup>49</sup>

The permanent prohibition stated in question and answer Nos. 67, 68 and 69 mentioned above are based on the verses of the Glorious Qur'an herein below quoted:

حرمت عليكم امهاتكم وبناتكم واخواتكم وعماتكم وخالاتكم وبنات الاخ  
وبنات الاخت وامهاتكم التي ارضعنكم واخواتكم من الرضاعة وامهات  
نساءكم وربائبكم التي في حوزكم من نساءكم التي دخلتم بهن فان  
لم تكونوا دخلتم بهن فلا جناح عليكم وظلائل امهاتكم الذين من اصلا بكم  
وان تجمموا بين الاختين . (٤ : ٢٢) ولا تنكحوا ما نكح آباؤكم (٤ : ٢٢)

which means: Prohibited to you (for marriage) are: your mothers, daughters, sisters; father's sisters, mother's sisters; brother's daughters, sister's daughters; foster-mothers (who gave you suck), foster-sisters;

<sup>48</sup>*Ibid.*, Art. 26.

<sup>49</sup>Badrān, *op. cit.*, pp. 77-78.

your wives' mothers; your stepdaughter under your guardianship, born of your wives to whom ye have gone in, — no prohibition if ye have not gone in; — (those who have been) wives of your sons proceeding from your loins and two sisters in wedlock at one and the same time.<sup>50</sup> And marry not women whom your fathers married.<sup>51</sup>

**70. Q — In the just quoted verse 23 of Sura 4 of the Glorious Qur'an, it appears that there could only be prohibition between a stepdaughter and a stepfather if the former under the guardianship of the latter. Will you clarify this point?**

A — It is generally but not unanimously held that the term “under guardianship” is merely a description and not a condition. Therefore, a stepdaughter who is not under the guardianship of her stepfather is very much within the prohibition provided that the other condition about her mother in relation to her stepfather is fulfilled, i.e., the consummation of marriage between them.<sup>52</sup>

**71. Q — What are the wisdoms behind the prohibition by consanguinity?**

A — The reasons or the wisdoms behind the prohibition by consanguinity are as follows:

1. It is necessary for man to strengthen his relations with the people in a community to which he belongs or in which he is inhabiting and this relation is already existing between him and his close relatives by consanguinity. It is therefore better for him to establish new relations with the other families in the said community to accomplish the objectives of strengthening the relations of his family with the other families thereby making his position stable and assured of help and support of the inhabitants thereof.

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<sup>50</sup>A. Yusuf Ali, Qur'an, Sura 4, Verse 23.

<sup>51</sup>*Ibid.*, Sura 4, Verse 22.

<sup>52</sup>*Cf.* Yusuf Ali, Qur'an, Sura 4, Verse 23, Note 534.

2. It has been scientifically tested that the child of the spouses who are not closely related to each other are stronger descendants than those begotten out of the marriage of those husband and wife intimately related to one another. This finding is supported by the prophetic traditions:

لا تنكحوا القرابة فان الولد يخلق ضاويها .  
اغتربوا لا تنصروا .

which mean: Marry those not closely related to you beside those intimately related to you by consanguinity because the child begotten out of marriage of the husband and the wife of no close relation is stronger than those born out of the marriage of husband and wife who are closely related to one another.

3. It would be unpleasant and awkward to see the son living with his mother under the roof of marriage or the father with his daughter or the brother with his sister. It is really the actuations of animals but not human beings.

4. It is endowed by the creator to foster pity and relation among close relatives and so there will be instances where the obligations to relatives will run counter to the obligations to spouses, had the Islamic law allowed marriage among closely related individuals.

For clarity, let us take the case of a mother with her son. Had the *Sharī'a* allowed the mother to be married by her own son, the latter should be obedient to the former in the matter of maternal relation and the former should likewise obey the latter in the matter of marital relation. How about if conflict of obligation arises? Henceforth, the prohibition of marriage among the closely related by consanguinity.

5. Had marriage been allowed among those persons who are prohibited to marry each other by consanguinity, the relatives who are closely related to one another would become stranger to each other because they will not then be allowed to be mixed up in one place considering that they can marry one another and so it

will be very dangerous to get them gathered without *mahram* overseeing them. It will therefore be terrible to prohibit the father from mingling with his daughter and the brother with his sister. Worse above all is when the mother is forbidden to associate with her son after having just passed the agony of breastfeeding him. This will not in anyway be accepted in a human society.<sup>53</sup>

**72. Q — What is the wisdom behind the prohibition by affinity?**

A — The prohibition of marriage by affinity is a part and parcel of the law of creation. Henceforth, the heavenly laws and the Islamic laws are unanimous in its prohibition because it is a part of a general plan for creation. It is never contradicted by any law that when a man marries a woman in a family, he becomes a member of the said family and the affairs of the said family are therefore his affairs and its concern is his concern. The mother or the daughter of his wife is as therefore his mother or daughter, as the case may be. The wife of his son stands in the place of his son or she is as his daughter. It will crack the family union if the husband is allowed to marry the mother of his wife or the latter is allowed to be married with his father. You just can imagine the damage to be caused to a family if the present wives of a husband are his mother-in-law, his stepdaughter and his sister-in-law in addition to his wife. By this, the members of such a family are really put into an arena of trouble; hence, the prohibition by affinity.<sup>54</sup>

**73. Q — What is the wisdom behind the prohibition by fosterage?**

A — The Islamic law prohibits it because of the following reasons:

1. The breastfeeding mother is actually feeding the child with the part of her body i.e., her milk and so it

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<sup>53</sup>Al Jabburī, *op. cit.*, pp. 80-82.

<sup>54</sup>*Cf* Al Jao rī, *op. cit.*, pp. 88-89, *Cf*. Abū Zahra, *op. cit.*, pp. 82-83.

is forming part of the body of the child and his flesh is growing and his bones strengthened out of it. If the child is part of her, she is therefore like a real mother to him and because the son is prohibited to marry his real mother he is also prohibited to marry his mother by fosterage.

2. The child breastfed is always mixing with the members of the family of the breastfeeding mother and so he becomes one of them. This will be consequently leading to a close tie between the family of the breastfeeding mother and the family of the breastfed son until such relation will reach the stage that his family becomes her family or vice versa. Henceforth, the prohibition due to fosterage.<sup>55</sup>

**74. Q — What is temporary prohibition in marriage?**

A — Temporary prohibition in marriage is one that exists only during the occurrence of a prohibiting cause.

**75. Q — Enumerate those persons prohibited temporarily to contract marriage:**

A — The following persons are prohibited temporarily to contract marriage:

1. The wife;
2. The woman while observing an 'idda;
3. The pregnant during her pregnancy;
4. The three time divorcee cannot be rejoined by her husband until she got married with another husband in a consummated valid marriage and the latter divorces her and her 'idda expires;
5. A woman who is a pagan (a person who has no religion);
6. The woman who will be in excess of four wives of a husband at a time;
7. A person in a state of *ihrām*;

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<sup>55</sup>Cf. al Jabburī, *op. cit.*, p. 93; Cf. Abū Zahra, *op. cit.*, pp. 93-94.

8. The woman who will be the wife at the same time of the husband of her sister, aunt or niece; and
9. The husband of four wives at a time.<sup>56</sup>

### Section 7. Subsequent Marriages

**76. Q — Can a husband contract a subsequent marriage? If so, how many times will he be allowed to do so?**

A — Yes, he can. He is allowed to marry as many as he can provided that he shall not be married with more than four wives at a time.<sup>57</sup>

**77. Q — Is the husband enjoined to contract subsequent marriage? What is the rule?**

A — No, he is not enjoined. Actually, \*plurality of wives in Islam although allowed is not really enjoined.<sup>58</sup>

**78. Q — What is the rule or the requirement of law by which a husband may contract subsequent marriage?**

A — The rule or the requirement of law is: No husband can have more than one wife unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law, notwithstanding the rule of Islamic law permitting him to have more than one wife but not more than four at a time.<sup>59</sup>

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<sup>56</sup>Badrān, *op. cit.*, pp. 78-88.

<sup>57</sup>Saaduddin A. Alauya, Lecture on the substantive provisions of the Code of Muslim Personal Laws of the Phil. delivered in a National Seminar on said Code on April 2628, 1979 (unpublished).

\*The term plurality of wives is used instead of the term polygamy as it is usually used because the latter means the practice of having two or more wives or husbands at the same time. Islām permits only a Muslim male to have more than one wife but not more than four at a time. In no case a Muslim female is allowed to have more than one husband at a time. The term polygamy is not also used because it means the practice of having two or more wives or concubines at the same time. Islām does not allow a Muslim male to have one or more concubines.

<sup>58</sup>*Ibid.*, p. 1 1.

<sup>59</sup>Code of Muslim Personal Laws, Art. 27.

**79. Q — What is the verse of the Glorious Qur’ān on which the above-mentioned requirements are based? Explain it.**

A — The particular verse of the Glorious Qur’ān on which the requirements of law mentioned in the immediately preceding number are based in

وان خفتم الاتقسطوا فى اليتيمى فانكحوا ما طاب لكم من النساء  
مثنى وثلاث ورباع فان خفتم ان لا تعدلوا فواحدة أو ما ملكت ايما نكم  
ذلك أدنى الا تعولوا . ( ٤ : ٣ )

which means: If ye fear that ye shall not  
Be able to deal justly  
With the orphans,  
Marry women of your choice,  
Two, or three, or four;  
But if ye fear that ye shall not  
Be able to deal justly (with them),  
Then only one, or (a captive)  
That your right hands possess.  
That will be most suitable,  
To prevent you  
From doing injustice.  
(S. IV, 3, Qur’ān, Yusuf Ali)

Please note the conditional clause about orphans, introducing the rules about marriage. This reminds us of the immediate occasion of the promulgation of this verse. It was after the battle of Uhūd, when the Muslim community was left with many orphans and widows, and some captives of war. Their treatment at that moment was to be governed by the principles of the greatest humanity and equity. The occasion is past, but the principles remain. Marry the orphans if you are quite sure that you will in that way protect their interests and properties, with perfect justice to them and to your own dependents, if you have any. If not, make other arrangements for the orphans. The unrestricted number of wives of the “Times of ignorance”



is now strictly limited to a maximum of four, provided you could treat them with perfect equality in material things as well as in affection. As this condition is most difficult to fulfill, I understand that the recommendation to be is toward monogomy.<sup>60</sup> However, it should be noted that some jurists in line with the prophetic tradition have limited the scope of the term “justice” in the above-quoted verses to the favors which a husband has control of but not to the extent of the emotional inclination of the heart.<sup>61</sup>

Another verse of the Glorious Qur’ān regarding plurality of wives is also hereto quoted:

ولن تستطيعوا ان تعدلوا بين النساء ولو حرصتم فلا تميلوا  
كل الميل فتدروها كالمعلقة . (٤ : ١٢٩)

which means: You will not be able to do justice between (your) wives, however much you wish (to do so). But turn not altogether away (from one), leaving her as in suspense. (S. IV. 129)

The commentary of A. Yusuf Ali in this particular verse states that in this material world there are two principal causes of division between a man and his wife, i.e., money and “the other woman” or “the other man”. For relevancy, here is the case of “the other woman” which we shall discuss.

Legally, more than one wife but not exceeding four at a time are permissible on condition that the man can be perfectly fair and just to all. But this is a condition almost impossible to fulfill. If, in the hope that he might be able to fulfill it, a man puts himself in that impossible position, it is only right to insist that he should not discard one but at least fulfill all the outward duties that are incumbent on him in respect of her.

On the bases of the aforequoted verses of the Glorious Qur’ān and the commentaries on the subject, the

<sup>60</sup>Yusuf Ali, Qur’ān, p. 179; Alauya, *op. cit.*, p. 10.

<sup>61</sup>*Ibid.*, p. 10.

Presidential Commission<sup>62</sup> that drafted the Code of Muslim Personal Laws of the Philippines wrote the requirements by which a husband may contract subsequent marriage in the answer to question No. 78, *supra*.

**80. Q — How can it be determined that the husband, desiring to contract subsequent marriage, can deal with his wives with equal companionship and just treatment? Who shall do the determination?**

A — It can only be wisely determined by properly scrutinizing the financial status of the husband and of his peculiarities in life and I recommend that the state where the husband and his wife are residing should do the determination considering that if it is left to the discretion of the husband, he will declare on the top of his voice over and above any circumstance under which he is situated that he can do perfect justice to all of his wives should he be given the chance to contract subsequent marriage. It is equally true that if it is left to the decision of a wife or the wives, she or they will certainly disqualify the husband even if he is the most fair and just one in the world because no wife should bear to see her plate divided.<sup>63</sup>

**81. Q — Why is a husband only allowed to marry more than one wife but not exceeding four at a time?**

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<sup>62</sup>The author was a member (representing Muslim lawyers) of the Presidential Commission that crafted the Code of Muslim Personal Laws of the Philippines. The other members were Dean Cesar Adib Majul (Dean, Institute of Islamic Studies, PCAS, and Chairman), Dr. Agapito I. Cruz (representing the Supreme Court and Vice Chairman) Senator Mamintal A. Tamano (representing Muslim lawyers) Atty. Ide C. Tillah (representing the Department of Justice), Justice Ramon O. Nalasco (representing the Integrated Bar of the Philippines), Ustath Ibrahim T. Ghazali (representing 'Ulama'), Con-Con Delegate Michael O. Mastura (Project Officer of the Research Staff for the Codification of Filipino Muslim Laws), Ustath Ali Abdulaziz (Representing 'Ulama') and Bishop Bienvenido Tutud (representing the Catholic Hierarchy of the Philippines). The last two never participated in any session or activity of the Commission.

<sup>63</sup>*Ibid.*, pp. 11-12.

**Why is not a wife also allowed to do so? Can we treat them with absolute equality in this respect?**

- A — It is only the husband who is allowed to marry more than one wife but not exceeding four at a time because he is a man and not a woman. Even if he marries four wives at a time, no problem of fatherhood will ensue because he can readily and reasonably be the father of the children to be begotten by them. The wife is not allowed to be married with more than one husband because if she is married with, let us say, four husbands and she becomes pregnant, trouble will consequently arise on who is the probable father of the child begotten by her. Aside from that, the wife is a river bed of menstruation. If she is married with four husbands and she menstruates, naturally the four husbands are consequently in forced-vacation waiting for the time that the river bed is cleared. When the flood subsided, trouble will certainly occur among her husbands because none of them will permit the others to go ahead and he will be in awaiting list. We can cite many reasons for not allowing her to marry more than one husband at a time. Suffice it to say that we cannot treat the man and the woman with an absolute equality or in the same footing in this respect because each is situated under different circumstances. Above all, we cannot amend the verse of the Glorious Qur'an in this respect. However, if any man or woman is not accepting the reasonableness of the law of Allah, he or she may address his or her petition to Allah. I assure you that He is the Most Knowing. If he or she is still complaining about it despite its reasonableness, he or she may get out of this world of Allah and try to find his or her own world and promulgate thereat the governing rules acceptable to him or her.

82. Q — **It is often observed that broken homes are mostly caused by the desire of the husband to contract subsequent marriage because although a husband is allowed to marry more than one wife but not exceeding four at a time, it is rare to find a wife who is willing to share her hus-**

**band with another woman or women. Is there a remedy offered by the *Sharī'a* for such eventualities? If so, what is it?**

A — Yes. The appropriate remedy is the verses of the Glorious Qur'ān herein below quoted:

وان ظنتم شقاق بينهما فابعثوا حكما من أهله وحكما من أهلها ان  
يريدا اصلاحا يوفق الله بينهما . ( ٤ : ٣٥ )

which means: If you fear a breach between both of them (the man and wife) appoint an arbiter from his folk and an arbiter from her folk. If for peace, Allāh will cause their reconciliation (S. IV, 35, Qur'an)

Another verse is:

وان امرأة خافت من بعلها نشوزا أو امراضا فلا جناح عليهما ان  
يصلحا بينهما صلحا والصلح خير . ( ٤ : ١٢٨ )

which means: If a wife fears cruelty or desertion from her husband, it is no sin for both of them if they arrange an amicable settlement between themselves; and such settlement is the best. (S. IV, 128, Qur'an).

Cursory glance of the aforequoted verses of the Glorious Qur'ān readily urges the readers who believe in Allāh to create, when the need arises, an arbitration committee consisting of the representatives of each of the husband and the wife to deal mainly with any case involving the spouses or to bring about a conciliation or amicable settlement of their misunderstandings, if there is any. It is respectfully submitted that the creation of a committee or any ad hoc body is a system of implementation of the aforequoted verses of the Glorious Qur'ān.

Admittedly, the arbitration effort is not new to us, Muslims. As a matter of fact, it has gained solid grounds in our respective communities all over the world as part of our indigenous traditions for we are indeed urged by Allah to amicably settle our disputes. However, it is just a matter of correct and regulated implementation.

**83. Q — When can a widow contract a subsequent marriage?**

A — The widow may contract a subsequent marriage after she has observed an *'idda* of four months and ten days counted from the date of the death of her husband.<sup>64</sup>

**84. Q — When can a pregnant woman remarry?**

A — The pregnant may remarry within a reasonable after delivery.<sup>65</sup>

Please note that the two answers given in this number and in the immediately preceding number are of general nature considering that it is possible that the widow is pregnant at the time of the death of her husband. If she is so pregnant, then we have to qualify the answers and there are two views in the issue, viz:

1. According to Ibn Mas'ud and supported by the four orthodox schools, the *'idda* is until delivery. After having delivered her burden, she can contract marriage even if the deceased husband is not yet interred. They based their opinion on this verse of the Glorious Qur'an:

وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ • (٦٥ : ٤)

which means: For those who carry (life within their wombs), their period (*'idda*) is until they delivered their burdens. (S. LXV. 4, Qur'an). This particular verse is not only applicable to pregnant widow but also to pregnant-divorcee.

2. According to 'Alī and Ibn 'Abbās and those who supported them, the *'idda* depends upon the following situations:

a. If she delivered her burden before the expiration of four months and ten days counted from the date of the death of her husband, the *'idda* is not upon delivery, It is upon the expira-

<sup>64</sup>Code of Muslim Personal Laws of the Phil., Art. 28.

<sup>65</sup>*Ibid.*, Art. 28.

tion of the period of four months and ten days. She has to wait therefore for its expiration before she contracts a marriage.

b. If, on the other hand, the said period of four months and ten days has expired before delivery, then the *'idda* is until delivery. In short, the *'idda* is four months and ten days or until delivery whichever is longer because the said *'idda* is not only for preventing simulation of birth but also for giving due respect to the deceased husband and his family. They based their argument on the herein below quoted verse of the Glorious Qur'an:

والذين يتوفون منكم ويذرون أزواجا يتربصن  
بأنفسهن أربعة اشهر وعشرا. (٢ : ٢٣٤)

which means: If any one of you die and leave widows behind, they shall wait concerning themselves four months and ten days. (S. II. 234, Qur'an).

Personally, I subscribe to the opinion of 'Alī and Ibn 'Abbās and their supporters.

**85. Q — When can a divorcee remarry?**

A — The divorcee may remarry after observing an *'idda* of three monthly courses counted from the date of divorce. However, should she and her husband reconcile during her *'idda*, he shall have a better right to take her back without need of a new marriage contract.<sup>66</sup>

**86. Q — Suppose the marriage has not been consummated when divorce was effected, when can the divorcee hereof remarry?**

A — The divorcee in a marriage not consummated may remarry immediately after the divorce because she is not required to observe *'idda*, considering that the marriage is not consummated.<sup>67</sup>

<sup>66</sup>*Ibid.*, Art. 29 (1-2).

<sup>67</sup>*Ibid.*, Art. 29 (3).

**87. Q — Suppose the wife is thrice repudiated by her husband (*ṭalāq bā'in kubrā*), can the husband remarry her? How can he remarry her?**

A — The husband cannot remarry her rightaway. He can only remarry her after she shall have been married with another husband in a valid and consummated marriage and thereafter the latter divorces her and after the expiration of her prescribed *'idda*.<sup>68</sup>

**88. Q — Suppose a husband after having thrice repudiated his wife (*ṭalāq bā'in kubrā*) and because he can no longer legally remarry her rightaway, he arranged a marriage of his divorced wife to a third person with the understanding that after all the formalities of marriage but before its consummation, he (the intervening husband) should divorce her in order to facilitate the former husband's desire to remarry her, can the former husband remarry her under such circumstances? Why?**

A — No, because the intervening marriage has not been consummated due to the collusion initiated by the three time divorcer and it is not sufficient to comply with the requirements of *tahlil*.<sup>69</sup>

**89. Q — What are the requirements the compliance of which will justify the husband to remarry his wife who has been thrice divorced by him? In other words, what are the requirements for *tahlil*? State the ground or grounds of the requirements.**

A — The requirements for *tahlil* are:

1. The wife must have been married by another band in a valid marriage because Allāh said:

فإن طلقها فلا تحل له من بعد حتى تنكح زوجا غيره • (٢ : ٢٣٠)

<sup>68</sup>*Ibid.*, Art. 30 (1), Abū Zahra, *op. cit.*, pp. 370-372.

<sup>69</sup>Abū Zahra, *op. cit.*, p. 370.

which means: So if a husband divorces his wife (thrice, meaning irrevocably), he cannot remarry her until after she has married another husband and he has divorced her. (S. II. 230, Qur'ān)

2. The intervening marriage must have been consummated because the Prophet (p.b.u.h.) has said:

• لا تحل للأول حتى يذوق عسيلة الآخر .

which means: She will not be valid for the first (former husband) until she tasted the honey or the sweetness of the sexual intercourse of the other (intervening husband).

3. The remarriage should take place after the expiration of her *'idda* after she has been repudiated by the intervening husband. This is a normal requirement in all marriages that the woman to marry must not be observing her *'idda*.<sup>70</sup>

**90. Q — Suppose a man marries a three time divorcee without any understanding with the husband who divorces her, but kind as he is, with the intention to perform *tahlīl* to justify the former husband to remarry her; will such marriage, after its consummation, amount to *tahlīl* and justify the former husband to remarry her?**

A — It depends. If such intention is kept secretly during the celebration of the marriage, the marriage is valid and if the intervening husband divorces the wife after the consummation, the former husband is consequently justified to remarry her according to *the Jamhūr Al Fuqahā* because the intention of a party, cannot be read for the validity or the invalidity of the marriage. However, some of the disciples of the Mālikī and Hanabila schools argue that the said marriage is invalid because it is temporary and so it will not consequently amount to *tahlīl* to justify the former husband to remarry her. If, on the other hand, such in-

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<sup>70</sup>*Ibid.*, pp. 370-372.



tention is revealed explicitly during the celebration of the marriage, conflict of opinions of the jurists in general will arise and most particularly among the disciples of the school of Hanafī. Abū Hanīfa and Zufar maintain that the former husband is justified to remarry her although it is detested (*makrūh*). Abū Yūsuf argued that the marriage is void because it is temporary and a temporary marriage is void and so it will not amount to *tahlil* to justify the former husband to remarry her. According to Muhammad, the marriage is valid but it will not consequently justify the former husband to remarry her because the requirements for the justification of remarriage are not met although the marriage is left valid.<sup>71</sup>

**91. Q — Suppose a husband repudiates his wife for the first time or the second time and fails to reconcile with her within the prescribed ‘*idda*, can he rejoin her rightaway?**

A — He cannot rejoin her rightaway. He has to remarry her in a new contract of marriage because his failure to take her back within the prescribed ‘*idda* amounts to an irrevocable divorce (*talāq bā‘in sugrā*).<sup>72</sup>

### Section 8. Kinds of Marriage

**92. Q — What are the kinds of marriage on the bases of the failure of the parties thereof to comply with its *arkān* or *shurūt*?**

A — The kinds of marriage based on the failure of the parties thereof to comply with its *arkān* or *shurūt* are:

1. *Bātil* marriage;
2. *Fāsīd* marriage;
3. *Mauqūf* marriage;
4. *Nāfīd* but not *lāzīm* marriage;
5. *Lāzīm* marriage.

<sup>71</sup>*Ibid.*, p. 370.

<sup>72</sup>*Ibid.*, p. 369.

**93. Q — Explain each kind of marriage mentioned in the immediately preceding number.**

A — The explanations of each kind of marriage mentioned in the immediately preceding number are:

1. Marriage is *bātil* when it is entered into without complying with one or more of the essential requisites (*arkān*) and *shurūt inqād* of marriage, *supra*.

2. Marriage is *fāsīd* when it is entered into without complying with one or more of the *shurūt sihha* after having complied with the essential requisites (*arkān and shurūt inqād*) of marriage, *supra*.

3. Marriage is *mauqūf* when it is entered into and has complied with the *arkan, shurūt inqād* and *shurūt sihha* but failed to meet one or more of *shurūt nafad*.

4. Marriage is *nāfid* (valid) but not *lāzim* when all the requirements of *inqād, sihha* and *nafad* are complied with and the person who has the parental authority (*walī*) over the said marriage has still the right to rescind it. This is the kind of marriage contracted into by a woman herself who has the legal capacity to do so but the dower thereof is below the proper dower (*mahr-mithl*) of her family. The guardian (*walī*) of this woman has therefore the right to rescind the marriage if the husband will not put up the proper dower.

5. Marriage is *lāzim* when all its essential requisites (*arkān* and all kinds of *shurūt*) are complied with.<sup>73</sup>

**94. Q — What are the effects of the above-mentioned marriages?**

A — The effects of the above-mentioned marriages are:

1. *Bātil* marriage is void from the very beginning and so it has no effect at all. This is the example of a marriage contracted between a brother and his sister.

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<sup>73</sup>Al Jabburī, *op. cit.*, pp. 71-74.

2. *Fasid* marriage is one which does not permit consummation and it has no effect of a matrimonial contract. If, however, consummation of marriage takes place, it is a grave violation of Islamic precept and so it has to be prevented and the spouses should be separated.

It shall have the following effects, if consummation has taken place:

a. The prohibited marriages by affinity are consequently established between and among the close affinal relatives of the man and the woman involved in this kind of marriage.

b. *'idda* becomes obligatory to the wife to be counted from the time the man and the woman involved thereof have separated themselves from each other or from the time that the Judge separated them.

c. The punishment for fornication (*zina*) shall not be imposed upon them because of the existence of doubt.

d. The relations of child, if there is any, to parents and relatives are established thereby to prevent his loss and to protect his interest.

e. If dower is specified, the woman shall be entitled to the minimum of the minimum of the dower. If, however, dower is not specified, the proper dower (*mahr-mithl*) shall instead be due.

f. The man and the woman involved thereof shall not inherit from each other.

3. *Mauqūf* marriage arises when a minor contracted marriage by herself without the consent of her parents. This kind of marriage shall not have the effect of a valid marriage unless authorized by her parents or guardian. However, if consummation of marriage has taken place prior to the giving of parental or guardian consent, the said marriage shall have the same effects of a *fāsīd* marriage.

4. *Nāfid* marriage but not *lāzim* is a valid marriage although the proper guardian (*walī*) has still the au-

thority to petition its revocation (*faskh*). If nullification takes place prior to the consummation of marriage, the dower shall not be due regardless of at whose side the nullification is initiated.

5. *Lāzim* marriage is a valid marriage and no one has the authority to rescind it. It has the following effects:

a. The spouses can live together, observe mutual respect and fidelity and render mutual help.

b. One half of the specified dower shall be given before consummation and its entirety after consummation.

c. The support to wife shall become obligatory upon the husband.

d. Prohibited marriages by affinity between the spouses and their respective affinal relatives are established.

e. The spouses shall inherit from each other.

f. The relations of children to the parents are accordingly established.<sup>74</sup>

## Section 9. Rights and Obligations between Spouses

### A. Mutual Rights and Obligations

**95. Q — What are the mutual rights and obligations of the spouses?**

**A —** The mutual rights and obligations of the spouses are:

1. The husband and the wife are obliged to live together, observe mutual respect and fidelity, and render mutual help.<sup>75</sup>
2. The husband and the wife shall inherit from each other.

<sup>74</sup>Badran, *op. cit.*, pp. 1119-122 Al Jabburi, *op. cit.*, pp. 71-75.

<sup>75</sup>Code of Muslim Personal Laws, Art. 34 (1).

3. The spouses shall have the right to divorce or *faskh* in accordance with the Islamic law.
4. When one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonor or material injury upon the other, the injured party may petition the court for relief. The court may counsel the offender to comply with his or her duties, and take such measures as may be proper.<sup>76</sup>
5. The spouses are prohibited to marry their respective affinal relatives who are within the prohibited degrees in marriage in accordance with the Islamic law.<sup>77</sup>

## B. Rights and Obligations of the Husband

### 96. Q — What are the rights and obligations of the husband?

A — The husband shall have the following rights and obligations:

1. The husband shall fix the residence of the family. The court may exempt the wife from living with her husband on any of the following grounds:
  - a) Her dower is not satisfied in accordance with the stipulations; or
  - b) The conjugal dwelling is not in keeping with her social standing or is, for any reason, not safe for the members of the family or her property.<sup>78</sup>
2. The wife shall obey her husband except in those cases prohibited by the *Sharīʿa*.
3. She shall take care herself of him during his presence and absence and shall not divulge the husband's secret.

<sup>76</sup>Code Art. 34 (2, 3 and 4).

<sup>77</sup>Al Jabburī, *op. cit.*, p. 258.

<sup>78</sup>Code of Muslim Personal Laws, Art. 35.

4. She shall safeguard the wealth of her husband.
5. She shall not permit entrance to anybody to the conjugal dwelling without the approval of the husband except to her parents and those of her relatives who are within the prohibited degrees in marriage.
6. The wife shall not be going out of the conjugal dwelling without the permission of the husband except in case of necessity.
7. The wife may be educated or admonished by the husband when she disobeys him in those cases she is obliged to obey.<sup>79</sup>

### C. Rights and Obligations of the Wife

#### 97. Q — What are the rights and obligations of the wife?

A — The rights and obligations of the wife are:

1. The wife shall dutifully manage the affairs of the household. She may purchase things necessary for the maintenance of the family, and the husband shall be bound to reimburse the expenses, if he has not delivered the proper sum.
2. The wife cannot, without the husband's consent, acquire any property by gratuitous title, except from her relatives who are within the prohibited degrees in marriage.
3. The wife may, with her husband's consent, exercise any profession or occupation or engage in lawful business which is in keeping with Islamic modesty and virtue. However, if the husband refuses to give his consent on the ground that his income is sufficient for the family according to its social standing or his opposition is based on serious and valid grounds, the matter shall be referred to the AAC, the wife cannot do otherwise.

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<sup>79</sup>Badrān, *op. cit.*, pp. 171-174; Al Jabburi, *op. cit.*, pp. 253-257.

4. The wife retains ownership and administration of her exclusive property unless otherwise stipulated in the marriage settlements.
5. The wife shall be entitled to an equal and just treatment by the husband.<sup>80</sup>
6. The wife shall have the right to demand the satisfaction of her full dower after the consummation of marriage and one half of it before the consummation.
7. The wife shall have the right to receive support from her husband after she has given up herself for the consummation of the marriage.
8. The wife shall have the right to equal companionship, if her husband has another wife or wives.<sup>81</sup>

### Section 10. Dower (*Mahr*)

**98. Q — What is dower and what can legally be a dower?**

A — Dower is a bridal money or anything of value required of the husband as his obligation to his wife and the right of the latter upon the perfection of the contract of marriage. According to the *jamhūr Al Fuqahā'*, anything that can be a price of a sale, a rent of a lease, property or not, or any thing of value acceptable to the *Sharī'a Al Islāmīa* can legally be made a dower. The school of Hanafī requires it to be a property of value.<sup>81A</sup>

**99. Q — Is the stipulation of a dower an essential requisite for the validity of the marriage?**

A — No. It is not a *rukṅ* or a *shart* for the validity of the marriage. You must have noticed it when we discussed the *arkān* and the *shurūt* of marriage, *supra*.

**100. Q — Because it is not a requisite for validity, can the contract of marriage be perfectly valid even**

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<sup>80</sup>Code of Muslim Personal Laws, Art. 36.

<sup>81</sup>Badran, *op. cit.*, p. 123.

<sup>81A</sup>*Ibid.*, p. 128.

**without stipulating a dower before, during or after the celebration of the marriage?**

A — Yes. The scholars are unanimous that it can be perfectly valid even without fixing or stipulating a dower before, during or after the celebration of the marriage.

**101. Q — How about the giving of a dower to the bride, is it an essential requisite for the validity of the marriage? Explain.**

A — No. The giving of a dower to the bride is not an essential requisite for the validity of the contract of marriage. Even if the dower is not yet given to the bride, the marriage can be valid. The giving of a dower is an obligation of the husband to his wife required of him after the perfection of the marriage as an after effect of the marriage. It may be given before, during or even after the celebration of the marriage depending upon the agreement on that respect.

**102. Q — Will the marriage be valid when it is agreed upon by the contracting parties thereof to be without a dower at all? Explain.**

A — It depends. In Hanafia, it can be valid but the wife shall automatically be entitled to the proper dower (*mahr-mithl*) because dower is an after effect of the marriage required of the husband by Allāh and the contracting parties have no right or power to amend or repeal the law of Allāh. Admittedly, if it has been the property of the wife, she may condone it and that may happen after the perfection of the marriage.<sup>82</sup> According to Imām Mālik, the marriage cannot be valid if the dower is expressly denied of it. Some of the Shafi'ia said that if a man marries a woman without giving her a dower during or after the celebration of the marriage, the said marriage cannot be valid.

The Mālikia and some of the Shāfi'ia argued that the contract of marriage is like the contract of sale. A

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<sup>82</sup>Abū Zahra, *op. cit.*, p. 210, Al Ibyānī, *op. cit.*, pp. 24 and 112, Vol. I., Badrān, *op. cit.*, p. 126.



dower in a marriage is like a price in a sale. If it is stipulated in a sale that there is no price, the sale cannot be valid because it will not be a sale and so the marriage contracted without a dower. The Hanafia rejoined by saying that dower is not a *rukṅ* or a *shart* for validity and so there is no need of mentioning it in a marriage.<sup>83</sup>

**103. Q — Suppose a marriage is contracted without stipulating a dower before, during and after its celebration, will there be a dower for the wife?**

A — Yes, there will be. If it is not specified or stipulated before, during or after the celebration of the marriage, the wife shall be entitled to the proper dower (*mahr-mithl*).<sup>84</sup>

**104. Q — We came to know that dower is not a ruin or a shart for the validity of the marriage; what is it?**

A — The dower is one of the effects or an after effect of the marriage strictly required of the husband to give. It is a right of a wife and an obligation of a husband to his wife.

**105. Q — Suppose the husband refuses to give the dower to his wife after the perfection of the marriage, what can the wife do?**

A — The wife may refuse to come to the consummation of marriage until her dower is satisfied.<sup>85</sup>

**106. Q — How do we know that a dower is an obligation of a husband to his wife?**

A — We came to know that it is an obligation of a husband to his wife because firstly, in the herein quoted verse of the Glorious Qur'ān, husbands are enjoined by Allāh to give dower to their wives:

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<sup>83</sup>*Ibid.*, p. 24.

<sup>84</sup>Abū Zahra, *op. cit.*, p. 198; Al Ibyānī, *Ibid.*, pp. 24 and 112, Vol. I.

<sup>85</sup>*Ibid.*, pp. 195-202; Al Jabburī, *op. cit.*, pp. 159-164.

وَأَتُوا النِّسَاءَ مَدَقَاتِهِنَّ نِحْلَةً . (٤ : ٤)

which means: Give women (on marriage) their dower as a free gift. (S. IV, 4, Qur'ān) and secondly, there are several prophetic traditions on this subject and one of them is hereto quoted:

التمس لها ولو خاتما من حديد .

which means: Look for her (a dower) even it is an iron ring. (Al Hadīth).

**107. Q — Considering that the dower is a right of a wife, can she condone a part of it?**

A — She can very well do that on the strength of the verse of the Glorious Qur'ān herein below quoted:

فإن طبن لكم عن شيء منه نفسا فكلوه هنيئا مريئا . (٤ : ٤)

which means: If they (women) of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer. (S. IV, 4, Qur'ān).

**108. Q — Why is dower only required of the husband when both spouses are deriving happiness and benefits from the marriage? Explain.**

A — The dower is only required of the husband because it is a part of the general plan of the creation that men are bound to look for wealth and women are keepers of the households. The verse of the Glorious Qur'ān states and I quote:

الرجال قوامون على النساء بما فضل الله بعضهم على بعض وبما انفقوا من اموالهم . (٤ : ٣٤)

which means: Men are the protectors and maintainers of women because Allāh has given the one more strength than the other and because they support them from their means. (S. IV, 34, Qur'ān).

The verse of the Glorious Qur'ān are explicit to the effect that the husbands are required by Allāh to give dowers to their wives and I quote:

وَأْتُوا النِّسَاءَ مَدَقَاتِهِنَّ نِحْطَةً . (٤ : ٤)

which means: And give the women (on marriage) their dower as a free gift. (S. IV' 4, Qur'ān).

Another verse of the Glorious Qur'ān along that line is also hereto quoted:

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً . (٤ : ٢٤)

which means: Due to the benefits you derive from them, give them their dowers (at least). (S. IV, 24 Qur'ān).

On account of the fact that dower is an obligation of the husband to his wife, our Prophet (p.b.u.h.) urged 'Alī Bin Abī Tālib to give anything as a dower to Fatima, his daughter when the former married the latter. In response, 'Alī told him: "I have nothing". The Prophet (p.b.u.h.) told 'Alī: "Give her your armor or coat of mail". 'Alī gave it to her.

Aside from that, it is a fact that, after the perfection of the marriage or not long thereafter, the wife has to transfer from the house of her parents to the house of her husband thereby meeting new environments and new life. At this juncture, she will be incurring expenses and so it is out of fairness that the husband should help shoulder the said expenses. That is the reason why Allāh urged a dower for her.

It is likewise an accepted custom and tradition of the people that the bride and her family have to prepare for the forthcoming marriage by purchasing new beds and other furnishings and so the husband, in justice to her, will have to share with her in meeting this urgent responsibility by giving her the dower required of him by Allāh.

It is equally true that the power to divorce is in the hands of the husband and if his marriage to his wife is without a dower required of him, he will take it easy to divorce her because he has not incurred any expenses when he married her and that he can again marry another woman without incurring any expenses in the form of a dower. He will then develop the habit

of just divorcing and then marrying. He will outright lose all respects to his wife. The dower is therefore designed to make the marriage of the spouses interesting and happy.

**109. Q — What are the kinds of dower? Explain each.**

A — The kinds of dower are two herein below listed and their respective explanations are made following each of them, to wit:

1. Fixed dower (*mahr-musammā*). This kind of dower arises when the contracting parties in a marriage specified the dower and the specification is valid.

2. Proper dower (*mahr-mithl*). This kind of dower will arise when the dower is not specified in a marriage contracted with or the specification is not valid. In other words, when the dower is not specified in a marriage or the specification is not valid, the wife shall, automatically, be entitled with the proper dower (*mahr-mithl*).

**110. Q — What is the basis of the proper dower (*mahr-mithl*) of a wife?**

A — The basis of the proper dower (*mahr-mithl*) of a wife is the dower given to a certain woman, possibly her sister, aunt or daughter of her uncle, in the family of her father who is equal to her in term of age, beauty, virginity, education, intelligence, wealth, widowhood, temper and religion.<sup>86</sup>

**111. Q — Suppose the dower of one girl is made a dower of another girl, example: “A”, a man offers his daughter in marriage to “B”, another man and the latter also offers his daughter “C” in marriage to the former, the dower of one is considered the dower of the other, can this kind of marriage be valid? If so, what kind of dower shall be due?**

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<sup>86</sup>*Ibid.*, pp. 164-165.

- A — No. That kind of marriage is a *shighār* and so it is prohibited. However, according to Hanafia, *shighār* is a valid marriage and the proper dower (*mahr-mithl*) will be due to each of the wives concerned.<sup>87</sup>

**112. Q — When shall the dower be due and obligatory?**

- A — It shall be due and obligatory immediately after a valid contract of marriage. Upon perfection of the marriage, the wife may demand the satisfaction of her dower in its entirety or just a part of it depending upon the stipulation. She may likewise condone its entirety or a part of it. She may above all refuse the consummation of marriage if her dower is not satisfied in accordance with the stipulation. If there is no stipulation, she may demand the stipulation of her dower before the consummation or else she will just be entitled to the proper dower (*mahr-mithl*).<sup>88</sup>

**113. Q — What are the causes that will render the entire dower due? Explain.**

- A — The causes that will render the entire dower due are the following:
1. The consummation of the marriage by the husband (*dukhūl al haqīqīe*).
  2. When the wife stays alone with the husband and there exists no hindrance to prevent the consummation of a valid marriage (*khulwa al Sahīha*). This is the opinion of Hanafia and Hanābila. Shāfi'ī and Daud Al Zahiri argued in an opposition even if the isolation is complete. The Mālikia maintains that the dower will not become fully due by *khulwa* unless the wife stays longer in the house of her husband and at the same time there exists nothing to prevent the consummation of marriage between them.

The Shāfi'ia and the companions argued, firstly, on the bases of the verse herein below quoted:

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<sup>87</sup>*Ibid.*, pp. 130-131.

<sup>88</sup>*Ibid.*, pp. 133-134.

فان طلقتموهن من قبل ان تمسوهن وقد فرضتم لهن فريضة فنصف ما فرضتم . ( ٢ : ٢٣٢ )

The verse just quoted above ordains half of the dower to be due if the marriage is not consummated. *Khulwa* alone will not amount to a consummation of marriage. If we make therefore the dower fully due before the actual consummation of marriage, then we have violated the aforequoted verse of the Glorious Qur'an, they scored. Secondly, the dower can be fully due if the thing contracted into is surrendered and the *khulwa* does not mean surrender.

The Hanafia and the Hanābila rejoined, firstly, on the strength of the verse of the Glorious Qur'an quoted:

وإن أردتم استبدال زوج مكان زوج واتيمت احداهن فخطارا فلا تأخذوا منه شيئا . أتأخذونه بهتانا واشما مبينا . ( ٤ : ٢٠ )  
وكيف تأخذونه وقد أفضى بعضكم الى بعض واخذن منكم ميثاقا  
عليضا . ( ٤ : ٢١ )

The verse just quoted above, explicitly warns the husband not to take any part of the dower he has given to his wife if he divorces her. The warning is premised upon the fact that he had *khulwa* with her because the term "*ifdhā*" mentioned in the above quoted verse means going into each other and connotes *khulwa*. Henceforth, *khulwa* alone will render the dower fully due, they argued. Secondly, it has been a decision of the *Khulafā' Al Rāshidīn* that he who closed the door and lowered the curtain is obliged to give the dower and the woman concerned is likewise obliged to observe *'idda*, if divorce or death of the husband overtakes. *Khulwa* is more than the closing of a door and lowering the curtain. Thirdly, if a wife stays with a husband alone, she is presumed to have surrendered herself to him and so the price becomes due because they are not there alone to sing. On the contrary, they are there to finish the unfinished business of the day.

3. The death of one of the spouses. The death of one of them will render the dower fully due whether or

not consummation of marriage or the *khulwa has* taken place because dower is a consideration of a contract long time ago perfected. In short, the dower is a contractual obligation of the husband. The contract is not nullified by death. It just comes to maturity by death because the contract is life long and its end is death, hence, the dower becomes fully due by death.<sup>89</sup>

The stand of Imām Abū Hanīfā and Imām Ahmad regarding *khulwa al sahiha* making it a cause to render the dower fully due should be better upheld because when the wife isolates herself and stays alone with her husband without any hindrance whatsoever presenting the consummation of marriage, the latter must have taken every opportunity for the consummation because they are not there to joke, they are there to finish the unfinished revolution. If he did not take the opportunity, he will be declared in default.

**114. Q — Suppose the husband, clever as he is, does not want to consummate the marriage to avoid rendering the dower fully due but just enjoying touching the private parts of the wife, will the dower become fully due?**

A — According to the schools of Hanafī and Hanbalī, the dower will consequently be fully due following their arguments mentioned in the immediately preceding number but the school of Shāfiī maintains that it will not be fully due.

Personally, I will go with the view of Hanafia and Hanabila because, firstly, if the husband has not consummated the marriage under the kind of circumstances in which he and his wife have been situated, he will be in default and, secondly, why do we allow him to abuse the right of the wife who has surrendered herself to him completely. Under that kind of circumstance, the dower must be rendered fully due in order to force him to stop such treacherous approach and then consummate the marriage.

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<sup>89</sup>Bardān, *op. cit.*, pp. 134-136.

**115. Q — What are the differences in effect between *dukhul* and *khulwa sahiha*?**

A — The differences in effect between *dukhūl* and *khulwa sahiha* are as follows:

1. Regarding the daughter of a wife, after *dukhul* she is prohibited to the husband of her mother but not in the case of *khulu*.

2. Regarding punishment, if a husband or a wife commits fornication (*zinā*) after the occurrence of *dukhūl*, he or she will be stoned to death. If he or she commits it after *khulu* only, he or she will just be punished with one hundred stripes.

3. Regarding a three time divorcee, if a wife is thrice repudiated by her husband, the latter cannot remarry the former unless she is married with another husband and if after consummation (*dukhūl*) of the subsequent marriage, the intervening husband dies or divorces her, the three time divorcer may remarry her after the expiration of her prescribed *'idda* for the subsequent marriage. This cannot be true in *khulu*. In other words, *dukhūl* is a condition precedent of the *tahli* but not *khulu*.

4. Regarding *talāq raj'i*, if the husband divorces his wife for the first or the second time and while she is observing the *'idda* the husband engages *dukhul* with her, such *dukhūl* amounts to reconciliation between the spouses and this cannot be true to ordinary *khulu*.

5. Regarding inheritance, consummation of marriage (*dukhūl*) establishes consequently the rights of inheritance between the spouses and ordinary *khulu* cannot establish such rights.<sup>90</sup>

**116. Q — What are the similarities in effects between *dukhul* and *khulu*?**

A — The similarities in effects between *dukhul* and *khulu* are as follows:

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<sup>90</sup>Al Jabburī, *op. cit.*, 185-186; Badrān, *op. cit.*, pp. 136-137.



1. Both rendered the dower fully due whether it is fixed dower (*mahr musammā*) or the proper dower (*mahr-mithl*) if the same is not fixed or the specification is not valid.
2. Both made the observation of *'idda* obligatory to the wife if repudiation or death takes place.
3. The support to wife during the observation of *'idda* is obligatory upon the husband.
4. The husband is prohibited to marry another woman who is within the prohibited degrees in marriage of his wife while the latter is still observing her *'idda*. This view is special to Hanafīa.<sup>91</sup>

**117. Q — What are the causes that will forfeit the dower?**

A — The causes that will forfeit the dower are:

1. Separation initiated by the wife before the consummation of marriage (*dukhūl*) or *khulu sahiha*.
2. The wife condones the entire dower to her husband.
3. When the wife renounces her dower as a consideration for her release (*khul'*) from the marriage bond.
4. When the judge, acting on the petition of the guardian (*walī*) of the woman, nullified the marriage on the ground that her dower is short of a proper dower and the nullification takes place before the consummation of marriage or before the *khulu*. The nullification is construed to have been initiated by the wife because the petitioner-guardian is on her side.
5. When the marriage is *fāsīd* in the sense that it is contracted without witnesses and the separation takes place before the consummation.<sup>92</sup>

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<sup>91</sup>*Ibid.*, p. 184.

<sup>92</sup>*Ibid.*, pp. 192-194.

**118. Q — In a *fasid* marriage, suppose separation between spouses takes place after consummation of marriage, will the dower be forfeited?**

A — No. After the consummation of marriage, the dower will not be forfeited.

**119. Q — Suppose the wife kills herself after the consummation of marriage, will the dower be consequently rendered fully due or forfeited?**

A — According to *the Jamhūr Al A'imma*, it will be rendered fully due because this time the dower is owned by her lawful inheritors by operation of law and so it cannot be forfeited by her act. According to Shafi'i, the dower will consequently forfeit because she deprives the husband of his right on her by killing herself.<sup>93</sup>

**120. Q — What are obligatory dowers and when shall they be due?**

A — The following are obligatory dowers and each shall become due upon the occurrence of the circumstances set herein below opposite their respective numbers:

1. Fixed dower (*mahr-musamma*) shall become fully due upon the occurrence of any of the three causes mentioned in question and answer No. 113, *supra* provided that the contract of marriage is valid and the specification of the dower is also valid. If, however, divorce takes place before the consummation of the marriage, only one half of it shall become due.

2. Proper dower (*mahr-mithl*) shall become due if dower is not specified or the specification is not valid and it will occur in the following situations:

a) In a marriage without a dower specified or stipulated or when the specification is void.

b) When, upon agreement of the parties a man marries a woman without a dower at all. Such agreement is void because the parties can-

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<sup>93</sup>*Ibid.*, pp. 138-139.

not stipulate against the verse of the Glorious Qur'an and so *mahr-mithl* will instead be due to her.

c) If the woman to be married relies upon or gives the choice to her husband or to her guardian (*wali*) in the sense that her husband marries her without specifying a dower for her. Under this situation, she has to demand for the fixing of her dower after the celebration of the marriage but before its consummation. In this case, the husband is obliged to fix a dower for her. If the spouses agreed upon the dower, the agreement shall be subject to the review of the proper guardian (*wali*) in the sense that the latter has still the right to rescind the agreement if it is short of the proper dower (*mahr-mithl*) until the husband puts up the amount to complete the proper dower (*mahr-mithl*) or otherwise the Judge will decree a *mahr-mithl* for her. If, however, the wife did not demand of her husband the fixation of her dower until the marriage is consummated or one of them died, then proper dower (*mahr-mithl*) will become due.

d) Proper dower (*mahr-mithl*) will also be due when a person consummated a woman by mistaken identity. The sexual intercourse with a woman without the benefit of marriage will either call for dower or punishment. The punishment is negated and not imposed upon the said person because of the fact of mistaken identity and so dower will instead become due and it will be in the form of the proper dower (*mahr-mithl*).

e) If the dower specified has no price like a dead man or a prohibited thing like liquor. Under this kind of specification, the proper dower (*mahr-mithl*) will instead become due.

f) Proper dower (*mahr-mithl*) will also be due in the case of a *shighār* marriage for the school of Hanafi that maintained that *shighār* is a valid marriage. No dower will be due for the *shighār* according to the schools of Shafi'i,

Mālik and Hanbali because it is a forbidden marriage.

3. Less than the fixed dower and the proper dower. This will happen in only one occasion, i.e., when the marriage is *fāsīd* and the specification of dower is properly done and the proper consummation of marriage takes place. It will be construed that such specification of dower is made according to the choice of the bride. However, the specification is subject to the wishes of the proper *walī* considering that he has the right to petition for the completion of the dower which is below the proper dower (*mahr-mithl*).

4. One half of the fixed dower will become due when divorce takes place before the consummation of marriage or before the *khulu*.<sup>94</sup>

**121. Q — Suppose a man marries a woman without specifying for her a dower. After the celebration of the marriage, the spouses voluntarily specified the dower. Will this specified dower in its entirety become due after the consummation of marriage? Will a half of it become due if divorce takes place before the consummation?**

A — There is no conflict that this dower specified after the celebration of the marriage will become fully due after the consummation of marriage or upon the death of either of the spouses. Incongruities of opinions will arise if she is repudiated by her husband after such specification of dower and before the consummation of marriage. Ordinarily, if divorce takes place before consummation, one half of the specified dower (*mahr musammā*) shall become due. According to Hanafia, half of that dower specified after the celebration of marriage shall not become due if divorce takes place before consummation of marriage because actually and in truth such dower is a proper dower (*mahr mithl*) and the proper dower (*mahr-mithl*) cannot be due by its half. According to Shāfi'ī and Abū Yūsuf, half of the

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<sup>94</sup>*Ibid.*, pp. 174-177; *Ibid.*, pp. 139-140.

said dower shall become due because it has been specified and any dower specified before, during or after the celebration of marriage is a fixed dower (*mahr-musammā*) and so it shall become due by its half if divorce takes place before the consummation of marriage<sup>95</sup> because of the verse in the Glorious Qur'an hereto quoted:

فنصف ما فرضتم . ( ٢ : ٢٣٧ )

which means: One half of your specification. This view is supported by the other schools of thought.<sup>96</sup>

It is believed that the opinions of Imām Shāfi'ī and Abū Yūsuf and the other schools of thought in this respect will prosper.

**122. Q — Suppose a marriage was contracted without fixing a dower for the wife and unfortunately before the consummation of the marriage divorce takes place, what will be due for the divorcee? Explain your answer.**

A — Ordinarily, if a marriage is contracted with a fixed dower (*mahr-musammā*) for the wife and a divorce takes place before the consummation of marriage, one half of the fixed dower shall be due for the wife. In the given problem, the dower is not fixed and the divorce overtakes the marriage before its consummation. The proper dower (*mahr-mithl*) would have been due if consummation of marriage had taken place before the divorce.

Therefore, premises considered, the divorcee hereon shall only be entitled with *mut'a* on the strength of the verse of the Glorious Qur'an hereto quoted:

لا جناح عليكم ان طلقتم النساء ما لم تمسوهن ، او تفرضوا لهن  
فريضة ، ومتعوهن على الموسع قدره ، وعلى المقتر قدره ، متاعا  
بالمعروف حقا على المصنين . ( ٢ : ٢٣٦ )

<sup>95</sup>Badrān, *op. cit.*, p. 142.

<sup>96</sup>*Ibid.*, p. 147.

which means: There is no blame on you if ye divorce women before consummation or the fixation of their dower but bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means, a gift of a reasonable amount is due from those who wish to do the right thing. (S. II. 236, Qur'an).

This *mut'a* is not the temporary marriage discussed above. It is a form of a gift of a divorcer to a divorcee substituting the half of the dower which would have been due were it not for the explicit verse of the Glorious Qur'an to the effect that only the fixed dower can be due by its half. On account of its being a substitute of an obligation then it is respectfully submitted that the same is obligatory on the part of the husband. Its value is dependent upon the financial resources of the giver.

- 123. Q — Is it necessary at the dower be paid at the time of the celebration of the marriage?**
- A — No. It may or may not be paid at that time. Part of it may be paid at the time and the other part may be paid later or its entirely may be paid after the celebration of the marriage depending upon the stipulation of the parties thereof.<sup>97</sup>
- 124. Q — Suppose the parties in a marriage agreed on a secret dower in the presence of two witnesses and thereafter announced a bigger one for glorification, which of the two covers shall be paid or upheld?**
- A — Abū Hanifa and Muhammad said that the announced dower shall be paid or upheld because it will be construed as an addition to the secret one. Abū Yūsuf argued that the announced dower is nothing because the agreement on the dower which is the secret one has been perfected and the announced dower is not an amendment. The other scholars and jurists said that if the nature of the secret dower is different from

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<sup>97</sup>Al Jabburī, *op. cit.*, p. 170.

the nature of the publicly announced dower, proper dower (*mahr-mithl*) shall instead be due.<sup>98</sup> This will depend upon the intertion of the parties concerned. If their intention in making the announcement of a big dower is not only for glorification but also to supersede the already fixed and agreed upon secret dower, then the announced dower shall be paid on upheld. Otherwise, the secret one is not obliterated.

**125. Q — After the specification of dower, can it be increased or decreased? and how?**

A — Yes. Upon agreement of the spouses the dower specified before, during or after the celebration of marriage may be increased or decreased on the strength of the verse of the Glorious Qur'an herein quoted:

ولا جناح عليكم فيما تراضيتن به من بعد الفريضة • (٤ : ٢٤)

which means: If after a dower is prescribed, ye agree mutually (to vary it), there is no blame on you (S. IV. 24).<sup>99</sup>

**126. Q — In the case of increase, what are the requirements?**

A — The requirements of the increase of the dower are the following:

1. The husband has the legal capacity to offer voluntary contribution;
2. The increase is accepted by the wife;
3. The marriage bond is not severed at the time of the increase;
4. The value of the increase is known;
5. The increase is at the assent of the husband;
6. The increase is while the husband is not at the condition of death-illness (*maradh al maut*).<sup>100</sup>

<sup>98</sup>Badrān, *op. cit.*, pp. 146-147.

<sup>99</sup>Al Jabburī, *op. cit.*, p. 177.

<sup>100</sup>Al Jabburī, *op. cit.*, p. 178.

**127. Q — In the case of decrease, what are the requirements?**

A — The requirements for the decrease of the dower are the following:

1. The wife has the legal capacity to offer voluntary contribution;
2. The decrease is not rescinded by the husband;
3. The dower is susceptible of division, like when the dower is two hundred Dinar. If it is indivisible, like a house, it cannot be decreased. The wife may just give a part or a portion of it as a gift;
4. The decrease is at the assent of the wife;
5. The value of the decrease is known;
6. The decrease is done while the wife is not at the condition of death-illness (*maradh al maut*).<sup>101</sup>

**128. Q — Who will take hold of the dower of a woman?**

A — If she is of age, she or her authorized representative will take hold of it. If, on the other hand, she is not of age, the guardian for her wealth will take care of it. The guardians for her wealth are different from the guardians for her marriage. The guardians for her wealth are:

1. The father;
2. The father's nominee;
3. The paternal grandfather;
4. The paternal grandfather's nominee; or
5. The court.<sup>102</sup>

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<sup>101</sup>*Ibid.*, p. 214; *Ibid.*, pp. 178-179.

<sup>102</sup>Badrān, *op. cit.*, p. 148; Al Jabburi *op. cit.*, p. 199; Code of Muslim Personal Laws of the Philippines Art. 80.



**Section 11. Property Relations between Spouses**

- 129. Q — How shall the property relations between husband and wife be governed?**
- A — The property relations between the spouses, in the absence of any stipulation to the contrary in the marriage settlements or any other contract, shall be governed by the regime of complete separation of property.<sup>103</sup>
- 130. Q — What does regime of complete separation of property mean?**
- A — The regime of complete separation of property means that the properties of each of the spouses brought to the marriage as well as its earnings and the earnings of each of them shall remain and stand as separate properties of each of them.
- 131. Q. — Suppose there was no agreement made before, during or after the celebration of marriage regarding the property relation of the spouses and during the marriage it is only the husband who is earning and the wife has no earning whatsoever and unfortunately divorce overtakes their marriage, can the wife claim any portion of the earnings of her husband? Why? Will there be conjugal property of the spouses?**
- A — No. The wife cannot claim a share or any portion of the earnings or incomes of her husband in this given problem because the property relation between the spouses is a regime of complete separation of property and so the earnings of each of them shall be his or her paraphernal property. Actually and in truth, there is no conjugal property of the spouses in the absence of an agreement to that effect.
- 132. Q — Suppose a stipulation in the marriage settlements or a contract has been executed by the**

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<sup>103</sup>*Ibid.*, Art. 38.

**parties to a proposed marriage but unfortunately the proposed marriage did not prosper, what will happen to the stipulation or the contract?**

A — It depends. The stipulation or the contract that depends upon the prosperity of the contract of marriage shall be void and without effect whatsoever because the marriage did not prosper. However, the stipulation or the contract that does not depend upon the contract of marriage shall stand valid.<sup>104</sup>

**133. Q — Who shall administer ante-nuptial property?**

A — The wife shall not lose ownership and administration of all properties brought by her to the marriage in the absence of any written agreement to the contrary, and she may dispose of the same by deed or otherwise even without the consent of her husband.<sup>105</sup>

**134. Q — What are the exclusive property of each spouse?**

A — The following shall be the exclusive property of either spouse:

1. Properties brought to the marriage by the husband or the wife;

2. All income derived by either spouse from any employment, occupation or trade;

3. Any money or property acquired by either spouse during the marriage by lucrative title;

4. The dower (*mahr*) of the wife and the nuptial gifts to each spouse;

5. Properties acquired by right of redemption, purchase or exchange of the exclusive property of either; and

6. All the fruits of the properties mentioned in the foregoing paragraphs.<sup>106</sup>

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<sup>104</sup>*Ibid.*, Art. 39.

<sup>105</sup>*Ibid.*, Art. 40; Kitāb Al Ahkām Al Shari'a fi al Ahwāl Al Shakhsiay, *op. cit.*, p. 63.

<sup>106</sup>*Ibid.*, Art. 41.

**135. Q — Who shall own and administer the properties mentioned in the immediately preceding question and answer?**

A — Each spouse shall own, possess, administer, enjoy and dispose of his or her own exclusive estate even without the consent of the other such as those mentioned in the immediately preceding number. However, the court may, upon petition of either spouse, grant to the other the administration of such property.<sup>107</sup>

**136. Q — Who owns household property?**

A — Household property which customarily pertains to or is used by either spouse shall be *prima facie* presumed to be the property of said spouse.<sup>108</sup> With regard to household property that pertains to both of the spouses, the authorities and eminent jurists have contradicting opinions. Zufar said that it has to be divided between them half and half unless there is an evidence to the contrary. Abū Yūsuf said, the statement of the wife shall be upheld because she would not have transferred to the house of her husband without household of her own. Abū Hanīfa and Muhammad said: on the contrary, the statement of the husband must be the one considered because the house is his and everything thereat is owned by him. Imām Shafī'ī said: all the household properties whether it pertains to both or to anyone of them are their properties unless there is an evidence to the contrary.<sup>109</sup>

**137. Q — May the wife, independently of the husband, sue or be sued?**

A — It depends. In the cases enumerated in the next succeeding question, she may sue or be sued independently of her husband. In any other case, she must be joined by the husband.

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<sup>107</sup>*Ibid.*, Art. 42.

<sup>108</sup>*Ibid.*, Art. 43.

<sup>109</sup>Abū Zahra, *op. cit.*, pp. 267-268; Al Jabbūrī, *op. cit.*, pp. 215-216; Abu Muhammad 'Abdullah Bin Ahmad Bin Muhammad Bin Quddama, *Al Mugni Li Ibn Quddama*, (Cairo: Maktabatu Al Qāhira or Bairut: Dar Al Kitāb Al 'Arabie, 1972), p. 283, Vol. 10.

**138. Q — What are the cases in which the wife may, independently of the husband, sue or be sued?**

A — The wife may, independently of the husband, sue or be sued in the following cases:

1. When the litigation is between the husband and the wife;
2. If the suit concerns her exclusive property;
3. If the litigation is incidental to her profession, occupation or business;
4. If the litigation concerns the exclusive property of the husband, the administration of which has been transferred to her; or
5. Such other appropriate cases as may be allowed by the general principles of Islamic law.<sup>110</sup>

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<sup>110</sup>*Ibid.*, Art. 44.

# LEGAL OPINIONS RENDERED ON MARRIAGE

by

OFFICE OF THE JURISCONSULT

1. **Q** — **“A” married a woman “B”, but their marriage has not been consummated within a year, then “A” divorces “B” can “A” marry the mother of “B” and consummate the marriage?**

A — No. “A” is prohibited to marry his mother-in-law even he has not consummated his marriage with his wife (daughter of his mother-in-law).<sup>111</sup>

2. **Q** — **“A” and “B” are husband and wife respectively. The husband wants her wife to transfer to the place fixed by him which is conducive to her and safe for her and her property, but the parents of the wife prevent the transfer, which of the two wishes better for the wife to follow? Is it the wish of the parents or the wish of the husband?**

A — The husband has a better right over his wife than her parents. She is obliged to obey her husband over and above the wishes of her parents. The Prophet (Peace be on him) said: The world is full of treasures and the best among them is the faithful wife: when you look at her you are rendered happy, when you ordered her to do something, she obeyed you and when you leave her, she takes care of herself for you and protects your property left with her.<sup>112</sup>

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<sup>111</sup>Compilation of Legal Opinions by Sheikhul Islam, Ahmad Ibn Taimia, Vol. 32, p. 77.

<sup>112</sup>*Ibid.*, Vol. 32. pp. 261-263.

**3. Q — “A” and “B” are husband and wife respectively. “B” condones her dower in favor of his husband. Can she be prevented by her brothers because her father is not alive?**

A — The brothers have no guardianship over her. She has the right to condone her dower or part of it in favor of her husband provided she is one of those allowed to make donation or contribution.<sup>113</sup>

**4. Q — “A” a man under the guardianship of his father contracted marriage with “B” without the consent of his father. The witnesses manifested that the father died but the truth he is still living, will the marriage contract be valid?**

A — Yes, it is valid. However, if “A” is insane under the guardianship, the contract is invalid without the consent of his father and so “A” and “B” will be separated. On the other hand, if “A” is sane and of legal age, the contract is valid even without the consent of his father.<sup>114</sup>

**5. Q — A non-Muslim who converted to Islām, has he still the guardianship over his children who remained non-Muslims?**

A — No. He has no guardianship over them in marriage and even in inheritance because of their difference in religion. This is a consensus among the four Orthodox Schools as well as their predecessors.<sup>115</sup>

**6. Q — “A” and “B” both of legal ages contracted a marriage and it is her grandfather (father’s father) who gives the offer (*ijāb*), can that marriage be nullified by her grandfather after the consummation of the marriage?**

A — No. Her grandfather cannot nullify her marriage. If she is of legal age and sane, she can contract marriage

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<sup>113</sup>*Ibid.*, Vol. 317 p. 271.

<sup>114</sup>*Ibid.*, Vol. 32, pp. 30-31.

<sup>115</sup>*Ibid.*, Vol. 32, p. 35.

at her own choice. If she is a widow or a divorcee, she has a better right over herself than her guardian. If she is a virgin, she will give her consent and her silence is her consent. However, a young virgin girl may be compelled by her father. There was a case during the life time of the Prophet (Peace be on him): The father gave his daughter in marriage and the daughter resisted and reported the incident to the Prophet (Peace be on him). The Prophet (Peace be on him) nullified the marriage.<sup>116</sup>

**7. Q — A young orphan girl who did not reach the marriageable age and her father died, can the duly constituted authority act as her guardian in marriage? Will she have the choice after reaching the legal age?**

A — After reaching the age of nine years, her residuary relatives or the duly constituted authority may give her into marriage after compliance with the other essential requisites of marriage. Emphasis is given on the giving her a dower. She should not be taken easy because of her being orphan. If she has not given her consent, she will have the choice after reaching the legal age. However, if she has consented, she will not have the choice after reaching the age of puberty. The meat of the answer is the Prophetic tradition: the orphan girl herself will give consent to her marriage and her silence when consulted is her assent. If she resisted, the marriage will not be valid.<sup>117</sup>

**8. Q — A man found a young girl, he reared her and after reaching the age of puberty, he married her through the solemnization of the marriage by the duly constituted authority. The spouses begotten several children. Thereafter, her brother appeared. Will the appearance of her brother invalidate the marriage?**

A — No. The marriage is valid and it will not be invalidated by the appearance of her brother considering that she

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<sup>116</sup>*Ibid.*, Vol. 32, p. 39.

<sup>117</sup>*Ibid.*, Vol. 32, pp. 44-46.

was lost from her family when she was very young and it is not known whether or not she has a brother from the time that she was found by her husband-finder up to the time that she is married and begotten children. Anyway, the duly constituted authority is guardian for marriage of those who have no guardian. Even those who have guardians, but when they disputed among themselves, the Sultan is the guardian for those who have no guardian.<sup>118</sup>

**9. Q — A respected and responsible man wants to marry an orphan girl whose mother consents that her uncle or her brother will act as a representative of her deceased father. Can it be legally allowed to give her in marriage by her uncle or her brother without her consent?**

A — No. A lady of the age of puberty, orphan or not, cannot be given into marriage by anyone other than the father or father's father without her consent. There is even an opinion of Abu Hanifa and Ahmad that even the father cannot give her into marriage without her consent. The Jurists are unanimous that the uncle and the brother cannot give her into marriage without her consent.<sup>119</sup>

**10. Q — A man purchased a girl and engaged her in a sexual intercourse and then he reared her for his son, is it permissible for the son to have carnal relation with her?**

A — No. It is not permissible for the son to engage her into a carnal relation after his father has engaged her in a sexual intercourse. He who allowed it must repent in accordance with the requirements of Islamic law, otherwise he will be killed. The four Orthodox Schools are unanimous based on the Prophetic tradition that the son is strictly prohibited to marry a woman whom his father has lawfully married or engaged in a sexual intercourse for her being possessed by his right hand.<sup>120</sup>

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<sup>118</sup>*Ibid.*, Vol. 32, p. 51.

<sup>119</sup>*Ibid.*, Vol. 32, p. 52.

<sup>120</sup>*Ibid.*, Vol. 31, p. 77.



11. Q — **“A” and “B” husband and wife respectively. “A” has a son “C” and “B” has a daughter “D”. At the initiative of the spouses “A” and “B”, “C” married “D”. Will there be a prohibition? How about if “C” marries the mother of “B”, will there be a prohibition also?**

A — None. “C” married the daughter of the wife of his father. The marriage is legally allowed because “D” is not his sister, she is his step-sister. There is no prohibition also for “C” to marry the mother of the wife of his father because she is not his mother in law.

12. Q — **“A” married “B” secretly with a dower payable by yearly installment. “A” has consummated the marriage with “B” Would the marriage be valid? If they begot a child, can he inherit? Would they be punished?**

A — If “A” married “B” secretly, meaning, without a guardian and the witnesses, the marriage is not valid. It is a consensus of the Jurists that “no marriage can be valid without a guardian.” “Any woman who marries without the consent of her guardian, her marriage is not valid,” on the basis of Prophetic tradition, it has been stated several times by the Jurists that “no marriage can be valid without witnesses.”

Secret marriage is not valid. It is a kind of prostitute marriage. No secret marriage in Islam Muslim woman cannot give herself into marriage secretly by herself while her guardian is available. It is only the prostitute who secretly gives herself into marriage. If this kind of marriage is considered valid to them, consummation thereof is the uncertain consummation and the child begotten out of it can inherit his father. Punishment in this kind of marriage is due to the clandestine spouses.<sup>121</sup>

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<sup>121</sup>*Ibid.*, Vol. 32, pp. 102-103.

- 13. Q — A man traveling from one place to another. He stays a month or two months in a place and then leaves it. He is afraid to fall into fornication. Can he be legally allowed to marry a woman while sojourning in a place? If he leaves, he divorces her. Will the marriage be valid?**
- A — The marriage is valid if he marries the woman permanently without stipulating a time limit thereby making it a temporary marriage such he keeps her if he chooses to do so or divorces her if he likes it. If he intends to divorce her upon the expiration of his sojourn in the place then it is time limit imposition that makes the marriage temporary (*Mut'a*). It is the consensus of the four Orthodox schools and other Jurists that such marriage is prohibited (*haram*). The Prophet (Peace be on him) said: "Verily, Allah prohibits *Mut'a* until the day of resurrection."<sup>122</sup>
- 14. Q — "A" married "B" as virgin and consummated the marriage with her. Thereafter, "A" alleges that "B" is not virgin. "A" and "B" litigated it before the judge. Two women examined "B" and found her virgin, but "A" disputed it and refused to give her dower. What would be required of "A"?**
- A — "A" is obliged to pay the entire dower. It has been decided by the Khulafa'al Rashideen and the renowned Jurists: He who locked the door and fallen down the curtain is obliged to give the dower and observe the prescribe *idda*.<sup>123</sup>
- 15. Q — A Christian Physician married a Muslim Nurse in accordance with his custom. They were blessed with one child. He allegedly embraced Islam but actually he remains Christian. He converted his wife to Christianity. Is their marriage valid?**
- A — It is prohibited for the Muslim female to be married by a non Muslim male. This is the consensus of the

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<sup>122</sup>*Ibid.*, Vol. 32. pp. 106-107.

<sup>123</sup>*Ibid.*, Vol. 32, p. 197.

Muslim Jurists based on the verses of the Holy Qur'ān and the Prophetic traditions. Therefore, their marital relation is void *ab initio*.<sup>124</sup>

**16. Q — A man is desirous to marry the granddaughter of his sister. Will he be allowed to do so?**

A — No, he will not be allowed to marry anyone of the descendants of his brothers or sisters even how low.<sup>125</sup>

**17. Q — A man was supposed to be wedded on a given schedule. The bridal family arranged and prepared everything for this marriage specially the place of solemnization. One day before the schedule of ceremonial rites, the bridegroom refused to continue the proposed marriage without reasonable ground. Is he liable to compensate the expenses incurred for the preparation of the ceremonial rites?**

A — Yes, he is liable. Any person who has entered into a contract to marry but subsequently refuses without reasonable ground to marry the other party who is willing to perform the same shall pay the latter the expenses incurred for the preparation of the marriage and such damages as may be granted by the court.<sup>126</sup>

**18. Q — “A” wants to marry “B”. A dower has been fixed and delivered to the family of “B” without the consent of “B”, her parents spent the dower paid in the form of money for the celebration of the marriage. Are these parents right?**

A — No because the dower of the wife is her exclusive property. Therefore it cannot be disposed of without her consent.<sup>127</sup>

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<sup>124</sup>Buhuth wa Fatwa Islamiya by Shaikhul Ashar Jadul Haqq Ali Jadul Haqq, Vol. 4, p. 131.

<sup>125</sup>Muslim Code, Art. 24C.

<sup>126</sup>*Ibid.*, Art. 22.

<sup>127</sup>*Ibid.*, Art. 41.

**19. Q — A and B are husband and wife respectively. The husband is working in the private company from which he receives nominal earnings that could hardly meet the daily needs of his family. For this reason, he asks his wife to work with him to meet their daily needs. Can the wife legally work with him?**

A — Yes, the wife may, with the husband's consent, exercise any profession or occupation or engage in lawful business which is in keeping with Islamic modesty and virtue.<sup>128</sup>

**20. Q — A man married the woman whom he believes to be at the age of puberty. He divorces her thrice before the consummation of the marriage. Then she was again married by another man who also divorces her thrice before the consummation of the marriage. Is it allowed for the first husband to remarry her?**

A — No. The first husband cannot remarry her because the intervening husband has not also consummated the marriage. In other words, the requisites of justification (*tahlīl*) for the three times divorcer to remarry the three times divorcee are not complied with. The requirements of *tahlīl* are as follows:

1. The wife must have been married by another husband in a valid marriage;
2. The intervening marriage must have been consummated;
3. The remarriage should take place after the expiration of her waiting period (*'iddah*) after she has been repudiated by the intervening husband.<sup>129</sup>

**21. Q — “A” and “B” Husband and wife respectively. “B” has a beautiful daughter “C”. “A” divorces “B”**

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<sup>128</sup>*Ibid.*, Art. 36 p. 3.

<sup>129</sup>Al-Mughni, Vol. 33, p. 116 and Compilation of legal opinions by Sheikhul Islam, Ahmad Ibn Taimi, Vol. 33, p. 116.

**without consummating the marriage with her.  
Can “A” legally marry “C” who is his step-  
daughter?**

- A — Yes, “A” can legally marry “C” because he has not consummated the marriage with her mother “B”, If “A” and “B” have consummated their marriage. “A” would have been prohibited to marry “C”, who is his step-daughter.

**22. Q — Is it allowed in Islām to compel a lady to accept a man in marriage whom she does not like? What can be done to her family who compels her?**

- A — No. It is not allowed in Islam to compel a woman in marriage because it is her right to choose. There was a man, during the life time of the Prophet (peace be on him), who compelled her daughter to accept a man whom she does not like because he wants to strengthen the relation by consanguinity and affinity. The girl approached the Prophet (Peace be on him) and reported what has been done by her father. The Prophet (Peace be on him) requested the presence of the father and asked him about he has done. The Prophet (Peace be on him) told him that what he does is prohibited (*haram*) and it is not his right to compel her. The Prophet (Peace be on him) nullified the marriage contract. Hence, it is not allowed to force a woman into a marriage with a man whom she does not like.

The woman who is compelled into the marriage should assert her right for the nullification of the marriage. The family shall be made to withdraw from their mistake or the duly constituted authority may interfere to avoid the commission of the error.<sup>130</sup>

**23. Q — Is it allowed for the suitor to touch the suited on permission of her father before solemnization and before the payment of the dower?**

- A — If what is in mind in touching is to do what the spouses are doing then it is not allowed. Such activities are

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<sup>130</sup>*Ibid.*, Vol. 4, p. 75.

not allowed even with the permission of the father of the girl. It can only be done after the solemnization of the marriage where offer (*ijāb*) and acceptance (*qabūl*) are made in the presence of at least two witnesses. Above all, it must be with the consent of the bride. The parents should not take it easy because marriage has its multi-purposes.<sup>131</sup>

**24. Q — Is it allowed to engage into sexual intercourse with a wife presently menstruating?**

A — No. it is not allowed to engage into sexual intercourse with a wife who is currently menstruating according to the consensus of the jurists as it is prohibited by Allah and his Messenger (Peace be on him because intercourse with her while menstruating requires expiration and there is a popular dispute, among the jurists in her taking a bath as a result of intercourse other than the menstruation. Intercourse with her after the delivery of a fetus is like intercourse with her while menstruating.

It is allowed to romance her while menstruating or after delivery of fetus above her private part. He can romance her in her lips, her hand or legs. If he engages her in her stomach and masturbates, it is allowed. If he romances her between her two legs, it is allowed but there is a dispute among the jurists.<sup>132</sup>

**25. Q — A woman who menstruated and the blood stops, she wants to clean by taking a bath, but she cannot find a water will the husband be allowed absolutely to engage her into sexual intercourse before her bath?**

A — No. The woman who menstruated and her blood stops cannot be engaged into sexual intercourse by her husband before taking a bath, if she can take a bath, or else she will perform Tayammum in lieu of a bath, according to the Jamhur Al Ulama like Malīk, Ahmad and Al Shāfi'i.<sup>133</sup>

<sup>131</sup>*Ibid.*, Vol. 4, pp. 75-76.

<sup>132</sup>Taimiyya, Vol. 21, p. 624.

<sup>133</sup>*Ibid.*, Vol. 21, pp. 624-625.

**26. Q — How about sexual intercourse with the wife who menstruates and her blood stops, but before taking a bath? What does Abu Hanifa mean when he said: If the blood stops short of ten days, it is not allowed to engage her into a sexual intercourse before taking a bath. If the blood stops ten days, it is allowed to engage her into sexual intercourse. Are the jurists unanimous?**

A — No. The Schools of the jamhur like Malik, Al Shafi'i and Ahmad maintain that it is not allowed to engage her into sexual intercourse before taking a bath. The opinion of the Jamhur is more in accordance with the Qur'an and the precedents.<sup>134</sup>

**27. Q — How about a woman who has delivered a fetus is it allowed to engage her into sexual intercourse before taking a bath?**

A — No. it is not allowed to engage into sexual intercourse a woman who menstruates, or delivers a fetus before taking a bath. If she cannot take a bath either for lack of water, or she is afraid of herself for destruction, she performs Tayammum. This is the Schools of the Jamhur like Mālik Al Shāfi'ī and Ahmad.<sup>135</sup>

**28. Q — Is a man allowed to marry the two sisters by one contract (a) at one and at the same time, (b) one after another?**

A — No, he is not allowed to do so. According to the Muslim law in the case (a) the contract of marriage is void and separation must be effected between the man and the two sisters, and in the case of (b) according to the particular circumstances the second marriage may be either *Bātil* or *fāsīd*. But if a man marries two sisters by two marriages and does not know which is the first, then the judge will separate him from them whether the marriage is *batil* or *fasid* depends upon whether the marriage was contracted with the knowledge of

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<sup>134</sup>*Ibid.*, Vol. 21, pp. 626-627.

<sup>135</sup>*Ibid.*, Vol. 21, p. 635.

its unlawfulness or merely in ignorance of actual facts respectively. According to the *fatwa* of judge Khan, he says another of those classes is (that which relates to) the collection of two sisters in marriage, whether they be free women or female slaves; then if the husband has married them together (that is by one contract), the marriage with both is void (*bātil*) but if he has married them consecutively (that is one after the other) the marriage with the first is valid and the marriage with the second is void (*bāsil*).<sup>136</sup>

**29. Q — A man marries the married woman. Is he allowed to do so under Muslim law?**

A — No, this is not allowed under Muslim law. If a man marries another's wife then in as much as another's wife is not a fitting subject of marriage, such marriage with knowledge of its illegality is void *ab initio* and the issue of such marriage is illegitimate. The Holy Qur'an says: "All married women are forbidden to contract marriage."<sup>137</sup>

**30. Q — Is it lawful to marry a pregnant woman even the author of her pregnancy is known?**

A — No. No one is permitted to marry a pregnant woman when the author of her pregnancy is known. This is the opinion of the fatawa Alamgiri "It is unlawful to marry a pregnant woman when the author of pregnancy is known. But if a man marries a pregnant woman, then no cohabitation is permissible till delivery. However, if the person who rendered her pregnant marries her then sexual intercourse is allowed."<sup>138</sup>

**31. Q — How may a lady expose her desire of getting marriage to her father or guardian?**

A — It was said that either by allusion or exposition. That is why the head of the family should be wise and clever

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<sup>136</sup>Woman in Islamic Shari'a, Al Haj Muhammad Ullah, p. 99.

<sup>137</sup>Woman in Islamic Shari'a, Al-Haj Muhammad-Ullah, p. 98.

<sup>138</sup>Woman in Islamic Shari'a, Al-Haj Muhammad Ullah, p. 109.



enough to understand the feeling or needs of his family. One time, the daughter of Prophet So'ib (peace be on him) said "O my father! Hire him." The Prophet So'ib (peace be on him) cleverly understood what his daughter means. He directly offered to Prophet Musa (peace be on him) to marry one of his two daughters.

The woman, be a virgin or not, should be given the right to choose in terms of marriage. It was narrated by Abu Huraira (Allah likes him) that the Prophet (peace be on him) Said: "A matron should not be given in marriage except after consulting her; and a virgin should not be given in marriage except after her permission." The people asked: "O Messenger of Allah! How can we know her permission?" He replied: "Her silence (indicates her permission)."<sup>139</sup>

**32. Q — A woman was alluded by the actions of a certain man. As a result, she wanted to marry him. What shall she do? Will she approach the man personally or not?**

A — This woman has to refer her case to her father or her guardian.<sup>140</sup>

**33. Q — A man came to me to court my daughter who has once seen her. Asked me a permission to sit, talk and see her. My question, is it not prohibited for a man to see the woman whom he wants to marry?**

A — Yes, he is allowed to do so. Mughirah bin Sho'bah asked the Prophet (peace be on him) about the woman he is courting. The Prophet (peace be on him) said; "Go and see her because it is more appropriate for to have mutual love and affection." When this man came to his would be parents in law, he narrated them the advice of the Prophet (peace be on him). However, they seemed to be displeased with. Their daughter, who is in her room, heard their discussion and said: "If the

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<sup>139</sup>*Ibid.*, pp. 173-174.

<sup>140</sup>*Ibid.*, p. 188.

Prophet (peace be on him) commanded you to see me, you do it otherwise I may sing in your behalf. She really honors the words of the Prophet (peace be on him). The man said: I look at her and then marry her. He then mentioned the consent of the woman to him.<sup>141</sup>

**34. Q — “A” and “B” are brothers. “A” has daughter “C”, who is working in the Saudi Arabia. When “C” is to be married therein, “A” authorizes “B”, who is also working there as his proper guardian (*walī*) in his absence. Is “A” allowed to authorize “B” as his proper guardian (*walī*)?**

A — Yes, “A” is allowed to authorize “B” as his proper guardian (*walī*) of the marriage of his daughter “C” because he is entitled to do so being the father of “C”. Representations or agency in all transactions that a person may enter into is allowed under Islamic Law. The Prophet (peace be on him) had represented many of his companions in marriage. Hence, representation is allowed in marriage.

It was narrated that Abbas (Allah likes him) gave Maimonah Bent Al Haritha into the marriage with Mohammad (peace be on him) after having authorized by Omme al Fadl, Maimonah’s sister, and who happens to be the wife of Abbas. Hence, authorization to act as guardian in the marriage is allowed in Islamic Law provided the authorizer deserves to do so.<sup>142</sup>

**35. Q — A father gives his daughter in marriage to a gentleman without dower. However, said daughter refuses the gentleman because she does not like him. Can the father compel his daughter to do so?**

A — No, the father cannot compel his daughter to be married by gentleman whom she does not like. It was said in the Hadith (Sunnah) that a man gives his daughter in marriage to a man whom she does not like

<sup>141</sup>*Ibid.*, pp. 522-523.

<sup>142</sup>Yas’alonaka fi Ddin wal Haya, Dr. Sharbadi, Vol. 47, p. 91.

just to gain influence and dignity. Said daughter complained to the Prophet (peace be on him) after which the Prophet (peace be on him) called up her father. When he was asked of this matter, he replied positively.

The Prophet (peace be on him), thereafter, remarked that this marriage is prohibited. The father cannot compel his daughter by giving her into marriage to one she dislikes. As a result, he severed the marriage.<sup>143</sup>

- 36. Q — “A” is married to “B”. “A” divorces “B” and later marry “C”, the younger sister of “B”. Thereafter, “A” divorces “C”. Can “A” remarry “B”?**
- A — Yes, “A” can still remarry “B”. However, “A” will be accountable for his bad intentions in marrying “C”, the younger sister of “B”. It should be noted that Islam Religion encourages the permanency of marriage bond and discourages divorce being the most hateful among the lawful things in the sight of Allah.<sup>144</sup>
- 37. Q — An unmarried man wants to marry, but afraid that he might be required by his would be wife to do something that he is incapacitated to do. Will he be committing sin, if he will not marry?**
- A — It is well established that the Prophet (peace be on him) said: O ye group of young man! He *who can* afford the expenses should marry because it can lower your vision and fortify the vulva. He who cannot afford should fast because it has the panacea. To afford to marry means to afford the expenses. It is not to afford sexual intercourse.<sup>145</sup>
- 38. Q — “A” and “B” husband and wife, respectively. The spouses were separated and “B” is observing the ‘idda. “C” proposes marriage to “B”. Is this allowed?**

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<sup>143</sup>Yas’alonaka fi Ddin wal Haya, Dr. Sharbadi, Vol. 4, p. 75.

<sup>144</sup>Yas’alonaka fi Ddin wal Haya, Dr. Sharbadi, Vol. 4, p. 84.

<sup>145</sup>*Ibid.*, Vol. 32, p. 6.

- A — No. It is prohibited to propose marriage clearly to a woman who is observing her *'idda* for divorce or even for death according to the consensus of the jurists. He who does it should be punished with deterrent penalty. "B" and "C" shall be punished all together by reprimanding them.<sup>146</sup>
- 39. Q — "A" and "B" husband and wife, respectively. "A" divorces "B" three times (meaning, the divorce is irrevocable). After the observance of the prescribed *'idda*, "B" was married by "C". In the same day "B" and "C" were divorced. "C" does not know anything about it. He knew it only the following day. Will it be allowed for "A" to marry "B"? How about "C" can he rejoin with "B"?**
- A — It is a well settled rule that marriage proposal is prohibited to be made to a woman who is observing her *'idda* for divorce or death. If she is a divorcee in a revocable divorce, it is not allowed to indirectly propose marriage to her. "C" can rejoin with "B" while "B" is observing her *'idda*, if their marriage is legal one. If their marriage is *tahlīl* (i.e., to justify the remarriage between "A" and "B" the Prophet (peace be on him) curses the parties involved in the *tahlīl*. However, if the marriage between "B" and "C" is legal one and "C" has consummated the marriage with "B" and after their divorce, "C" did not reconcile with "B" during the *'idda*, "A" may remarry "B".<sup>147</sup>
- 40. Q — A man takes care as well as Possession of a woman, he spent for her several years and he signified his intention to marry her, but the father of the woman has given her in marriage to another man. What will happen?**
- A — It is well-established that the Prophet (peace be on him) said: The Muslim is a brother of a Muslim, it is not allowed to a Muslim to present a marriage proposal to a woman to whom a marriage proposal has been

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<sup>146</sup>*Ibid.*, Vol. 32, p. 8.

<sup>147</sup>*Ibid.*, Vol. 32, p. 8.

presented ahead by his brother he will not offer it to whom his brother has offered; he will not buy whom his brother is buying. Is the second contract valid?

1. The second contract is valid. This is the opinion of the school of Malik and Ahmad;
2. The marriage is valid. This is the opinion of school of Abi Hanifa and Al-Shafi'i. The first opinion is more consonant with the Qur'an and Hadith.<sup>148</sup>

**41. Q — How should a Muslim woman conduct herself?**

A — The correct Islamic behavior required of Muslim women which keeps them from wantonly displaying then attractions is characterized by the following:

1. Lowering the gaze: Indeed, the most precious ornament of woman is modesty, and the best expression of modesty is in the lowering of the gaze, as Allah Subhanahu wa Ta'ala says:

... And tell the believing woman that they should lower their gaze . . . (24:31)

2. Not intermingling with men in such way that their bodies come in contact or that men touch women, as happens so often today in movie theatres, university classrooms, auditoriums, buses, streetcars, and the like. Ma'qal Ibn Yasar narrated that the Messenger of Allah (peace be on him) said.

It is better for one of you to be pricked in the head with an iron pick than to touch woman whom it is unlawful to touch. (Al Modhari says, It (this hadith) is reported by Al Tabarani and Al Bayhaqi, and Al Tabarani's transmitters are authentic and sound)

3. Her clothing must conform to the standard laid down by the Islamic Shari'a which are as follows:
  - a. Her dress must cover her entire body with the exception of "that which is apparent,"

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<sup>148</sup>*Ibid.*, Vol. 32, p. 10.

which according to the most preferable interpretation refers to the face and hands.

- b. It must not be transparent, revealing what is underneath. The Prophet (peace be on him) has informed us that, among the dwellers of hell are such women as are clothed yet naked, seduced and being seduced. These shall not enter the Garden, nor shall (seven) its fragrance reach them.

The meaning here of “clothed yet naked” is that their light, thin, transparent garments do not conceal what is underneath.

- c. Her dress must not be too tight so as to define the parts of her body, especially its curves, even though it may not be transparent. Women who wear such clothes and/or its styles likewise fall under the definition of “clothed yet naked,” since such a dress is often more provocative than one which is transparent.
  - d. She must not wear clothes which are specifically for men, such as trousers in our time. The Prophet (peace be on him) cursed women who try to resemble men and men who resemble women, and prohibited women from wearing men’s clothing and vice-versa.
  - e. In her choice of clothing she should not imitate non Muslims, for Islam disapproves the conformity to non-Islamic modes and desires its followers to develop their own distinctive characteristics in appearance, as well as in beliefs and attitudes. This is why Muslims have been asked to be different from non-Muslim in many aspects and so the Prophet (peace be on him) said, “Whoever imitates a people is one of them.”
4. The Muslim woman walks and talks in a dignified and business like manner, avoiding flitertatiousness in her facial expressions and movements. Flirting and seductive behavior are

characteristics of wrong minded women, not of Muslims. Allah says:

. . . Then do not be too pleasant of speech, lest one in whose heart there is a disease should feel desire (for you). (33:32)

5. She does not draw men's attention to her concealed adornment by the use of perfume or by jingling or toying with her ornament or other such things. Allah says:

They should not strike their feet in order to be known what they hide of their adornment . . . (24:31)<sup>149</sup>

**42. Q — Why marriage to more than one woman is permitted in Islam?**

- A — Islam is the last and final word of Allah, ending the series of His Messages to mankind. It therefore, came with a general law suitable for all times and places, and for the whole of humanity. It did not legislate for the City dweller only, while neglecting the nomad, nor for the cold region while ignoring the hot ones, nor for one particular period of time, forgetting later times and the generations to come.

Islam recognizes the needs and interest of all people, of individual as well as groups. And among human beings one finds that individual who has a strong desire for children but whose wife is barren, chronically ill, or has some other problems. Would it not be more considerate on her part and better for him that he marry a second wife who can bear him children, while retaining the first wife with all her rights guaranteed?

Then there may also be the case of a man whose desire for sex is strong, while his wife has a little desire for it, or who is chronically ill has long menstrual periods, or the like, while her husband is unable to restrain his sexual urge. Should it not be permitted to him to

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<sup>149</sup>*Ibid.*, pp. 164-166.

marry a second wife instead of his hunting around for girlfriends?

There are also times when women outnumber men, as for example after wars which often decimate the ranks of men. In such situation it is in the interest of the society and of women themselves that they become co-wives to a man instead of spending their entire lives without marriage, deprived of the peace, affection, and protection of marital life and joy of motherhood for which they naturally yearn with all their hearts.

There are only possible alternatives that exist for such surplus women who are not married as first wives:

1. To pass their whole lives in bitter deprivation,
2. To become sex objects and playthings for lecherous men, or
3. To become co wives to men who are able to support more than one wife and who will treat them kindly.

Unquestionably, the last alternative is the correct solution, healing for this problem, and that is the judgment of Islam:

And who is better than Allah in judgment, for a people who have certain faith? (5:50)

This is the Islamic “plurality of marriage” which people in the West consider so abhorrent and to which they react with such hostility, while their own men are free to have any number of girlfriends, without restriction and without any legal or moral accountability, either in respect to the women or to the children she may bear as a result of this irreligious and immoral plurality of extra-marital relationships. Let the two alternatives — plurality of wives or plurality of illicit affairs — be compared, and let people ask themselves which is the proper course of action, and which of the two groups correctly guided!<sup>150</sup>

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<sup>150</sup>*Ibid.*, pp. 192-193.



**43. Q — Why is it prohibited for a Muslim woman to be married by a non Muslim?**

A — The jurists maintain that a Muslim may marry a Christian woman, if she so likes it that way because she believes in Jesus and the Gospel (Injil). In the same way, he can marry a Jew woman because she believes in Moses and the Tauret. In short, these ladies are people of the Book, believing the Religion of God. Even if they remain Christian or Jew, as the case may be, they can still be married by Muslim.

Regarding the marriage of a Muslim woman by a Christian man or Jew man, it is absolutely prohibited by Islam. The reason behind is that a Muslim woman believes Moses and Jesus (peace be on them) and their religions are both revelations from God. Whereas, the Jew man and the Christian man do not believe in Islam and Prophet Muhammad (peace be on him).

It is a fearful danger to the religion of a Muslim woman to be married by a non Muslim who will not respect and submit to the Islamic percepts. The husband is the administrator of the family and he can forcefully convert her and the children to a non Islam religion.<sup>151</sup>

**44. Q — The Muslim Law allows the men to have four wives at a time but disallows the women to do so, why?**

A — Men are allowed to have four wives at a time because firstly, they are women's protectors and maintainers. Second, the number of women is more than that of men. The ratio now is one is to six or seven. If the rest of them left unmarried they might become prostitutes. Finally, many of the women are suffering barrenness. Hence, polygamy is allowed to men.<sup>152</sup>

**45. Q — “A” proposes marriage to “B”, but “C” has proposed marriage to “B” ahead of “A”. The marriage proposal of “C” is still pending for**

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<sup>151</sup>*Ibid.*, Vol 4, pp. 78-79.

<sup>152</sup>Fatawa Sha'rawi, p. 112.

**action by the relatives of “B”. Is the marriage proposal of “A” reasonable? If the marriage proposal of “A” is accepted by the relatives of “B” and the marriage between “A”, and “B” is solemnized would it be valid?**

A — It is a well-established rule that the Prophet (Peace be on him) said: it is not allowed to any man to present a marriage proposal to a lady whom a marriage proposal has been presented ahead by another man. If the first presenter withdrew his proposal or it is rejected then the second presenter may proceed to present his marriage proposal. There is no dispute over its prohibition. Dispute arises on the marriage of the second presenter “A” to “B”. One group opines it to be invalid because of the prohibition. The other group argues it to be valid because the prohibition is ahead of the solemnization of the marriage. There is no dispute that “A” has committed a sin, but it will not invalidate the marriage. I am more of appreciating the second opinion.<sup>153</sup>

**46. Q — “A” Contracted marriage with “B” whose guardian is a sinner, eating prohibited food and drinking liquor and the witnesses are also sinners. “A” divorces “B” three times. In other words, the divorce becomes major irrevocable. Under such circumstances will “A”, have privilege to reconcile with “B”?**

A — No. “A” cannot reconcile with “B” because the three times divorces have taken effect. Any person who will look into the validity of the contract after the three time divorces and he did not look into it before that, he is a trespasser of the limits of Allah. He wants to legalize the prohibited acts before and after the divorce. On the other hand, marriage under the guardianship of a sinner is valid according to the masses of the Jurists.<sup>154</sup>

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<sup>153</sup>Compilation of Legal Opinions by Sheikhul Islam Ahmad Ibn Taimia, Vol. 32, p. 7.

<sup>154</sup>*Ibid.*, Vol. 32, p. 101.

47. Q — “A” contracted marriage secretly with “B” and stayed with her several days. Thereafter, another husband “C” appeared. The two husbands “A” and “C” were presented to her “B” and asked whom do you prefer between the first “C” and the second “A”? She “B” answered: I want the second “A”. Therefore, he the first husband “C” divorces her. She was ordered to observe her waiting period *‘idda* for the first and the second. Will that be valid for her?

A — Yes, it is valid for her. She “B” was married by “A” before the expiration of her *‘idda* for her marriage with “C”. The first husband “C” separated her either because his marriage with her is irregular; or because “C” divorces her; or the duly constituted authority separated them because her marriage is wrong and she should be punished together with “A” as well as whom he solemnizes the marriage. However, she is required to complete her *‘idda* for the first marriage. If the second husband and has consummated the marriage, she has to observe another *‘idda*. After the completion of the two waiting periods (*‘idda*), she may marry either the first, the second or another.<sup>155</sup>

48. Q — “A” and “B” husband and wife, respectively. They love each other but they are often quarreling. “A” has divorced “B” twice. “A” does not want to pronounce the third. Unfortunately he has pronounced the third divorce and so it becomes major irrevocable divorce. He cannot anymore remarry “B”. “A” bribed “C” to marry “B” and after the solemnization of the marriage, “C” will sleep with “B” without touching her and in the following day, “C” will divorce “B”. Will this marriage of “C” and “B” justify the remarriage between “A” and “B”?

A — No. The marriage of “C” and “B” will not justify “A” to remarry “B” because the marriage of “C” and “B” is temporary and not consummated. Above all, it is

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<sup>155</sup>*Ibid.*, Vol. 32, p. 103.

prearranged with the intention to justify “A” to remarry “B”. It does not amount to *tahlil* to justify the three times divorcer to marry his three time divorcee.<sup>156</sup>

**49. Q – “A” married “B” and stipulated during the solemnization the following: (1) that “A” will not marry another woman during his marriage with “B”, (2) that he will not transfer her from her house, and (3) that her daughter will live with them. Will these conditions precedent be required of him to implement? If he violated any of these conditions precedent, will she be entitled to faskh?**

A – Yes, these conditions precedent and those that are within their meaning are valid and should be complied with. The Prophet (peace be on him) said: “The best condition is that which enables you to marry.” If “A” did not fulfill the condition. “B” may petition for faskh.<sup>157</sup>

**50. Q – “A” married “B” who is ten years old. The family of “B” imposes the following conditions: (1) “A” will live with them and will not transfer “B” from them, and (2) will not consummate the marriage within a year. Thereafter, “A” violated the conditions by taking her and consummated the marriage with her, he transferred her to other place and sometimes beating her. He travels with her and upon return he prevented her family from visiting her and continues beating her. Will it be allowed to make her remain with him under the circumstances?**

A – Under the circumstance mentioned above, it is not legally allowed to make her remain with him. If it is difficult for her to be associating with him according to custom, they should be separated. It is not proper for him to be engaging her into sexual intercourse by

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<sup>156</sup>*Ibid.*, Vol. 32, p. 152.

<sup>157</sup>*Ibid.*, Vol. 32, pp. 168-165.

beating her. If he cannot be prevented from beating her as an enemy, they should be separated.<sup>158</sup>

**51. Q – “A” marries “B” who imposes a condition that “A” will not marry another woman while “E1” is his wife. Is this condition valid. If “A” violated it, has “B” the right to choose?**

A – The condition is valid. If “A” violates it? “B” has the right to choose. She may continue the marriage or separate the husband.<sup>159</sup>

**52. Q – “A” swears to divorce if he marries “B”. Thereafter “A” changes his mind and married “B”. Can “A” lawfully marry “B” without divorcing her?**

A – “A” can marry “B” and they will not be considered divorced from each other after “A” marries “B”.<sup>160</sup>

**53. Q – “A” marries “B”. When “A” enters the room, “B” saw him suffering leprosy. Can “B” petition for faskh?**

A – If insanity, mutilated hand or suffering leprosy appears in one of the spouses, the other has the right to nullify the marriage. If “A” continues despite of the defect of “B” he cannot initiate separation. If “B” separates she cannot recover her preparation. If she separates before the consummation of the marriage, her dower is forfeited. If she separates after the consummation, the dower will not be forfeited.<sup>161</sup>

**54. Q – “A” marries “B” as virgin, but it was discovered she was not virgin, can “A” nullify the marriage?**

A – Yes “A” can nullify the marriage, he can demand the difference between the dower of a virgin and the dower of a non virgin if he continues the marriage. If he

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<sup>158</sup>*Ibid.*, Vol. 32, pp. 167-168.

<sup>159</sup>*Ibid.*, Vol. 32, p. 170.

<sup>160</sup>*Ibid.*, Vol. 32, p. 170.

<sup>161</sup>*Ibid.*, Vol. 32, p. 171.

nullifies it before the consummation of the marriage, the dower will be returned.<sup>162</sup>

**55. Q — “A” marries “B” and “A” advances cash which was not included in the stipulation of dower. There-after “A” died. Then the judge requested for the accounting of the advances made for the stipulated dower if there is any, because no advances mentioned in the stipulated dower.**

A — If “A” and “B” had agreed on what to be paid in advance and on what to be paid later according to the local customs and tradition, “B” has the right to demand all those that have to be paid later as those to be paid in advance are not mentioned in the contract. In the same way, the gifts given to “B” by “A” according to the local customs and traditions and those others given to her are in the account of the wife. In short, those gifts given to her not part of the dower belong to her.<sup>163</sup>

**56. Q — “A” and “B” are husband and wife respectively. “B” files a complaint against “A” for the non-payment of her dower in a period of two months. The judge finds that “A” has no property to pay the dower of “B”. Is it allowed for the judge to make them continue their relation or sever their relation?**

A — If “A” is known to have no money or property, the judge should swear him for his difficult situation and order “A” to divorce “B”. It is not allowed to put him in jail. This is the opinion of four Orthodox Schools.<sup>164</sup>

**57. Q — “A” presented a marriage proposal to “B”. “A” and “B” and their respective families agreed for the marriage, but no marriage contract yet is entered into. On account of this agreement “A” gave something to the father of “B”. Unfortunately, “B” died before the solemnization of**

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<sup>162</sup>*Ibid.*, Vol. 327 p. 173.

<sup>163</sup>*Ibid.*, Vol. 32, p. 196.

<sup>164</sup>*Ibid.*, Vol. 32, p. 197.

**marriage. Can “A” demand the return of what he has given to her father?**

A — If the family of “B” has complied with their agreement and they have not prevented “A” from marrying “B” until she dies, nothing can be taken against them and “A” cannot demand the return of anything he has given to the father of “B”. “A” has exerted this effort to facilitate his desire to marry “B” and the family of “B” has cooperated well to the extent of doing everything possible. Anyway, if “A” has married “B”, the latter would have taken the entire dower.<sup>165</sup>

**58. Q — “A” marries “B”. Thereafter, it was discovered that “B” has husband. The judge separated them (“A” and “B”) will she “B” be given a dower? Is it fixed or proper dower?**

A — If “B” knows to be married and she did not make it known that she is married with another husband she is an obedient fornicatress and no dower is due for her. If “B” on the other hand thought that her husband is dead or he divorces her, the consummation of marriage between “A” and “B” is an uncertain consummation in an irregular marriage and so “B” has a dower. According to the school of Ahmad and Malik, “B” is entitled to fixed dower. According to the statement of Al-Shafi’i and another narration from Ahmad, “B” is entitled to proper dower.<sup>166</sup>

**59. Q — “A” marries “B” and gives her the stipulated dower. They required of him One Thousand Dinar as dower and stipulated that they will not anymore demand anything from him. Now that “A” dies, “B” demanded the completion of her dower from his inheritance, would it prosper?**

A — According to the circumstances mentioned above, “B” cannot demand more than their agreement. Regarding the aforesaid stipulation, “B” has no right to demand

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<sup>165</sup>*Ibid.*, Vol. 32, p. 198.

<sup>166</sup>*Ibid.*, Vol. 32, p. 198.

for it. It is only her right to get what has been agreed upon.<sup>167</sup>

**60. Q – “A” marries “B” and gives her the dower in full. “B” has nothing anymore to demand from him. “A” wants to consummate the marriage and “B” refuses. She has a maternal aunt who is preventing her. Will she be forced to consummation? Will her aunt required to surrender her?**

A – “B” has no right to prevent the surrender of herself to “A” according to the unanimous opinion of the jurists. The aunt or anybody else has no right to prevent “B” from surrendering herself to “A”. Her aunt committed a grave sin by violating the requirements of God. “B” has to be compelled to surrender herself to “A”.<sup>168</sup>

**61. Q – A man refrained from engaging his wife into sexual intercourse for month or two months. Will he be required to engage sexual intercourse with his wife?**

A – Yes. It is his obligation to reasonably engage his wife into sexual intercourse. It is the foremost of her right on him, the biggest of the foods due to her. Sexual intercourse is an obligation depending on the need of the wife and the capability of the husband.<sup>169</sup>

**62. Q – A man whose wife is fasting during the day and praying during the night. When she is called upon by her husband to come to bed, she refuses. She prefers the night prayer and the day fasting over her husband. Is that allowed?**

A – No. She is not allowed according to the consensus of the jurists based on the Prophetic tradition. She is obliged to obey her husband when invited to bed. This is an obligation, whereas the night prayer and the day fasting are only optional. How can the optional prevail

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<sup>167</sup>*Ibid.*, Vol. 32, p. 199.

<sup>168</sup>*Ibid.*, Vol. 32, pp. 203-204.

<sup>169</sup>*Ibid.*, Vol. 32, p. 271.



over the obligation. She cannot fast except Ramadhan without the permission of her husband.<sup>170</sup>

**63. Q — “A” marries “B” and stipulated in their marriage settlement that he will not contract subsequent marriage while married to “B” if “A” violated the stipulation what can “B” do?**

A — If “A” contracted subsequent marriage while he still married to “B”, the latter has the choice to stay or to separate.<sup>171</sup>

**64. Q — A man having two wives. He loves one of them more than the other, he gives more beautiful clothings, he stays more with one than the other. Is he fairly treating them?**

A — No, he is unfairly treating them. If he sleeps two days with one, he should also sleep two days with the other. However, if he engages sexual intercourse with one more numerous than the other, he cannot be blamed because the fairness or the justice required of him does not include the inclination of the heart. It is narrated by A’isa, the wife of the Prophet (peace be on him) that in the distribution of love and sexual intercourse, the Prophet (peace be on him) said: “This is my distribution of what I have? then do not blame me on what you have and I do not have.” meaning the heart.<sup>172</sup>

**65. Q — “A” marries “B”. Thereafter, “A” left her six years without leaving her anything for her expenses. Then “B” was married by “C”, another man who consummated the marriage with “B”. The case was raised before the judge who nullified the marriage between “B” and “C”. Will “C” be required to pay the dower to “B”?**

A — If the marriage between “A” and “B” is nullified because of the failure of “A” to give the necessary expenses and the waiting period (*idda*) of “B” has expire, then she

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<sup>170</sup>*Ibid.*, Vol. 32, p. 274.

<sup>171</sup>*Ibid.*, Vol. 32, p. 170.

<sup>172</sup>*Ibid.*, Vol. 32, p. 269.

married “C” the second husband, the marriage is valid. If the marriage between “B” and “C” was before the nullification of the first marriage, their marriage is not valid. If “B” and “C”, know that the first marriage is subsisting and it is prohibited for them to marry each other, then they must be punished. If “C” ignores the first marriage or denies it or ignores the prohibition of his marriage before nullification of the first marriage, his marriage is suspicious marriage. He will be required to pay the dower and the child to be born? if any? will be related to him and he will not be punished. If “C” is misled by “B” or her guardian by telling her that “B” has no husband, the dower “C” has given to those who misled him will be returned to him.<sup>173</sup>

**66. Q — “A” and “B” husband and wife respectively “A” had divorced “B” thrice. “A” has not paid the dower of “B” and the latter is demanding it from “A”, who is now very poor. Has “B” the right of demanding it from “A”?**

A — “B” has the right to demand it from “A”, but for as long as “A” is poor, it is not justified for “B” to be demanding it until his finances improves. If “B” will have evidence to show that his finances improves, the court will listen to her. If it is not known that “A” has the wealth, “A’s” denial must be supported with oath.<sup>174</sup>

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<sup>173</sup>*Ibid.*, Vol. 32, p. 200.

<sup>174</sup>*Ibid.*, Vol. 32, p. 204.

## CHAPTER THREE

### DIVORCE (*TALĀQ*)

#### Section 1. Nature and Form

139. Q — Define divorce (*talāq*).

A — Divorce is the formal dissolution of the marriage bond to be granted only after the exhaustion of all possible means of reconciliation between the spouse.<sup>175</sup>

140. Q — What are the basic principles laid down by the Glorious Qur'ān regarding divorce? Can you explain them?

A — The basic principles laid down by the Glorious Qur'ān regarding divorce and their explanations are the following:

1. Divorce should be pronounced in the period of purity (*tuḥr*) in compliance with the verse of the Glorious Qur'ān hereto quoted:

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ . (٦٥ : ١)

which means: O' Prophet! when ye do divorce women, divorce them at their prescribed period. (S. LXV. 1, Qur'ān)

The prescribed period mentioned in the just quoted verse means the period of purity. Please note that in the first instance the Prophet (p.b.u.h.) is himself addressed individually, as the teacher and representative of the community. Then the actual direc-

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<sup>175</sup>*Ibid.*, Art. 45.

tions: When ye... are addressed to the community collectively.

It is irregular therefore to pronounce divorce while the wife is menstruating. The idea behind is that in the period of purity the husband is inclined to resume conjugal relations with the wife and the latter is in a rational frame of mind as menstruation has a disturbing effect on her. Any incipient differences between the spouses should not be forced to an issue at a time when sex is least attractive and almost repulsive. Everything should be exhausted to strengthen the social and spiritual aspects of marriage because although divorce is permitted it is the most detestable in the sight of Allāh. Along that directions, the Prophet (p.b.u.h.) said:

أبغض الطلاق إلى الله

which means: Of all things permitted by Allāh, divorce is the most hateful in the sight of Allāh. (Abu Daud, P. 255, Vol. 2)

2. The pronouncement of divorce should be spread over three periods (three monthly courses) to give the spouses ample time to reflect calmly over the pros and cons of the matter. The verse of the Glorious Qur'an expressly states:

الطلاق مرتان فإمساك بمعروف أو تسريح بإحسان . ( ٢ : ٢٢٩ )

which means: A divorce is only permissible twice: after that, the spouses should either hold together on equitable terms or separate with kindness. (S. II. 229, Qur'an).

The aforementioned verse of the Glorious Qur'an expressly states that divorce should be pronounced separately in two periods of purity with the right of reconciliation between the spouses. In other words, the first two divorces that a husband may pronounce are revocable one (*talāq raj'i*). Thereafter, the spouses should have the final choice and deliberation whether to dissolve the union permanently or to reconcile and live honorable lives together. The final decision should

therefore be made by the husband whether he is prepared to take her back or has decided to bid her good-bye forever. In other words, if the husband pronounces a third divorce, then it becomes irrevocable (*talāq bā'in kubra*).<sup>176</sup>

**141. Q — Why is divorce allowed by the Shari'a? Explain.**

A — Actually, the *Shari'a* does not look upon divorce with favor, but despite of that it recognizes its necessity and value in cases when the marital relations of the spouses are poisoned to a degree which makes a peaceful home life impossible. The French legists Planiol and Riper have explicitly emphasized the *Shari'a's* point of view regarding divorce in these words: "Divorce is a mischief. However, it is a measure that cannot be avoided for the welfare of the community, because it is the only remedy for another harm which may be more dangerous." The *Shari'a* therefore permits it as a last resort, *i.e.*, when all efforts of peaceful living between the spouses miserably fail. The *Shari'a* exhorts both spouses to think hundred and one times before making the final decision of separation and it has, therefore, afforded all possible opportunities for reconciliation and provided ample time to reflect calmly over the pros and cons of the matter.<sup>177</sup>

**142. Q — How is divorce effected?**

A — Divorce may be effected by:

1. Repudiation of the wife by the husband (*talāq*);
2. Vow of continence by the husband (*ilā*);
3. Injurious assimilation of the wife by the husband (*zihār*);
4. Acts of imprecation (*li'ān*);
5. Redemption by the wife (*khul'*);

<sup>176</sup>Alauya, *op. cit.*, pp. 17-18.

<sup>177</sup>*Ibid.*, pp. 18-19.

6. Exercise by the wife of the delegated right to repudiate (*tafwidh*); or
7. Judicial decree (*faskh*).<sup>178</sup>

**143. Q — How is *talāq* effected?**

- A — A divorce by *talāq* may be effected by the husband in a single repudiation of his wife during her nonmenstrual period (*tuhr*) within which he has totally abstained from carnal relation with her.<sup>179</sup>

This answer follows the principle of the most laudable kind of divorce known as the *talāq ahsan*.

**144. Q — Suppose the husband made three successive repudiations of his wife within one period of purity (*tuhr*), will it be construed as three divorces (*talāqat*) and why?**

- A — No, because any number of repudiation made during one period of purity (*tuhr*) shall constitute one repudiation (*talāq*) only.<sup>180</sup> The three repudiations (*talāq*) allowed to a husband in a given marriage should not be pronounced in one occasion but in different occasions prescribed by the *Sharī'a*.<sup>181</sup>

**145. Q — Suppose the husband made the repudiation of his wife while she is menstruating, will it be considered valid repudiation? Why?**

- A — No. It will not be considered valid because it is expressly prohibited to make repudiation during the menstrual period of the wife. The repudiations should have been made during the period of purity (*tuhr*).<sup>182</sup>

**146. Q — Suppose the husband made the first and the second repudiation of his wife, what kind of repudiation are they?**

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<sup>178</sup>*Ibid.*, Art. 15.

<sup>179</sup>*Ibid.*, Art. 46.

<sup>180</sup>*Ibid.*, Art. 46.

<sup>181</sup>Abū Zahra, *op. cit.*, p. 355.

<sup>182</sup>Badrān, *op. cit.*, pp. 201-209.

A — They are revocable divorces (*talāq rajʿī*) because the first and the second repudiation pronounced by a husband in a given marriage are *talāq rajʿī*.

**147. Q — Why is it revocable divorce (*talāq rajʿī*)? What does *talāq rajʿī* connote?**

A — It is a revocable divorce (*talāq rajʿī*) because the husband has still the right to take his wife back into conjugal relation within the prescribed *ʿidda* even against her will by just resumption of cohabitation with her and without need of a new contract of marriage. *Talāq rajʿī* connotes a revocable divorce wherein the husband has the right to rejoin his wife during the prescribed *ʿidda*.<sup>183</sup>

**148. Q — Suppose the husband fails to take his wife back to conjugal relation during the *ʿidda* in a *talāq rajʿī*, will the said *talāq* remain to be a *talāq rajʿī*? and Why?**

A — No. Upon failure of the husband to reconcile with his wife during the prescribed *ʿidda*, the *talāq rajʿī* shall ripen into an irrevocable divorce known as *talāq bāʿin sugrā* because the rule laid down by the *Sharīʿa* is: should the husband fail to resume cohabitation with his wife within the prescribed *ʿidda* for the *talāq rajʿī*, the repudiation shall become irrevocable (*talāq bāʿin sugrā*).<sup>184</sup>

**149. Q — If the revocable divorce (*talāq rajʿī*) ripens into irrevocable divorce (*talāq bāʿin sugrā*), can the husband rejoin his wife? In what way?**

A — Yes, he can still rejoin his wife but by entering with her into a new contract of marriage and stipulating with her a new dower (*mahr*).<sup>185</sup>

<sup>183</sup>*Ibid.*, Art. 46 (2), Abū Zahra, *op. cit.*, p. 365.

<sup>184</sup>*Ibid.*, Art. 46 (2); *Ibid.*, p. 366.

<sup>185</sup>*Ibid.*, Art. 46 (2); *Ibid.*, p. 366.

**150. Q — What is the difference between *talāq bā'in sugrā* and *talāq bā'in kubrā*?**

- A — The difference between *talāq bā'in sugrā* and *talāq bā'in kubrā* is that *talāq bā'in sugrā* arises when the husband repudiates his wife either for the first or the second time and fails to reconcile with her during the prescribed 'idda and so he cannot rejoin her without the benefit of a new contract of marriage, whereas *talāq bā'in kubrā* arises when the husband repudiates his wife thrice and so he can not remarry her unless she will be married with another husband and the latter dies or divorces her and the prescribed 'idda for death or for divorce, as the case may be, has expired *i.e., tahlīl*. In other words, *talāq bā'in sugrā* though severs the marriage bond but the husband has still the chance to remarry her by a new contract of marriage, whereas *talāq bā'in kubrā* severs the marriage bond and the husband cannot anymore remarry her unless she will be married with another husband and the latter dies or divorces her and the 'idda prescribed for death or for divorce, as the case may be, has expired.<sup>186</sup> This is the meaning of the verse of the Glorious Qur'an hereto quoted:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ . (٢ : ٢٣٠)

which means: So if a husband divorces his wife (irrevocably), he cannot, after that, remarry her until after she has married another husband and who has divorced her. (S. II. 230, Qur'an). The just aforequoted verse of the Glorious Qur'an is the enabling precept for *tahlīl*.

**151. Q — What is *tahlīl*?**

- A — *Tahlīl* is an Arabic term which literally means legalization or justification and technically signifying the subsequent valid and consummated marriage contracted by an intervening husband with a wife who

<sup>186</sup>Abū Zahra, *op. cit.*, p. 380.



has been thrice repudiated by her former husband and thereafter the intervening husband dies or divorces her and after the expiration of the prescribed *‘idda* for death or for divorce, as the case may be, the former husband may remarry her. In other words, after three divorces, the husband is prohibited to remarry her. He can only remarry her by complying with the requirements of *tahlīl*. Please refer to question and answer No. 89 *supra* for clarity.

**152. Q — Suppose a husband remarried his wife after complying with the requirements of *tahlīl*, how many divorces (*talāqat*) will he again be entitled to?**

A — The authorities and the eminent jurists are unanimous that the husband will be entitled to three new divorces because the wife has returned to him with full legalization. In other words, the remarriage is as if it is a new marriage.<sup>187</sup>

**153. Q — Suppose a husband repudiated his wife for the second time and thereafter the latter contracted a valid and a consummated marriage with an intervening husband who divorces her and then the former husband remarried her, how many divorces (*talāqat*) will he again be entitled with after the remarriage?**

A — There are two contradicting ideas here, *viz*:

1. According to Abū Hanīfa and Abū Yūsuf, the husband will be entitled to three new divorces because the subsequent marriage contracted by his wife negated usually the three divorces previously made by him prior to the subsequent marriage and how much more for only two divorces to negate in the given problem.

2. According to Muhammad and Sufar, he will only be entitled to one *talāq* considering the fact that before his wife contracted a subsequent marriage with

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<sup>187</sup>*Ibid.*, p. 372.

another husband he had already exhausted the two divorces out of the three he is entitled with and considering further that the subsequent marriage here contracted by his wife is not *tahlīl*. The *tahlīl* will only arise after a wife is thrice repudiated by her husband and this circumstance does not happen in the given problem.

The companions (*al saḥāba*) of the Prophet (may Allāh be pleased with them) also had conflicting views on this kind of problem. It is narrated from ‘Ali, ‘Abdullah Bin Mas’ūd, ‘Abdullāh Bin ‘Abbas and ‘Abdullah Bin ‘Umar the same view of Abū Hanīfa and Abū Yūsuf. It is likewise narrated from Ibn Ka’b and ‘Imrān Bin Husain the same idea of Muhammad and Zufar.<sup>188</sup> Personally, I will go with the argument of Muhammad and Sufar.

**154. Q — What is a divorce by *ila*?**

A — It is a kind of divorce where a husband makes a vow to abstain from any carnal relation (*ilā*) with his wife and keeps such *ilā* for a period of not less than four months, she may be granted a decree of divorce by the court after due notice and hearing.<sup>189</sup>

**155. Q — Suppose the husband made a vow to abstain from any carnal relation (*ilā*) with his wife and keeps such *ilā* for a period of not less than four months, what is its effect?**

A — When a husband made a vow to abstain from any carnal relation (*ilā*) with his wife and keeps such *ilā* for a period of not less than four months, the *ilā* will have the following effects:

1. According to the school of Hanafi, it will have an effect of irrevocable divorce (*talāq bā’in*) and if the husband would want to rejoin her, it should be by a new contract of marriage.

<sup>188</sup>*Ibid.*, p. 372.

<sup>189</sup>Code of Muslim Personal Laws, Art. 47.

2. According to the other schools of thought after the expiration of the period of not less than four months, the husband may divorce his wife otherwise the court may grant a decree of divorce. The divorce to be granted by the court is revocable one (*talāq raj'ī*), according to the three schools of thought, unless there exists an evidence to show that it would be irrevocable (*bā'inuna*).<sup>190</sup>

**156. Q — Suppose the husband made a vow to abstain from any carnal relation with his wife for a period of not less than four months and during this period he had had carnal relation with her, what is the effect?**

A — The effect is that it becomes obligatory upon the husband to expiate his vow by feeding ten poor individuals or dress them or to free one slave and if he is incapacitated to do any of the above-mentioned requirements, he should fast for three days.<sup>191</sup>

**157. Q — What is divorce by *zihār*?**

A — The divorce by *zihār* is one where the husband has injuriously assimilated (*zihār*) his wife to any of his relatives within the prohibited degrees of marriage. As a consequence, the spouses shall mutually refrain from having carnal relation with each other until the husband shall have performed the prescribed expiation.<sup>192</sup>

**158. Q — What is the prescribed expiation for *zihār*?**

A — The prescribed expiation for *zihār* is of three kinds as follows:

1. To free a slave, man or woman, minor or adult, Muslim or disbeliever. The disbeliever is allowed in the school of Hanafi and a statement from Ahmad. Shafi'i, Mālik and another statement from Ahmad dis-

<sup>190</sup>Abū Zahra, *op. cit.*, p. 401, Badrān, *op. cit.*, p. 264.

<sup>191</sup>*Ibid.*, p. 401.

<sup>192</sup>*Ibid.*, Art. 48, *Ibid.*, p. 398.

allowed disbeliever because, according to them, the expiation is a right of Allāh and it cannot be performed by making His enemy as a means of compliance. The remedy should be acceptable to Whom it is offered.

2. If the first is not possible because it is expensive, then fasting two months consecutively provided that the period of two months shall not fall during the month of *Ramadhān*, the day of breaking the fast (*Ed Al Fitr*), the day of sacrifice (*Ed Al Adhhā*) and the days of *tashrīq*.

3. If the fasting for two months consecutively is not possible because of acceptable reasons such as old age or illness, then feeding of sixty poor individuals complying therewith the verse of the Glorious Qur'an hereto quoted:

فَمَنْ لَمْ يَسْتَطِعْ فِطْرًا سِتِينَ مَسْكِينًا . (٥٨ : ٤)

which means: If he cannot afford (the freeing of slave and the fasting of two consecutive months) then feeding of sixty poor individuals.

The feeding of the poor should be calculated to give each of them his need for a day in food or its price.<sup>193</sup>

**159. Q — Can a husband, who does *zihār* to his wife, take preference on any of the above stated kinds of expiation?**

A — No. He can only avail of the second if the first is not possible and so on and so forth.<sup>194</sup>

**160. Q — Suppose the husband, who does *zihār* to his wife, had carnal relation with her or had a romance with her before he performed the prescribed expiation, what is the effect?**

A — Such carnal relation or romance with her before the performance of the prescribed expiation by the hus-

<sup>193</sup>Badrān, *op. cit.*, pp. 272-273.

<sup>194</sup>*Ibid.*, p. 272.

band, who does *zihār* to his wife, is strictly prohibited because it is a patent violation of the verse of the Glorious Qur'an hereto quoted:<sup>195</sup>

وَالَّذِينَ يَظَاهِرُونَ مِن نِّسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا  
فَتَحْرِيرَ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَا. (٥٨ : ٣)

which means: Those who divorce their wives by *zihār*, then wish to go back on the words they uttered, — (it is ordained that such a one) should free a slave before they touch each other. (S. LVIII. 3, Qur'an, Yusuf Ali)

**161. Q — Suppose the husband, who does *zihār* to his wife, refrains from having carnal relation with her for unreasonable time and at the same time ignores the performance of the prescribed expiation, what is the remedy of the wife?**

A — The wife may ask the court to require her husband to perform expiation and to resume marital relations with her or to pronounce a regular *talāq*. She may even sue the husband for her maintenance and of her children.<sup>196</sup>

**162. Q — Suppose the husband who does *zihār* to his wife instead of performing the prescribed expiation divorces her and he did not reconcile with her during the 'idda purposely to make the divorce ripen into its irrevocability (*talāq bā'in sugrā*) and thereafter he remarried her by a new contract of marriage, can he now lawfully have carnal relation with her? Why?**

A — No. He cannot lawfully have carnal relation with her because he is expressly prohibited to resume marital relation, or to have even a romance or any enjoyment with her before the performance of the prescribed expiation by him.<sup>197</sup> The expiation cannot be substituted with divorce and then remarriage.

<sup>195</sup>*Ibid.*, pp. 270-271.

<sup>196</sup>*Ibid.*, Art. 48; Yūsuf Ali, *op. cit.*, No. 5335.

<sup>197</sup>Badrān, *op. cit.*, p. 271.

**163. Q — Suppose the husband who does *zihār* to his wife instead of performing the prescribed expiation divorces her and so she becomes a three time divorcee complementing the previous divorces he had made and then she was married to another husband and the intervening husband divorces her and after the expiration of the prescribed ‘*idda* for divorce, the former husband remarried her, can he now lawfully have carnal relation with her in this new marriage with her after the performance of the required *tahlil*? Explain the answer.**

A — No. The requirement for expiation cannot be negated or avoided by a divorce, *tahlil* and remarriage. It cannot be replaced by anything else or complied with by performing any remedy other than the prescribed expiation mentioned above and so the husband is still prohibited to have carnal relation or enjoyment with her.<sup>198</sup>

**164. Q — When shall *zihar* extinguish?**

A — *Zihār* shall extinguish by either of the following:

1. By death of either spouse; or
2. By expiation.<sup>199</sup>

**165. Q — What is divorce by *li’ān*?**

A — The divorce by *li’ān* is one where the husband accuses his wife in court of adultery, a decree of perpetual divorce may be granted by the court after due hearing and after the parties shall have performed the prescribed acts of imprecation (*li’ān*).<sup>200</sup>

**166. Q — What is the prescribed procedure for a divorce by (*li’ān*) which itself is the prescribed act of imprecation (*li’ān*)?**

A — The prescribed procedure for the divorce by *li’ān* which itself is the prescribed act of imprecation (*li’ān*) is that

<sup>198</sup>*Ibid.*, p. 271.

<sup>199</sup>*Ibid.*, p. 272.

<sup>200</sup>Code of Muslim Personal Laws, Art. 49.

the Judge shall require the presence of the spouses and order the husband to bear witness four times with an oath to Allah that he is solemnly telling the truth, nothing but the whole truth and to take the fifth oath to Allah that he solemnly invokes the curse of Allah on himself if he tells a lie in his accusation against his wife. Thereafter, he will order the wife to bear witness four times with an oath to Allah that her husband is telling a lie in his accusation against her and the fifth oath to Allah that she solemnly invokes the wrath of Allah on herself if her accuser is telling the truth and then a decree of perpetual divorce is granted to them by the court.<sup>201</sup>

**167. Q — Why are direct testimonies of the spouses required?**

A — The direct testimonies of the spouses are required or availed of because of the nonavailability of witnesses or evidences to prove the accusation. As a matter of fact, the prescribed acts of imprecation (*li'ān*) which is itself the prescribed procedure mentioned in the immediately preceding number will only be availed of when there are no witnesses or evidences of the spouses to prove or disprove the accusation except their own.<sup>202</sup>

**168. Q — Why is oath of each of the spouses repeated four times?**

A — The oath of each of the spouses is repeated four times to take the place of four witnesses in the ordinary or regular proceedings.<sup>203</sup>

**169. Q — Is the procedure stated in question and answer No. 166, *supra*, applicable to other accusations for adultery?**

A — No. In the other accusations of adultery, the complainant is required to present four witnesses and if he fails

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<sup>201</sup>Badrān, op. at p. 280.

<sup>202</sup>*Ibid.*, p. 280.

<sup>203</sup>*Ibid.*, p. 280.

to do so, he will be punished with eighty stripes. In other words, the procedure mentioned in question and answer No. 166, *supra*, is a special rule of procedure prescribed for the accusation of a husband against his wife.<sup>204</sup>

**170. Q — Why is a special rule of procedure adapted for the accusation of adultery by the husband against the wife?**

A — The special rule of procedure is adapted for the accusation of adultery by the husband against his wife because the case of the spouses against each other is different from the case of the outsiders considering that if one of them accuses the other for adultery, the accusation partly reflects the accuser. It is really difficult to find a courageous witness to intervene in the internal affairs of the spouses, hence, special arrangement is made to offer a remedy for such a difficult situation because under such circumstances it is against human nature that the spouses can happily live together after such an incident.<sup>205</sup>

**171. Q — What is the effect of the testimony and the oath taking of a wife after her husband's testimony and oath taking?**

A — Actually, it is a testimony and oath taking for acquittal though amounting thereafter to perpetual divorce.<sup>206</sup>

**172. Q — After the issuance of a decree of perpetual divorce, is it in the nature of *talāq* or *faskh*?**

A — There are contradicting opinions on that issue but suffice it to state that it is perpetual divorce because the Prophet (p.b.u.h.) has said:

المُتَلَامَنان لا يجتمعان أبداً .

<sup>204</sup>Abū Zahra, *op. cit.* at pp. 402-403.

<sup>205</sup>Yusuf Ali, 6, Commentary on Qur'ān S, XXXIV.

<sup>206</sup>*Ibid.*, S. XXIV 6.



which means: The (spouses) who accuse one another of adultery shall not join each other anymore.

Another prophetic tradition in this respect is also hereto quoted:

المتلاعنان يفرق بجهنما ولا يجتمعان أبدا .

which means: The spouses who throw the curse of Allāh to each other in an accusation for adultery shall be separated and shall not be joined together forever.<sup>207</sup>

**173. Q — What is divorce by *khul'*?**

A — Divorce by *khul'* is one where the wife may, after having offered to return or renounce her dower or to pay any other lawful consideration for her release (*khul'*) from the marriage bond, petition the court for divorce. The court shall, in meritorious cases and after fixing the consideration, issue the corresponding decree.<sup>208</sup>

**174. Q — What makes this kind of divorce a *khul'*?**

A — The offer of the wife to return or renounce her dower or to pay any other lawful consideration for her release from the marriage bond makes it a *khul'*.

**175. Q — Will it be possible that the husband is the one making the offer of a consideration for *khul'*?**

A — Nothing will prevent him from making such an offer but it will be strange to think or to find him making an offer of a consideration for his release from the marriage bond when the power or the right to divorce resides in him. At his own pleasure and although divorce is not recommended by the *Shari'a*, he can readily release himself from the marriage bond without making an offer of a consideration but just to pronounce a divorce.

<sup>207</sup>Badrān, *op. cit.*, p. 284; Abū Zahra, *op. cit.*, p. F. 404.

<sup>208</sup>Code of Muslim Personal Laws Art. 50.

176. Q — Ordinarily, who initiated *khul'*?

A — Ordinarily, it is initiated by the wife.

177. Q — Can *khul'* be initiated by the husband by demanding the dower or a part of it from the wife as a consideration thereof? Explain your answer.

A — No. The husband cannot initiate *khul'* by demanding the dower or a part of it from the wife because it will be a violation of the verses of the Glorious Qur'an herein below quoted:

ولا تمسكوهن ضرارا لتعتدوا . ( ٢ : ٢٣١ )  
ولا يحل لكم ان تأخذوا مما اتيتموهن شيئا الا ان يخافا ألا يقيما  
بد الله . ( ٢ : ٢٢٩ )  
ولا تعضلوهن لتذهبن ببعض ما اتيتموهن الا ان يأتين بفاحشة  
بينة . ( ٤ : ١٩ )

which mean respectively: Do not take them back to injure them, (or) to take undue advantage. (S. II. 231, Qur'ān). It is not lawful for you (men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by God. (S. II. 229, Qur'ān). Don't treat them with harshness, that he may take away part of the dower ye have given them, — except where they have been guilty of open lewdness. (S. IV. 19, Qur'ān).

Please note that the prohibitions and the limitations prescribed in the just quoted verses of the Glorious Qur'an are designed for the interest and honorable lives of the spouses avoiding thereby public or private scandals. If the wife's very freedom is at stake over and above her economic right; in the sense that the husband is refusing the dissolution of the marriage and yet treating her with cruelty with the aim in view perhaps to regain the dower or a part thereof, then, in such exceptional case, it is permissible to give some material consideration to the husband but the need

and the equity of this should be submitted to the proper determination of an impartial judge, *i.e.*, the properly constituted court of justice.

**178. Q — Will the dower be a proper consideration in a divorce by *khul*?**

- A — It depends. If the *khul* is initiated by the husband, the dower cannot be its proper consideration because it is not permissible for him to regain the dower at his own initiative. The herein below quoted verse of the Glorious Qur'an in addition to those quoted in the immediately preceding number are explicit for the prohibition:

مِنْ أَرْتَمِ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَأَتَيْتُمْ أَحَدًا مِنْ قَنَسَاتِنَا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا ، أَتَأْخُذُونَهُ بِهَيْبَتِنَا وَإِنَّمَا مَجِينَا . (٤ : ٢٠)

The just quoted verse means: But if ye decide to take one wife in place of another, even ye had given the latter a whole treasure for dower, take not the least bit of it back: would ye take it by slander and a manifest wrong? (S. IV. 20, Qur'an).

However, if the *khul* is at the initiation of the wife and she offers the dower as a consideration, then, it can be its proper consideration because the husband may take it on the strength of another verses of the Glorious Qur'an herein below quoted which are exceptions to the general rule:

إِلَّا أَنْ يَبْتَئِينَ بِفَاحِشَةٍ مَجِينَةٍ . (٤ : ١٩)

which means: Except where they (wives) have been guilty of open lewdness. (S. IV. 19, Qur'an).

The aforequoted verse speaks an exception to a general rule, prohibiting the husbands from taking back any of the dower given to the wives, in the sense that if the wives are guilty of open lewdness, they are within the meaning of the exception and so the husband may take back the dower.

Personally, I respectfully submit that even if the wife is not found guilty of open lewdness, the husband may legally take the dower or a part thereof as a consideration of the *khul'*, if same is offered by, the wife without the husband demanding of it. After all, the dower is owned by her and she may dispose of it at her pleasure. What is prohibited is the demanding of it by the husband or harshing or maltreating her in order to use for *khul'* and offer her dower as a consideration thereof. The term lewdness (*fahisha*) has several meanings and I do not believe that the husband may only take the dower as a consideration of the *khul'* initiated by the wife if the latter is pronounced guilty of adultery or fornication.

The other verse of the Glorious Qur'ān that speaks of an exception to the general rule is hereto quoted:

فَإِنْ خِفْتُمْ أَلَّا يَتَّقُوا اللَّهَ فَلَإِ جُنَاحَ عَلَيْهِمَا  
غَيْمًا افْتَدَتْ بِهِ • (٢ : ٢٢٩)

which means: If ye (judges) do indeed fear that they would be unable to keep the limits ordained by God, there is no blame on either of them if she gives something for her freedom. (S. II 229, Qur'ān Yusuf Ali).

The just quoted verse is addressed to the impartial determination of the judge. If it is established during the hearing that the spouses cannot keep the limits ordained by Allāh, the impartial Judge may fix the amount of the consideration of the *khul'* even out of the dower if the same is offered by the wife and there is no sin for both of them.

**179. Q — Will it be permissible for the husband to take more than the dower as a consideration for the *khul'*? Explain the answer.**

**A —** There are two contradicting opinions on the issue, to wit:

1. It is disliked but not forbidden (*makrūh*), according to 'Alī and Sa'd Bin Al Musīb and others.

2. It is not detested (*mandūb*), said the school of Shafi'i and 'Uthman Al Bata.<sup>209</sup>

I subscribe to the idea that it is *makrūh* for the husband to receive a consideration for *khul* more than the dower he has given her because of the verse of the Glorious Qur'ān hereto quoted:

واتوا النساء صدقاتهن نحلة فان طبن لكم عن شيء منه فكلوه  
فكلوه هنيئا مريئا . (٤ : ٤)

which means: and give the women (on marriage) their dower as a free gift; but if they of their own good pleasure, remit *any part* of it to you, take it and enjoy it with right good cheer. (S. IV. 4, Qur'ān).

The aforequoted verse is explicit in that the husband may take and enjoy *any part* of the dower remitted by her. Please take notice and give emphasis on the italicized words "any part" and not more than. If the wife has offered a consideration more, than her dower, then we have to go deeper into the reason or reasons behind the offer. If she is pressured by the husband, then, it is not only *makrūh* but haram for him to do so. If, however, she voluntarily offers such a consideration without any participation of the husband whatsoever, then, I see no wrong for the husband to take it provided that the latter has all the good intentions and he is in good faith. It would be otherwise if he is defrauding or oppressing her because he will be judged by his intention. The Prophet (p.b.u.h.) has said:

لكل امرئ ما نوى .

which means: Everyone will take his due for what he intends.

<sup>209</sup>Badrān, *op. cit.*, pp. 255-257.

**180. Q — If *khul'* is granted, is it in the nature of *faskh* or *talāq*? If it is in the nature of *talāq*, what kind of *talāq* is it?**

A — There are two opinions in this respect as follows:

1. *Khul'* is a *faskh*, according to one statement of Shāfi'ī and a report of Ahmad.

2. *Khul'* is an irrevocable divorce (*talāq bā'in*), according to another statement of Shafi'i and another report of Ahmad. Abū Hanīfa and his companions and Mālik and Ibn Abī Lailī also considered it irrevocable.<sup>210</sup>

A cursory glance of the above-mentioned opinions will readily tell the reader that it is almost unanimous that *khul'* if ever granted is an irrevocable divorce (*talāq bā'in*).

**181. Q — Does the proposal for *khul'* by the wife need the acceptance of the husband?**

A — Yes, there should be *ijāb* and *qabūl*.<sup>211</sup>

**181-A Q — Is *khul'* allowed during the menstrual period of the wife?**

A — Yes, as an exception to the general rule.

**182. Q — What are the similarities as well as the differences between *khul'* and *talāq 'alā māl*?**

A — 1. The similarities between *khul'* and *talāq 'alā māl* are:

a. Both are divorces by change or consideration;

b. Both will divest the right of marriage from the husband;

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<sup>210</sup>Badrān, *op. cit.*, p. 253; Ibn Quddāma, *op. cit.*, p. 56 Vol. 7; Muhammad Bin Muhammad Al Shaukani, *Nail Al Autar*, (Cairo: Shirkatu Maktabati wa Matba'atii Mustafa Al Bābi Al Halabī 'wa Aulādihi), p. 239, Vol. 6; See also Badhāi Al Shanāī, p. 144, Vol. 6.

<sup>211</sup>Abū Zahra, *op. cit.*, p. 385.

- c. Both are dependent upon the acceptance.
2. The differences between the two are:
- a. In the divorce by *khul'* if the consideration invalidates, the divorce becomes irrevocable, whereas in the divorce '*alā māl*' it becomes revocable.
- b. If the consideration is valid, the *talaq* '*alā māl*' becomes irrevocable (*talāq bā'in*) and it will then be deducted from the number of divorce allowed to the husband as enunciated by the majority of the eminent jurists. It is only Ibn Al Musib and Al Zahrī who dissented by saying that it is *talāq raj'i* whereas in the *khul'*, there exists a conflict of opinions whether it is *talāq* or *faskh* as discussed in question and answer No. 180, *supra*.
- c. In the divorce '*alā māl*', nothing will be invoked except the wealth agreed upon and it will not forfeit anything, whereas in the *khul'*, there exists a conflict of opinions whether or not it will forfeit the existing rights of the spouses from each other.<sup>212</sup>

**183. Q — What is divorce by *tafwīdh*?**

- A — Divorce by *tafwīdh* is one wherein if the husband had delegated (*tafwīdh*) to the wife the right to effect a *talāq* at the time of the celebration of the marriage or thereafter, she may repudiate the marriage and the repudiation would have the same effect as if it were pronounced by the husband himself.<sup>213</sup>

**184. Q — By virtue of *tafwīdh*, what is the effect of the repudiation pronounced by the wife?**

- A — The repudiation pronounced by the wife by virtue of *tafwīdh* would have the same effect as if it were pronounced by the husband himself.<sup>214</sup>

<sup>212</sup>Badrān, *op. cit.*, p. 259.

<sup>213</sup>Code of Muslim Personal Laws of the Philippines, Art. 51.

<sup>214</sup>*Ibid.*, Art. 51.

**185. Q — Can a husband delegate his right to divorce his wife to a third person?**

A — Yes by *taukīl* or *tafwīdh*.

**186. Q — Can a husband delegate his right to divorce to his wife by *taukīl*?**

A — No, he cannot. Ordinarily, he delegated it to her by *tafwīdh*.<sup>215</sup>

**187. Q — What is the difference between *taukīl* and *tafwīdh*?**

A — The difference between *taukīl* and *tafwīdh* are:

1. In *taukīl*, the husband may terminate the egate (*wakīl*) at his pleasure and at any time he desires, whereas in *tafwīdh*, he cannot.<sup>216</sup>

2. The delegate (*wakīl*) is working at the pleasure the person who delegated him, whereas in *tafwīdh*, delegate (*Al mufawwadh*) is working at his discretion.

**188. Q — Suppose the right to divorce is delegated (*fawwadha*) to the wife and she pronounces three divorces on one occasion, can it be construed as three divorces to make it irrevocable divorce (*talāq bā'in kubrā*)? Explain.**

A — No. She cannot do that and even if she does it, it cannot be construed as *talāq bā'in kubrā* because she is just a delegate (*al mufawwadh*) and so she cannot act more than what the husband, who delegated her, can act. The husband cannot validly pronounce three divorces in one period of purity (*tuhr*) because it will be *bid'a*, and so the wife cannot.

**189. Q — You just mention *talāq bid'a*, what is it? What makes it a *bid'a*? What is its relation to *talāq sunnī*?**

A — The *talāq bid'a* is one of the kinds of divorce which is

<sup>215</sup>Abū Zahra, *op. cit.*, p. 378. Badrān, *op. cit.*, p. 239.

<sup>216</sup>*Ibid.*, p. 378.



prohibited for its being pronounced in violation of the prophetic injunction on divorce.

The Prophet (p.b.u.h.) prohibited divorce to take place on either of the two occasions herein below stated:

1. During the menstrual period of the wife; and
2. During the purity (*tuhr*) period of the wife if the husband has had carnal relation with her during the said period of purity.

If divorce is pronounced during any of the aforesaid periods, then such divorce is *bid'a* because it is a violation of the prophetic tradition. If, on the other hand, it is pronounced with the compliance of the prophetic injunction thereof, then, it is *sunni*. *Talāq Sunnī* is further divided into *Talāq Al Sunnī Al Ahsan* (most laudable divorce) and *Talāq al Sunnī Al Hasan*. The former is one where the husband repudiates his wife by making one pronouncement within the term of *tuhr* (period of purity) during which he has not had carnal relation with her and she is left to observe her *'idda*. The latter is one where a husband repudiates the wife by three consecutive pronouncements during the three periods of purity (*tuhr*) and enjoyed the wife.<sup>217</sup>

**190. Q — When shall *tafwīdh* take place?**

- A — Ordinarily, *tafwīdh*, the delegation to the wife of the right of the husband to divorce takes place during or after the celebration of the marriage. However, it may also take place before the celebration of the marriage provided that it is a condition precedent of the marriage.<sup>218</sup>

**191. Q — Suppose the wife pronounces *talāq* by virtue of a *tafwīdh* agreed upon during the celebration of**

<sup>217</sup>Al Huzairī *op. cit.*, p. 310; Alauya *op. cit.*, p. 16.

<sup>218</sup>Abū Zahra, *op. cit.*, p. 382.

**marriage, can she again effect another *talāq* thereafter?**

A — No. Unless she is expressly delegated by the husband to do so.<sup>219</sup>

**192. Q — Are the eminent jurists unanimous on the legality of *tafwīdh*? Explain.**

A — No. The *Zahīria* said that *tafwīdh* is illegal *per se* because the power to divorce is expressly conferred by Allah upon the husbands and no one in this world has the authority to amend or repeal what has been ordained by Allah in a manner to delegate the power to the wife. However, the *Jamhūr Al Fuqahā'* based their arguments for its legality on what has been done by the Prophet (p.b.u.h.) himself. When the Prophet (p.b.u.h.) was petitioned by his wives to increase their supports and expenditures to the extent which the Prophet could not afford, he got angry and refrained himself from associating with them for one month. The Prophet (p.b.u.h.) then was urged by Allāh to give them the option to make their marriages with the Prophet remain or dissolve. This option to remain or dissolve the marriage is actually a *tafwīdh*, said the *Jamhūr*. The consensus among the *Al Sahāba* was that *tafwīdh* is legal.<sup>220</sup>

**193. Q — Generally, how many kinds of divorce are there and what are they?**

A — Generally, there are only two kinds of divorce, namely:

1. *Talāq*; and
2. *Faskh*.

**194. Q — How about those previously discussed, what are they?**

A — They are kinds of *talāq*.

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<sup>219</sup>*Ibid.*, pp. 383-384.

<sup>220</sup>*Ibid.*, p. 383.

**195. Q — What are the differences between *talāq* and *faskh*?**

A — The differences between *talāq* and *faskh* are:

1. *Talāq*, when *raj'i*, does not sever the marriage bond and, when *ba'in*, it extinguishes the rights created by a valid contract of marriage, whereas *faskh* nullifies the contract of marriage and extinguishes the rights created thereby.

2. *Talāq*, when pronounced, is to be deducted from the number of *talāq* that the husband is entitled to pronounce, whereas *faskh* is not.

3. *Talāq* is a right endowed by Allāh to the husband upon a valid contract of marriage, whereas *faskh* is only due when there exists a cause to nullify the marriage.<sup>221</sup>

**196. Q — Suppose the spouses have been granted with three *faskh*, can they still remarry one another without *tahlil*? Why?**

A — Yes. They can remarry one another without *tahlil* because *faskh* is, unlike *talāq*, limitless.<sup>222</sup>

**197. Q — Suppose the spouses have been granted with five *faskh* and they remarried one another, can the husband still divorce her and rejoin her thereafter? Explain.**

A — Yes, regardless of the number of *faskh* that has been granted to the spouses, the husband is still entitled with his right to divorce and thereafter rejoin her within the prescribed *'idda*, if the divorce is still revocable (*talāq raj'i*). In other words, the right of the husband to divorce is not avoided by the number of *faskh* granted to them.<sup>223</sup>

<sup>221</sup>*Ibid.*, p. 324; Badrān, *op. cit.*, p. 186.

<sup>222</sup>*Ibid.*, p. 324; *Ibid.*, p. 186.

<sup>223</sup>*Ibid.*, p. 186.

- 198. Q — How many *faskh* are allowed to the spouses?**  
A — Limitless.<sup>224</sup>
- 199. Q — Who has the right to petition for *faskh*?**  
A — Both spouses have the right to petition for *faskh* but according to Al Imān Abū Yusūf from the school of Hanafī, all repudiations initiated from the side of the wife are *faskh*.<sup>225</sup>
- 200. Q — How many kinds of *faskh*? Explain each.**  
A — There are two kinds of *faskh*. One is a *faskh* that will nullify the contract of marriage from the very beginning and the other is one to nullify the marriage not from the very beginning.<sup>226</sup>
- 201. Q — When shall *faskh* nullify marriage from the very beginning?**  
A — *Faskh* will nullify marriage from the very beginning when its grounds are directly connected with the very beginning of marriage, like when a contracting party is not of legal capacity to contract marriage.<sup>227</sup>
- 202. Q — When shall *faskh* nullify marriage not from the very beginning?**  
A — *Faskh* will nullify marriage not from the very beginning when its grounds do not exist at the time of the celebration of the marriage, like, when the husband abandons Islam after the marriage and so the wife who is a Muslim may petition for *faskh*.<sup>228</sup>
- 203. Q — What is the significance behind the differences between the *faskh*, nullifying the marriage from the very beginning and the *faskh*, nullifying it not from the very beginning?**

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<sup>224</sup>*Ibid.*, p. 186.

<sup>225</sup>*Ibid.*, p. 186.

<sup>226</sup>Abū Zahra, *op. cit.*, p. 324.

<sup>227</sup>*Ibid.*, p. 324.

<sup>228</sup>*Ibid.*, p. 325.

- A — The significance behind the differences between the *faskh*, nullifying the marriage from the very beginning and of the *faskh*, nullifying it not from the very beginning is in the matter of the rules as follows:

1. If the marriage is nullified from the very beginning at the instance of either of the spouses, nothing of the dower shall be due unless one of the causes mentioned in question and answer No. 113 arises to render the entire dower due. If, however, the marriage is nullified not from the very beginning and at the instance of the wife, the entire dower shall be forfeited unless one of the causes mentioned in question and answer No. 113 arises to render entire dower entirely due. However, if none of the causes mentioned in question and answer No. 113 arises when the nullification is not at the very beginning of the marriage and at the instance of the husband one half of the dower shall be due.

2. If the *faskh* nullified the marriage from the very beginning, the divorce pronounced during the *'idda* shall not be counted as divorce in time the spouses rejoin one another, whereas, if it nullifies the marriage not from the very beginning, the divorce pronounced during the *'idda* shall be counted as divorce in case they rejoin one another.<sup>229</sup>

**204. Q — Does it need a decree of a Court to grant *faskh*?**

- A — It depends upon the ground or grounds for which *faskh* is petitioned. If it is technical, it will need therefore resolution of the court.<sup>230</sup> If on the other hand, it is an established fact that the spouses are within the prohibited degree to marry each other, then it will not need court action. They should instead separate themselves upon knowing the prohibition.<sup>231</sup>

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<sup>229</sup>*Ibid.*, pp. 324-326.

<sup>230</sup>*Ibid.*, p. 326.

<sup>231</sup>Sābiq, Al Sayid, *Fiqhu Al Sunna*, (Bairut: Dār Al Kitāb Al 'Arabie, 1977), p. 315, Vol. 2.

**205. Q — What are the grounds for *faskh*?**

A — There are many grounds for *faskh* and I will take separately those stated in the Code of Muslim Personal Laws of the Philippines and those written in other Islamic books. The grounds for *faskh* stated in Article 52 of the Code of Muslim Personal Laws of the Philippines are the following:

1. Neglect or failure of the husband to provide support for the family for at least six consecutive months;

2. Conviction of the husband by final judgment sentencing him to imprisonment for at least one year;

3. Failure of the husband to perform for six months without reasonable cause his marital obligation:

4. Impotency of the husband;

5. Insanity or affliction of the husband with an incurable disease which would make the continuance of the marriage relationship injurious to the family;

6. Unusual cruelty of the husband as defined under the next succeeding article; or

7. Any other cause recognized under Muslim law for the dissolution of marriage by *faskh*.

**206. Q — What is the unusual cruelty of the husband that can be made a ground for *faskh*?**

A — Article 53 of the aforesaid Code states that a decree of *faskh* on the ground of unusual cruelty may be granted by the court upon petition of the wife if the husband:

1. Habitually assaults her or makes her life miserable by cruel conduct even if this does not result in physical injury;

2. Associates with persons of ill-repute or leads an infamous life or attempts to force the wife to live an immoral life;

3. Compels her to dispose of her exclusive property or prevents her from exercising her legal rights over it;

4. Obstructs her in the observance of her religious practices; or

5. Does not treat her justly and equitably as enjoined by Islamic law.

**207. Q — What are the other grounds of *faskh* written in other Islamic books other than those enumerated in question Nos. 205 and 206?**

A — The other grounds of *faskh* stated in other Islamic books are numerous. Some of them are in the nature of noncompliance with one or some of the requirements of marriage. Some are in the nature of violation of important principle of marriage. Some of them may exist at the time of the celebration of marriage like when the spouses happened to be brother and sister by fosterage or when they are in anyway within the prohibited degrees in marriage. In this case, the spouses should separate themselves upon knowing that they are prohibited to marry each *other*. Some may arise after the celebration of the marriage like when the husband apostates from Islām. In this case, the wife should petition for *faskh* because she, as a Muslima, is prohibited to live with a non-Muslim husband.

There are many other grounds of *faskh*. To enumerate them here will not just be lengthy and repetitious but also delicate because omission of one of them might be construed as negation.

**208. Q — Are the effects of *talāq* exactly the same as the effects of *faskh*?**

A — No. The effects of *talāq* and *faskh* are not exactly the same. However, there are effects which are common to both.

**209. Q — What are the effects of irrevocable *talāq*?**

A — The effects of irrevocable *talāq* are:

1. The marriage bond shall be severed and the spouses may contract another marriage;

2. The spouses shall lose their mutual rights of inheritance;

3. The custody of children shall be determined in accordance with the rules stated in question and answer Nos. 243 to 280, *infra*.

4. The wife shall be entitled to recover from the husband her whole fixed dower in case the *ṭalāq* has been effected after the consummation of the marriage, or one half thereof if effected before its consummation;

5. The husband shall not be discharged from his obligation to give support in accordance with the rules stated in question and answer Nos. 284 to 294, *infra*.

6. The conjugal partnership, if stipulated in the marriage settlements, shall be dissolved and liquidated.<sup>232</sup>

**210. Q — What are the effects of *faskh*?**

A — The effects of *faskh* are:

1. The contract of marriage is rendered void *ab initio* if the ground for *faskh* was existing at the time of the celebration of the marriage;

2. The contract of marriage is just nullified if the ground for *faskh* is not existing at the time of the celebration of the marriage;

3. The *faskh* shall not be counted as *ṭalāq* to be deducted from the number of divorce that the husband is entitled to;

4. The *faskh* will have the same effects as those stated in paragraphs 2, 3, 4, 5 and 6 of the immediately preceding question and answer.<sup>233</sup>

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<sup>232</sup>Code of Muslim Personal Laws Art. 54.

<sup>233</sup>*Ibid.*, Art. 54; Badrān, *op. cit.*, p. 186.



**211. Q — What are the effects of the other kinds of divorce?**

A — The effects of *talāq* enumerated in question and answer No. 209 shall apply to the dissolution of marriage by *ilā*, *zihār*, *li'an*, and *khul'*, subject to the effects of compliance with the requirements of the Islamic law relative to such divorce.<sup>234</sup>

**Section 2. 'Idda****212. Q — What are 'Idda?**

A — 'Idda is the period of waiting prescribed for a woman whose marriage has been dissolved by death or by divorce the compliance of which shall enable her to contract a new marriage.<sup>235</sup>

**213. Q — Is 'Idda obligatory? and why?**

A — Yes. It is obligatory by the injunction of the Glorious Qur'an, the *Hadith* and the *Ijmā'*. The Glorious Qur'an states in the herein below quoted verses regarding 'idda:

والمطلقات يتربصن بأنفسهن ثلاثة قروء • (٢ : ٢٢٨)

which means: Divorced women shall wait concerning themselves for three monthly periods. (S. II. 228, Qur'an).

واللأى يئسن من المخيفن نحاكم ان ارتبتم فعدتهن ثلاثة أشهر  
واللأى لم يحضن وأولات الأحبال أجلهن ان يحضن حلين • (٤ : ٦٥)

which means: Such of your women as have passed the age of monthly courses, for them the prescribed period, if ye have any doubt, is three months, and for those who have no courses (it is the same). For those who carry (burden within their wombs), their period is until they deliver their burdens. (S. LXV. 4, Qur'an).

<sup>234</sup>*Ibid.*, Art. 55.

<sup>235</sup>*Ibid.*, Art. 56.

والذين يتوفون منكم ويذرون أزواجا يتربصن بأنفسهن أربعة  
أشهر وعشرا . ( ٢ : ٢٢٤ )

which means: If any of you die and leave widow behind, they shall wait concerning themselves four months and ten days. (S. II. 234, Qur'ān).

**214. Q — With the aforequoted verses of the Glorious Qur'ān regarding 'idda who among must women observe 'idda? What are their respective 'idda?**

A — A widow or a divorcee in a consummated marriage must observe *'idda*. If we are to specifically enumerate them, there are five kinds of women who are to observe their respective *'idda* set opposite their respective designations, to wit:

1. Pregnant widow, whose *'idda* is extending up to the time of the delivery of her burden or four months and ten days to be counted from the date of the death of her husband whichever is farther.

2. Not pregnant widow, whose *'idda* is four months and ten days to be counted from the date of the death of her husband.

3. Pregnant divorcee, whose *'idda* is until the delivery of her burden.

4. Not pregnant divorcee, who is menstruating regularly, whose *'idda* is three menstrual periods.

5. Not pregnant divorcee, who is not at all menstruating, whose *'idda* is three months to be counted from the date of divorce.<sup>236</sup>

**215. Q — How many kinds of 'idda are there and what are they? Explain each.**

A — *'Idda* is of three kinds, namely: (1) *'idda al aqrā*; (2) *'Idda al ash-hūr*, and (3) *'Idda al haml*.<sup>237</sup> Each is explained as follows:

<sup>236</sup>Qur'ān, S. II, 228 and 234; Abū Zahra, *op. cit.*, p. 437; al Huzairī, *op. cit.*, p. 518; Alauya, *op. cit.*, p. 20.

<sup>237</sup>Badrān, *op. cit.*, p. 303.

*Idda al aqrā* is a kind of *'idda* wherein the woman is required to observe her *'idda* for menstrual courses. The eminent scholars of Islamic law give different meanings to an Arabic term "*quru*" when Allah in His Infinite Wisdom said;

والمطلقات يتربصن بأنفسهن ثلاثة قروء • (٢٢٨ : ٢)

which means: Divorced women shall wait concerning themselves for three monthly periods. Some of them said that *Quru'* is a period of purity (*tuhr*). Still some argued that it is a period of menstruation. Whatever it is, it is a period designed to determine whether or not a divorcee is pregnant.

*Idda al ash-hūr* another kind of *'idda* wherein the woman is required by the *Shari'a* to observe her *'idda* for a period of three months because her menstruation is irregular or she is not at all menstruating. There shall be *'idda* by months (*'idda Al ash-hūr*) on only two occasions, viz: (1) When the divorcee, who is observing *'idda*, is not at all menstruating or her menstruation is irregular; (2) When the widow is required to observe an *'idda* of four months and ten days *Idda al haml* is a third kind of *'idda* observed by a pregnant woman during her pregnancy and it will last until her delivery.<sup>238</sup>

**216. Q — How long are the durations of the periods to be observed in the *'idda*?**

**A —** The durations of the periods to be observed in the *'idda* are as follows:

1. In the case of dissolution of marriage by death, the widow thereof must observe an *'idda* of four months and ten days to be counted from the date of the death of her husband;

2. In the case of termination of marriage by divorce, the divorcee thereof must observe an *'idda* of

<sup>238</sup>*Ibid.*, pp. 303-310; Abū Zahra, *op. cit.*, pp. 437-441.

three monthly courses or three months if she is not anymore menstruating or her menstruation is irregular;

3. In the case of a pregnant woman, she shall observe an *'idda* for a period extending until her delivery.<sup>239</sup>

**217. Q — While the wife is observing her *'idda* for divorce, her husband, who divorces her, dies, will she be required to observe her *'idda* for death?**

A — Yes.<sup>240</sup> The *'idda* for divorce shall be converted and continued into the *'idda* for death.<sup>241</sup>

**218. Q — Suppose the wife is pregnant and her husband dies just seven days before she had delivered her burden, will she be required to observe the *'idda* for death which is four months and ten days after her delivery?**

A — There are two opinions here: 'Ali and Ibn 'Abbās said that she should observe either four months and ten days or until the delivery of her pregnancy whichever is farther. According to Iba Mas'ūd and Zaid Bin Thābit and concurred in by the *jamhūr Al fuqahā'*, the *'idda* is until her delivery even if the deceased husband is not yet interred.<sup>242</sup> Many eminent scholars and jurists take the view of the Jamhūr but I do not subscribe to it considering that the prescribed *'idda* for death has dual purposes. *Firstly*, to prevent simulation of birth and *secondly*, to give due respect to the deceased husband and his relatives. If we follow the view of the Jamhur in this particular issue, the widow in the given problem can get married two days after the death of her husband *i.e.*, if she had delivered two days after the death of her husband. While it may be true that the simulation of birth is properly prevented by the

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<sup>239</sup>Code of Muslim Personal Laws Art. 57 (1).

<sup>240</sup>*Ibid.*, Art. 57 (2).

<sup>241</sup>Badrān, *op. cit.*, p. 316.

<sup>242</sup>*Ibid.*, p. 310.

fact that the wife has just delivered her burden but how about the respect to the deceased husband and his relatives.

**219. Q — What ought not to be done to a woman who is observing her ‘idda?**

A — The following acts must not be done to a woman who is observing her ‘idda:

1. To marry her because the Glorious Qur’ān warns and I quote:

**ولا تمزجوا ملة النكاح حتى يبلغ الكتاب أجله . (٢ : ٢٢٥)**

which means: Do not aspire to enter into a contract of marriage with a woman who is observing her ‘idda until she has observed the ‘idda prescribed for her.

2. To express to her directly (*tasrihan*) the desire to marry. However, indirect expression (*ta’ridhan*) is allowed to the woman who is observing the ‘idda for death.<sup>243</sup>

**219-A Q — Is the ‘idda for divorce by flee similar to the ‘idda required for other divorces?**

A — According to the *Jamhūr*, it is like the ‘idda for other divorces. However, according to *Jabir Bin Zayd*, no ‘idda shall be required if within the period of *ilā*, she has menstruated three times. According to the opinion of *Ibn Abbas* as favorably argued by *Ibn Rashd*, the purpose of ‘idda is to determine pregnancy and if this purpose has been accomplished, then there is no ‘idda required.

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<sup>243</sup>*Ibid.*, p. 317.

## LEGAL OPINIONS RENDERED ON DIVORCE

by

OFFICE OF THE JURISCONSULT

1. **Q** – “A” and “B” husband and wife respectively gravely quarrelled each other. As a result of which “A” prevailed upon by his anger repudiated “B” by telling her you are divorced three times, will such divorce be effected?

A – No. When the anger reached a point that “A” does not know what he said, he is like an insane and so his pronouncement has no effect.<sup>244</sup>

2. **Q** – “A” and “B” husband and wife respectively. On one Monday “A” got mad at his wife and at the height of his anger he pronounced divorce without mentioning the name of his wife and without alluding her, will the divorce be taken against “A”?

A – No. If he has no intention at all to divorce her, then the pronouncement has no effect whatsoever.<sup>245</sup>

3. **Q** – “A” and “B” husband and wife respectively. “A” was intimated by the relatives of “B” urging him to divorce “B” or else he will only live that night and he cannot take his breakfast in the following morning. As a result of which he repudiated “B” and signed the document of divorce, will the divorce be effective?

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<sup>244</sup>*Ibid.*, Vol. 33, p. 109.

<sup>245</sup>*Ibid.*, Vol. 33, p. 109.

- A — No. The consensus of the Jurists: the divorce pronounced by “A” and the document of divorce signed by him under intimidation has no force and effect of divorce.<sup>246</sup>
4. Q — **“A” and “B” husband and wife respectively. “A” has not consummated the marriage with “B” is a virgin. “A” has divorced her three times during her purity and in three different occasions. In other words, the divorce turns to be major irrevocable divorce (*talāq bāin kubrā*), will there be a way for “A” to reconcile with “B”?**
- A — No. Under the aforesaid circumstances, “A” cannot anymore reconcile with “B”. It is immaterial whether or not the marriage is consummated. However, “A” can remarry “B” in a new contract of marriage after “B” is married by an intervening husband in a consummated legal marriage and the intervening husband divorces her and after the expiration of the prescribed *‘idda* for divorce. In other words, these are the *tahll̄l* justifying the three times divorcer “A” to remarry “B” the three times divorce.<sup>247</sup>
5. Q — **“A” and “B” husband and wife respectively. They are blessed with sons and daughters. “A” divorced “B” and married another wife “C”. Thereafter, “A” delegated in writing to “C” his power of repudiation (*tafwīdh*) for a period of ten years if “A” reconciled with the mother of his children. If “C” availed of the *Tafwīdh* because “A” reconciled with “B”, will the *talāq tafwīdh* effective? If it is effective, will the delegation (*tafwīdh*) be terminated if “A” divorces “C”?**
- A — If “A” reconciled with “B” and “C” repudiated “A” by virtue of the delegated power to divorce, (*tafwīdh*) the divorce is effective as if it was pronounced by the husband “A” himself. The condition precedent that “A” will not reconcile with “B” is valid. Its only purpose is

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<sup>246</sup>*Ibid.*, Vol. 33, p. 110.

<sup>247</sup>*Ibid.*, Vol. 33, p. 116.

to prevent “A” from initiating conjunction between “B” and “C”. If “A” violated it, the choice is in her hand of “C”. On the other hand, if “A” divorces “C” the delegated power to divorce (*tafwidh*) is terminated.<sup>248</sup>

- 6. Q — “A” and “B” are husband and wife, respectively, mutually loving, respecting and helping each other. The mother of “B” wants them to separate each other. “B” did not follow the wishes of her mother, has she committed wrong?**
- A — No. “B” is not obliged to follow either of her father or mother in their proposal to separate her from her husband. Her obedience to the husband is preferable over her obedience to parents as long as the husband is not ordering her to violate the ordinance of Allah.<sup>249</sup>
- 7. Q — “A” and “B” are husband and wife respectively and have children. The mother of “A” does not like “B” and she urged “A” to divorce his wife. “B”, will it be legally allowed for “A” to divorce “B” on the strength of the desire of his mother?**
- A — No. “A” is not allowed to divorced “B” on the strength of the declaration of his mother, but “A” has to respect and revere his mother. Divorcing his wife is not a part of his respect and reverence to her.<sup>250</sup>
- 8. Q — I am Ahmad, the eldest son of Adel and Muslimah. Our parents were married sometimes in 1960 according to Shari’a Law. They were blessed with five children. Our father Adel is making the life of our mother Muslimah miserable by cruel conduct that resulted not only trouble to us but also physical injuries to our mother. Has our mother the right to divorce our father?**
- A — Your mother has the right to petition for *faskh*. She has no power to divorce. On the other hand, your father

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<sup>248</sup>*Ibid.*, Vol. 33, pp. 118-119.

<sup>249</sup>*Ibid.*, Vol. 33, pp. 112-113.

<sup>250</sup>*Ibid.*, Vol. 33, p. 112.



is enjoined to respect his wife and it is the right of your mother to be fairly treated by her husband. Since your father violated such right, your mother may now petition the court to grant her a decree of *faskh*.<sup>251</sup>

**9. Q — I am Faizal Fahad, married to Anisah. One time, I have had serious argument with my wife and because of too much anger, I have pronounced divorce three times successively in one occasion and also during her purity period. As a result of which, I was gravely worried because when I pronounced the three times divorce, I had no intention to divorce her irrevocably. May I respectfully request the rendition of legal opinions on the following:**

- 1. Do I have a right to take back my wife?**
- 2. Could you enlighten me of the “*Talaq Thalath*” three pronouncement of divorce?**

**A —** Yes. You have the right to reconcile with her. The three divorces you have pronounced and you did not intent to do so are considered as one only and so revocable, hence you have still the right to take her back within the prescribed *‘idda*. The consensus of the Jurists based on the Qur’anic verses and prophetic traditions is that the three divorces made in one period of purity and on one occasion shall only constitute one repudiation. How much more that you did not intent to do so.<sup>252</sup>

**10. Q — I am Salim, husband of Salma residing at Quiapo, Manila. One day, I went to Tarlac to trade some RTW’s products. I stayed there for five months. Upon returning home, I found out another man sleeping in our room. My wife also got pregnant although I have not had a carnal relation with her before I left her. May I ask your advice? What shall I do to repudiate her?**

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<sup>251</sup>Muslim Code Article 53.

<sup>252</sup>Muslim Code Article 46.

A — You have the right repudiate her. However, to get her punished together with that man, you have to accuse her in Court for adultery. To prove it, you have to present four eyewitnesses. If your case is proved beyond reasonable doubt, Salma will be stoned to death together with that man, if he is also married, otherwise he will only suffer one hundred stripes. If you do not have witnesses to prove your case, you have to perform the prescribed acts of imprecation by swearing four times invoking the will of God before the Court that you are telling the truth nothing but the whole truth, and the fifth oath you have to assume that all curses of Allah may fall upon you, if you are not telling the truth, then your wife will also swear four times that you are not telling the truth and the fifth oath she will accept that all curses of Allah may fall upon her if you are telling truth. Thereafter, the judge will declare that you and your wife are divorced from each other and you will not anymore reconcile with one another. That is irrevocable divorce.<sup>253</sup>

**11. Q — “A” and “B” are husband and wife respectively. They have had misunderstanding while “A” was preparing for travel. “A” designated his representative “C” and instructed him to deliver to “B” her expenses. If she likes it give it to her, otherwise present to her my words of divorce. When “A” was in travel, “C” delivered to “B” the message of revocable repudiation, when “A” learned of what had transpired, he declared within himself to reconcile with “B” and so negotiated for it. When “C” knew it, he “C” declared that he has presented three divorces. Is it legally permissible for “A” to reconcile with “B” after the pronouncement of “C”?**

A — There is no dispute that “C” was delegated to present to “B” message of repudiation. In compliance therewith, “C” declared one divorce. “C” cannot declare three divorces without the authority of “A”, “A” denied having authorized “C” to declare three divorces. That being

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<sup>253</sup>Al-Mognie Leebni Coddama, Vol. 7, p. 410.

so “C” has only legally declared one divorce even he alleged that he has pronounced three divorces. Under this circumstances, the reconciliation between the spouses “A” and “B” is tenable.

**12. Q — When is divorce permissible?**

A — If all these efforts for peaceful living between the spouses miserably fail and every course tried proves to be no avail, the husband may resort to the final solution permitted by the Shari’a of Islām. In response to the bitter realities of life, when difficulties cannot be resolved except through the separate of the two parties in an honorable fashion, Islām has made the provision of divorce. Islām has permitted divorce reluctantly, neither liking nor commending it. Said the Prophet (peace be on him).

“Among lawful things, divorce is most hated by Allāh.”  
(Reported by Abu Daoud)

That a thing is lawful yet detested by Allah means that it is permissible under unavoidable circumstances, when living together becomes a torture, mutual hatred is deep-seated, and it becomes difficult for the two parties to observe the limits of Allah and to fulfil their marital responsibilities. In such a situation, separation is better, and Allah says.

But if they separate, Allah will provide for each of them out of His abundance . . . (4:130).<sup>254</sup>

**13. Q — “A” and “B” are husband and wife. “A” divorces “B” with revocable divorce. While B is observing ‘idda, “A” died as a result of plane crash. Will the idda of the divorce be continued to the ‘idda of death?**

A — Yes. The ‘idda of divorce shall be continued to the ‘Idda of death. Therefore, the wife who is divorce in a revocable is obliged to observe the ‘Idda of four months and ten days counted from the death of her husband.<sup>255</sup>

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<sup>254</sup>*Ibid.*, p. 207.

<sup>255</sup>Minhaj Al-Muslim p. 397.

**14. Q — A man swears and says to his wife: If you will get out from the house while I am out then you are divorced three times. When he returns back from journey, his wife told him: I had gone out only to bathroom because I cannot afford to take a bath inside the house. Has the man broken his oath?**

A — No. He has not for a long as his wife believes that what she has done is not violation of the oath of her husband. Above all, violation of oath of the husband will not in anyway constitute three divorces meaning irrevocable divorce.<sup>256</sup>

**15. Q — A man, who is angry, swears that he will divorce his wife three times should she enters in the house of her aunt. His wife is blessed with son. Thereafter, she has entered into the house of her aunt. This man, who swore, was told that: if his wife has delivered a baby and has entered in the house of her aunt, he has not broken his oath. Please render legal opinion.**

A — If this man, who swore, has had in his mind that except when his wife delivers a child, he has not broken his oath. However, the oath made by him remains. Should his wife deliberately enter in the house of her aunt after she delivered a baby; he has not broken his oath.<sup>257</sup>

**16. Q — A man has two wives. He has lost his money inside the house. He swears three divorces to his new wife that should this money remained not found, he will confined their domestic helper in the house and will not release her unless the money found. The maid is a suspect. What is the rule?**

A — This man has not broken his oath if his intention in intimidating the domestic helper is to ascertain

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<sup>256</sup>Fatawa Ibn Taimiah, Vol. 33, p. 229.

<sup>257</sup>Fatawa Ibn Taimiah, Vol. 33, p. 229.

whether or not she has found the money. If said domestic helper has not really found it, he has to release her. Hence, he has not broken his oath.<sup>258</sup>

**17. Q – “A” has seen his first cousin together with his wife. He swears with divorce that his cousin used to meet his wife and vice versa. If he does not divorce his wife, has he broken his oath?**

A – If “A”, who swore, is truthful in his oath he has not broken his oath. Likewise, if he affirms his truthfulness, he has not again broken his oath even though the act is hidden. This was contradicted by one of the two reliable statements of the Muslim Jurists.<sup>259</sup>

**18. Q – “A” swears with divorce that he will not marry “B”. Thereafter, “A” turned out to marry “B”. Can “A” do so?**

A – Yes, “A” can marry “B”. The sworn divorce cannot be effected should the marriage of “A” and “B” be pursued based on the majority opinions of the jurists of the past, these are the School of Thought of Al Shafi’i, Ahmad and others.<sup>260</sup>

**19. Q – “A” is married to “B” who is disliked by his mother. His mother asks him to divorce her and then he divorces her. As a result he is demoralized and swore that he will not marry anymore in their place. If, later on, he changed his mind and married thereat, is the marriage valid?**

A – Yes, the marriage of “A” either contracted in his place, where he promises not to marry, or outside thereof is valid.<sup>261</sup>

**20. Q – “A” has had serious argument with his wife “B”. As a result, “A” divorces “B” but instead of**

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<sup>258</sup>Fatawa Ibn Taimiah, Vol. 33, p. 230.

<sup>259</sup>Fatawa Ibn Taimiah, Vol. 33, p. 233.

<sup>260</sup>Fatawa Ibn Taimiah, Vol. 33, p. 233.

<sup>261</sup>Fatawa Ibn Taimiah, Vol. 33, p. 114.

**pronouncing one divorce he has pronounced three divorces which is not his true intention. What is the rule?**

A — The pronouncement of the three divorces when the intention is only one, then the pronouncement constituted only one divorce. Similarly, the husband wants to tell her wife: You are pure but he has instead told her. You are divorced. At this juncture, the pronounced divorce is not effective because it is not the intention of the husband to actually divorce his wife.<sup>262</sup>

**21. Q — A husband said: Everything in my possession becomes unlawful to me. Is his wife also becomes unlawful to him?**

A — The Muslim Jurists have different opinions on this matter. According to Malik, this is considered divorce (*talāq*) whereas, Abu Hanifa and Shafi'ī are of the opinion that the husband has to expiate for his oath. Nonetheless, Ahamad opined that the husband has to expiate for *Zihār* unless his intention is otherwise. Generally, this is not considered divorce (*talāq*). Therefore, his wife does not become unlawful to him.<sup>263</sup>

**22. Q — A man tells his wife in oath: I shall divorce you once I see a stranger man inside our house. Has he broken his oath in case the stranger man has came to his house but his wife was not there or three of them are gathered in a house other than the sworn one?**

A — No, he has not broken his oath if he has seen the stranger man in his house while his wife was not there or all of them, three of them were gathered in another house not intended in the oath.<sup>264</sup>

**23. Q — A man accused his wife of stealing his money. His wife said: I swear by Allah (s.w.t.) I have not**

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<sup>262</sup>Fatawa Ibn Taimiah, Vol. 34, p. 114.

<sup>263</sup>Fatawa Ibn Taimiah, Vol. 33, p. 117.

<sup>264</sup>Fatawa Ibn Taimiah, Vol. 33, p. 162.

**taken it. He said to her: If you will not bring the money I should divorce you three times. What will happen to his oath?**

A — If it will appear that the wife has not actually taken the money, the husband has not broken his oath according to the two reliable statements of the Muslim Jurists because the oath performed was disallowed and his intention thereof is just to let her bring the money if ever she is the one who has taken it.<sup>265</sup>

**24. Q — A man who has been away from home for three and half years said to his wife over the telephone. “I divorce you”, three times. He followed with a letter saying the same thing, so that his family can complete the legal requirements. Shortly afterward, he realized that there were a number of misunderstandings that led him and his wife to adopt their respective attitudes. Both regretted the dispute and wanted to make amends. Should this divorce be considered as a single or a triple divorce? If it is a triple divorce, is it possible to make arrangements with another man to marry this woman and divorce her after one day so that she can remarry her first husband?**

A — All the details you have mentioned in your letter do not alter the fact that a divorce has taken place between this man and his wife. What worries me in the whole situation is the fact that this man has not seen his wife for three and a half years and yet he wants to control every step she takes. Such a life could be unbearable. The woman has been practically a servant in the home of her husband’s parents. She has been serving them and his brothers and sisters. She has accepted all that, which shows how kind and good-natured she is. When he was misinformed about a particular situation, he jumped to wrong conclusions. For example, he says that had he realized she was speaking to him on the phone from his parents’ home,

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<sup>265</sup>Fatawa Ibn Taimiah, Vol. 33, p. 163.

not from her family's home, he would not have divorced her. How pretty? To him, the difference between maintaining his marriage and breaking it hinges on whether his wife is with his parents or not. What about his obligations towards his wife? Has he really looked after her? Has he really provided her with a comfortable living?

What care has he taken of her, when he is living abroad for so many years, without even seeing her? May I remind him of the fact that one of the three recommendations the Prophet kept repeating on his deathbed is his reminder to his followers to "take good care of women". How observant has this man been of the Prophet's recommendations?

The divorce this man has uttered is valid. So, his wife is divorced. Many people will tell him that it is a triple divorce. This is the view of many scholars. However, the more valid view which is supported by much weightier evidence is that this type of divorce counts as a single divorce. This means that if it is the first or the second in the life of couple, it is revocable. The marriage can be reinstated with a new marriage contract if the woman has completed her waiting period and without need for such a contract if the woman is still in her waiting period. In either case, two witnesses to the reinstatement of the marriage are needed.

A woman who has been divorced three times may not be reunited in marriage with her husband unless she has, in her normal course of life, married another man. This marriage must be intended to last like any other marriage.

The woman and her new husband should have a firm resolution that they intend their marriage to continue until it is terminated by death. However, should the new marriage be unsuccessful, and a divorce takes place in the normal course of things, then the woman may remarry her first husband, provided that this time both of them are sure that the new marriage can be successful.



There has been a tendency in some communities to try to go around this condition by making some arrangements but which is forbidden. Both the two men making the arrangements have been cursed by the Prophet. Besides, the marriage is not valid, since it is intended as a temporary one.

As a result, it does not make the woman lawful to be married to her first husband, because the condition for such a marriage to take place has not been fulfilled. Indeed, the Prophet describes the man who is hired or brought in to go through this formality with the woman as a “borrowed bull”. That is sufficient to make a whole thing repugnant.

**25. Q — When a divorce permissible?**

A — If all these efforts fail and every course tried proves to be of no avail, the husband may resort to the final solution permitted by the Shari‘a of Islām. In response to the bitter realities of life, when difficulties cannot be resolved except through the separation of the two parties in an honorable fashion, Islam has made the provision of divorce. Islam has permitted divorce reluctantly, neither liking nor commending it. Said the Prophet (peace be on him).

“Among lawful things, divorce is most hated by Allāh.”

That a thing is lawful yet detested by Allāh means that it is permissible under unavoidable circumstances, when living together becomes a torture, mutual hatred is deep-seated, and it becomes difficult for the two parties to observe the limits of Allah and to fulfill their marital responsibilities. In such a situation separation is better, and Allah Ta’ala says,

But if they separate, Allāh will provide for each of them out of his abundance . . . (4:130).<sup>266</sup>

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<sup>266</sup>Al Quradawi, Yusuf. *The Lawful and the Prohibited in Man*. International Islamic Federation of Student Registration.

**26. Q — Does Islām limit the regulation of divorce?**

- A — Yes. The Islamic Shari‘a has placed a number of obstacles in the way of divorce in order to confine it within the narrowest possible compass. Divorce without lawful necessity and without first exhausting all the other means mentioned earlier of resolving the conflict is unlawful and is prohibited in Islam. Some jurists maintain, it is injurious to both husband and wife, unnecessarily damaging the interests of the two, which, like the wasting of property, is *haram*.

“Do not harm yourself or others,” the Prophet (peace be on him) has instructed us.

People who divorce their spouses and marry others in order to enjoy a variety of sexual partners are liked neither by Allah nor by His Messenger (peace be on him), the Prophet (peace be on him) called them “the tasters,” saying,

“I do not like the tasters, men and women,”

and,

“Allāh does not like the tasters, men and woman.” Said ‘Abdullāh bin Abbās, “Divorce is (only) in the case of necessity.”<sup>267</sup>

**27. Q — Why divorcing during menstruation is prohibited?**

- A — When divorce becomes necessity, it is not permissible for the Muslim to implement it any time he pleases; he must wait for a suitable time. According to the Shari‘a, this suitable time is when the woman is clean following her menstrual period or the period of puerperal discharge following childbirth and before her husband has resumed sexual relations with her, or when she is pregnant and her husband is aware of her pregnancy.

The reason for prohibiting divorce during menstruation or the period of puerperal discharge is that,

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<sup>267</sup>*Ibid.*, p. 212.

since during such periods sexual intercourse is *haram*, the idea of divorce may come to a man's mind because of sexual frustration and nervous tension. He is therefore advised to wait until his wife is clean and to divorce her then, if he is intent on divorce, before the resumption of marital relations.

Just as divorce during menstruation is *haram*, it is likewise *haram* between menstruation periods (*i.e.*, "the period of purity") if the husband has had intercourse with his wife following the termination of her previous period. Because it is possible that she may have become pregnant from this union, the husband may change his mind concerning divorce when he knows that his wife is carrying a child, desiring to stay married to her for the sake of the embryo in her womb. However, when the wife is in the period of purity but he has not had intercourse with her following the termination of her menses, or when she is pregnant and he is aware of it, he will be able to ascertain that his intention to divorce her is the result of deep-seated antipathy, and accordingly is permitted to carry through with the divorce. In the Sahih of al-Bukhari, it is transmitted that 'Abdullāh bin Umār divorced his wife during her menstrual period. When Umar mentioned the matter to the Messenger of Allāh (peace be on him) he became angry, saying, He must take her back. If he still wishes to divorce her he may do so when she is clean of the menstrual discharge before having intercourse with her, for that is the period of waiting which Allāh has prescribed for divorce, referring to the ayah, 'O Prophet, when you (men) divorce) women, divorce them during the prescribed periods.' (65:1)

Another version of this *hadith* reads,

Command him to take her back and then divorce her when she is clean from the menstrual discharge or (otherwise) is pregnant.

A question now remains: if a person does divorce his wife during these prohibited periods, does the divorce become effective or not? The prevailing opinion is that

it does become effective, although the husband will be considered sinful. However, some jurists hold that, as Allah did not legislate, it does not become effective, and whatever is not legal cannot be correct nor enforced. Abū Daud, on sound authority, has transmitted that when ‘Abdullah bin Umar was asked, “What would you say if a man were to divorce his wife during menstruation?” he related his own story of divorcing his wife during her period and the Prophet’s commanding him to take her back, disregarding his pronouncement of divorce.<sup>268</sup>

**28. Q — Why taking an Oath of divorce prohibited?**

A — It is not permissible for the Muslim to take an oath of divorce, vowing that if a particular event does not occur his wife will be divorced, or to threaten her by saying that if she does this or that particular thing she will be divorced. In Islām an oath may be expressed only in one specific manner. That is, in the name of Allāh alone; apart from this, no other form of oath-taking is permitted. The Prophet (peace be on him) said,

“Anyone who swear by (anything) other than Allah has committed shirk,”

and,

“Whoever wants to take an oath should take it in the name of Allah or keep silent.”<sup>269</sup>

**29. Q — Where the divorcee resides during the waiting period (*‘idda*)?**

A — The Islamic Shari‘a requires that the woman remains in her home, that is to say, her husband’s house, for the duration of her *‘iddah* (waiting period). It is not permissible for her to move from the house, as it is likewise not permissible for her husband to evict her without a just cause. This requirement leaves the way open, during the *‘iddah* following a first or second

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<sup>268</sup>*Ibid.*, pp. 213-214.

<sup>269</sup>*Ibid.*, p. 214.

pronouncement of divorce, for the husband to revert to his wife without the requirement of marriage. Her presence in the same house with him makes it quite probable that the mutual sympathy and love between them may rekindled, while if she is pregnant the passing of months will make her pregnancy obvious, which may be a further inducement to him to change his mind. In any case, ample time is at their disposal to reconsider the whole situation. With the healing effect of time, feelings of antipathy may give place to affection and reconciliation, and the revitalization of their love may occur.

. . . and fear Allāh, your Lord. Do not turn them out of their houses, nor shall they leave (of their own accord) unless they commit some clear immorality; and these are the limits set by Allāh. And whoever transgresses Allāh's limits indeed wrongs his own soul. Thou knowest not; it may be that Allāh. Will afterwards bring some new thing to pass. (65:1)

If then they must separate, it should be done with dignity and kindness, without mutual abuse, injury, recrimination, or infringement of rights. Says Allah Ta'ala:

. . . Either retain them in kindness or part with them in kindness . . . (65:2)

. . . Then (either) retain her in honor or release her with kindness . . . (2:229)

For divorced women a provision (shall be made) in kindness, a kindness, a duty for those who are conscious of Allāh. (2:241)<sup>270</sup>

**30. Q — Has the divorce the freedom to remarry?**

A — After the expiration of the divorced women's *'iddah*, neither her ex-husband, guardian, nor anyone else can prevent her from marrying anyone she chooses. As long as she and the man who proposes to her follow the

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<sup>270</sup>*Ibid.*, pp. 215-216.

procedure required by the Shari'ah, no one has the right to interfere. What some men of today do in attempting to prevent their ex-wives from remarrying intimidating them and their families, is in fact something pertaining to jahiliyyah; likewise, what some families guardians of divorced women do to prevent them returning to their husbands when they want to be reconciled, as indeed "Peace is better," (4:128) is also of jahiliyyah Allah Ta'ala says:

And when you divorce women and they complete their term (*'iddah*), do not prevent them from marrying their (former) husbands if they agree among themselves in an honorable manner. This is to instruct those among you who believe in Allah and the last Day. That is more virtuous and pure for you; and Allah knows and you do not know. (2:232)<sup>271</sup>

**31. Q — Has the wife the right to demand divorce?**

A — The woman who cannot bear to live with her husband has the right to free herself from the marriage bond by returning to her husband the *mahr* (required marriage gift) and gifts he has given her, or more or less than that according to their mutual agreement. It is, however, preferable that he should not ask for more than he has given her. Allah Ta'ala says:

. . . And if you (the judges) fear that the two may not be able to keep to the limits ordained by Allāh, there is no blame on either of them if she redeems herself (from the marriage tie by returning all or part of the *mahr*) . . . (2:229)

The wife of Thabit bin Qais came to the Prophet (peace be on him) and said, "O Messenger of Allah, I do not approach Thabit bin Qais in respect of character and religion, but I do not want to be guilty of showing anger to him." The Prophet (peace be on him) asked her about what she had received from him. She replied, "A garden." He asked, "Will you give him back his

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<sup>271</sup>*Ibid.*, pp. 218.

garden?” “Yes,” she said. The Prophet (peace be on him) then told Thabit,

“Accept the garden and make one declaration of divorce.”

It is not permissible for woman to seek divorce from her husband unless she has borne ill-treatment from him or unless she has an acceptable reason which requires their separation. Said the Prophet (peace be on him),

If any woman asks her husband for a divorce without some strong reason, the fragrance of the Garden will be forbidden to her.<sup>272</sup>

**32. Q — “A” and “B” husband and wife respectively. “A” had divorced “B” thrice. “A” has not paid the dower of “B” and the latter is demanding it from “A”, who is now very poor. Has “B” the right of demanding it from “A”?**

A — “B” has the right to demand it from “A”, but for as long as “A” is poor, it is not justified for “B” to be demanding it until his finance improves. If “B” will have evidence to show that his finance improves, the court will listen to her. If it is not known that “A” has the wealth, “A’s” denial must be supported with oath.<sup>273</sup>

**33. Q — A man has two wives. He used to prefer one over the other in providing them daily maintenance and all other rights. What is required of him?**

A — The husband must deal with his wives equally without preferring anyone of them over the other in terms of distribution of any kind. The Prophet (peace be on him) said: (Whoever prefers one of his wives by giving her more than the other will appear before the Day of Judgment with different size of shoulders). Hence, if the husband cannot treat them equally: he should either try his best to do justice between them or divorce one of them.<sup>274</sup>

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<sup>272</sup>*Ibid.*, pp. 218-219.

<sup>273</sup>*Ibid.*, Vol. 32, p. 204.

<sup>274</sup>Fatawa ibn Taimiah, Vol. 32, p. 270-271.

34. **Q** — **A and B are husband and wife respectively. B demanded divorce from A on the ground that she is no longer in love with him and she does not want to be guilty of showing anger to him as it is prohibited by Muslim Law and signified her willingness to return to him the entire dower she received from him. Will B have the right to petition the court for divorce?**
- A — Yes, “B” has the right to petition the court for divorce (Khul’) after having offered to return or renounce her dower or to pay any other lawful consideration for her release (khul’) from the marriage bond.<sup>275</sup>
35. **Q** — **“A” and “B” are husband and wife respectively. Both of them are Buddhist. “B” embraces Islam religion. Can “B” petition for divorce by *faskh*?**
- A — Yes, the wife can petition the Court for divorce by faskh on the ground of difference of religion.<sup>276</sup>

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<sup>275</sup>Muslim Code, Art. 50

<sup>276</sup>Minhaj al Muslim, p. 383.



## CHAPTER FOUR

### PATERNITY AND FILIATION

**220. Q — Why are paternity and filiation significant?**

A — Paternity and filiation are significant because both the parents and the children are enjoined by Allah to recognize one another. Allāh prohibits simulation of birth and relationship. The child is prohibited to adopt another man as his father in lieu of his real father. The father or the mother is likewise prohibited to adopt a child as his or her child when he or she knows that the child does not belong to him or her. Adoption is completely prohibited in Islām.

The legitimacy of a child is his right. It will give rise to his right to custody and guardianship, fosterage, support and education, et cetera.<sup>277</sup>

**221. Q — What are the three basic principles upon which legitimacy shall be based?**

A — The three basic principles upon which legitimacy shall be based are:

1. That the shortest period of pregnancy is six months. This principle is premised upon the verse of the Glorious Qur'ān herein quoted:

وجمله وفصله ثلاثون شهرا • (٤٦ : ١٥)

In the just quoted verse, it is explicit therein that Allāh made the period of pregnancy and of fosterage for thirty months. In another related verse of the Glorious Qur'ān also herein quoted:

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<sup>277</sup>Abū Zahra, *op. cit.*, p. 451.

وفصاله في عامين . ( ٢١ : ١٤ )

He made the period of fosterage for two years or twenty-four months. Consequently, only six month period out of thirty months is left for pregnancy, hence, the shortest period of pregnancy is six months.

With regard to the longest period of pregnancy, there exists a conflict of opinions among eminent scholars and jurists of Islamic law. According to Hanafī, two years, Shāfi'ī four years, Mālik five years, Dāud Al Zahiri nine months, Al Laith three years and Muhammad Bin Al Hukm one year in a lunar calendar.

2. That consummation of marriage is a cause of legitimacy of a child even though the marriage is *fāsid*. However, the authorities are unanimous that a valid marriage is a cause of legitimacy provided that the child is born during the period of the said marriage. There exists a conflict of opinions among them when the marriage is valid but the consummation is impossible. According to Abū Hanīfa, the validity of marriage alone is strong enough to establish legitimacy of the child even if the spouses thereof have not met whatsoever. The schools of Hanbalī, Shāfi'ī and Mālik maintained that a child born in a valid marriage even during the *'idda* is legitimate provided that consummation of the said marriage is possible between the spouses thereof.

3. That fornication or adultery shall not establish legitimacy.<sup>278</sup>

## 222. Q — How is legitimacy established?

A — Legitimacy of filiation is established by evidence of valid marriage between the father and the mother at the time of the conception of the child.<sup>279</sup> This theory follows the three basic principles mentioned in the immediately preceding question and answer.

<sup>278</sup>*Ibid.*, pp. 451-454.

<sup>279</sup>Code of Muslim Personal Laws Art. 58.

**223. Q — Who are presumed to be legitimate children?**

A — The following are presumed to be legitimate children:

1. Children conceived in lawful wedlock shall be presumed to be legitimate;
2. Children born after six months following the consummation of marriage or within two years after the dissolution of the marriage shall be presumed to be legitimate.<sup>280</sup>

This particular provision of the Code of Muslim Personal Laws of the Philippines actually follows the view of Imam Abū Hanīfa as far as the longest period of pregnancy is concerned which is two years as mentioned above. To me, the most practical among the opinions regarding the longest period of pregnancy is the view of Imām Muhammad Bin Al Hukm which is one year in a lunar calendar.

**224. Q — How can presumption of legitimacy be impugned?**

A — The presumption of legitimacy may be impugned as follows:

1. As far as the presumption of legitimacy of children conceived in lawful wedlock is concerned, whoever claims illegitimacy of or impugns such filiation must prove his allegation.
2. As far as the presumption of legitimacy of the children born after six months following the consummation of marriage or within two years after the dissolution of the marriage is concerned, no evidence shall be admitted against this presumption other than that of the physical impossibility of access between the parents at or about the time of the conception of the child.<sup>281</sup>

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<sup>280</sup>*Ibid.*, Art. 59 (1 & 2).

<sup>281</sup>*Ibid.*, Art. 59 (1 & 2).

**225. Q — What is the rule on children of subsequent marriage?**

A — The rule enunciated by Article 60 of the Code of Muslim Personal Laws of the Philippines is: Should the marriage be dissolved and the wife contracts another marriage after the expiration of her *'idda*, the child born within six months from the dissolution of the prior marriage shall be presumed to have been conceived during the former marriage, and if born thereafter, during the latter.

The aforequoted provision of the Code follows the theory that the shortest period of pregnancy of a woman is six months.

**226. Q — Suppose a divorce, after the expiration of her *'idda*, contracted subsequent marriage and within six months after the said divorce she beget a child, whose child is he?**

A — He is the child of the prior marriage considering that he is born within six months from the time of divorce and he is therefore conceived during the duration of the prior marriage and the divorcee who contracted the subsequent marriage must have been pregnant at the time of the celebration of the subsequent marriage. If the child born is conceived during the subsequent marriage, he would have been born after six months from the time the subsequent marriage is consummated because the shortest period of pregnancy is six months.

**227. Q — Suppose a divorcee begets a child within two years after the dissolution of the marriage, what is the status of the child?**

A — If we follow the school of Hanafī that the longest period of pregnancy is two years, such a child is presumed to be legitimate because he is born within the two years from the dissolution of the marriage. If, on the other hand, we follow another school of thought, the answer will vary. For purposes of clarity, please refer to question and answer No. 221, *supra*.

**228. Q — In a given question immediately preceding, suppose the child is born after two years from the dissolution of the marriage, what is the status of the child? Why?**

A — If we follow the school of Hanafī that the longest period of pregnancy of a woman is two years, such child is illegitimate because he is born after the two years from the dissolution of the marriage and he is most probably conceived after the dissolution of the marriage. If we follow, however, the other schools of thought, the answer will change. Please refer to the three basic principles upon which legitimacy is based which are discussed in question and answer No. 221, *supra*.

**229. Q — Suppose a divorcee, immediately after the expiration of her ‘idda, contracted a subsequent marriage and begot a child within the two years from the dissolution of the prior marriage and after six months from the consummation of the subsequent marriage, what is the status of child?**

A — In this given question, both husbands in the prior and in the subsequent marriages may claim legitimacy of the child for and in their respective favors. The husband in the prior marriage may argue that the child was conceived during his marital relation with the mother considering that the child was born within the two years from the dissolution of his marriage with her and the longest period of pregnancy is two years according to the school of Hanafī. On the other hand, the husband in the subsequent marriage may likewise say that the child was conceived during his marriage with the mother because he was born after six months from the consummation of the subsequent marriage and it is undisputed that the shortest period of pregnancy of a woman is six months.

The arguments of both the prior and the subsequent husbands are anchored on legal and pivotal points. However, it is my humble opinion that the child is presumed to have been conceived during the subsequent marriage because if the child was conceived dur-

ing the prior marriage, the mother must have been known to be pregnant when she was observing her *'idda*. Precisely, the purpose in requiring the divorcee or the widow to observe the prescribed *'idda* is to ascertain whether or not there exists in her womb a burden. Besides, the wife must have notified the former husband or his heirs of her pregnancy in accordance with Art. 61 of the Code.

### Section 1. Rights of Legitimate Children

**230. Q — What are the rights of a legitimate child as provided for in the Code of Muslim Personal Laws of the Philippines?**

A — Article 62 of the aforesaid Code states that a legitimate child shall have the right:

1. To bear the surnames of the father and of the mother;

2. To receive support from the father or, in his default, from his heirs in accordance with Articles 65 and 68; and

3. To share in the legitime (*furūdḥ*) and other successional right which this Code recognizes in his favor.

**231. Q — What are the other rights of a legitimate child other than those mentioned in the immediately preceding number?**

A — A legitimate child shall have the established relation to his parents (*al nasab*) and in view thereof he is entitled to the following rights:

1. Rights to fosterage (*al-irdhā*);

2. Rights to care and custody (*al-hadhāna*);

3. Rights to support (*al-infā-q*).<sup>282</sup>

**a) Fosterage (Al Irdhā')**

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<sup>282</sup>Badrān, *op. cit.*, p. 336, Abū Zahra, *op. cit.*, p. 536.

**232. Q — Who shall be primarily responsible for the fosterage of a child?**

- A — Actually, it is the father who is primarily responsible for the fosterage of his child, if the child has no wealth of his own. The mother cannot be forced to breastfeed her child unless there could be no one available to breastfeed him. In this regard, the Glorious Qur'ān states:

لا تضار والدة بولدها . ( ٢ : ٢٣٣ )

which means: The mother should not be prejudiced because of her kid.

Another verse of the Glorious Qur'ān in relation thereto states:

فإن أرضعن لكم فلتؤمنن أجرهن . ( ٦٥ : ٦ )

which means: If they (mothers) breastfed (child) for you (fathers) give them their salary. In other words, the salary or the expenses for the fosterage of a child is a responsibility of the father and not the mother. Another related verse of the Glorious Qur'ān states:

وعلى المولود له رزقهن وكسوتهن بالمعروف  
( ٢ : ٢٣٣ )

This verse just quoted above means that the support of the breastfeeding mothers is a responsibility of the fathers.<sup>283</sup>

**233. Q — In what way may the mother be prevailed upon to breastfeed her child?**

- A — The mother may be prevailed upon to breastfeed her child in three instances as follows:

1. If the child and the father have no means to pay a third person to breastfeed him or no one is willing to breastfeed him for free;

<sup>283</sup>*Ibid.*, p. 336.

2. If the father has not found any other person to breastfeed him; or

3. If the child does not like the breast of any woman other than that of the mother.<sup>284</sup>

**234. Q — Suppose the mother refuses, to continue breastfeeding the child despite the occurrence of any one of the three instances mentioned in the immediately preceding question and answer, what can the father do?**

A — The father is obliged to engage the services of another to breastfeed the child.<sup>285</sup>

**235. Q — Suppose the mother breastfeed the child while the marriage bond with the father of the child is not severed, will she be entitled to salary? Why?**

A — No. She will not be entitled to salary because she is already entitled with support considering that the marriage bond with the child's father is still intact and if she will be paid with the salary for the fosterage, she will be doubly, paid.<sup>286</sup>

**236. Q — Suppose the breastfeeding mother is a divorcee and her 'idda has already expired and she is no longer receiving the support, will she be entitled to salary? Why?**

A — Yes. She will be entitled to salary for breastfeeding her child because the marriage bond is already severed upon the expiration of the prescribed 'idda and so she is no longer entitled to support. However, there are scholars who maintained that she is not still entitled into.<sup>287</sup> The latter view is untenable.

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<sup>284</sup>*Ibid.*, pp. 336-337; Al Ahkām Al Shar'ia fī Al Ahwāl Al Shakhsiya 'alā Mathhab Al Imām Abi Hanīfa, p. 112.

<sup>285</sup>*Ibid.*, p. 112.

<sup>286</sup>*Ibid.*, p. 112; *Ibid.*, p. 337.

<sup>287</sup>*Ibid.*, p. 112; *Ibid.*, p. 337.



**237. Q — Can the father hire the services of another woman to breastfeed the child over and above the desire of the child’s mother, who is a divorcee in *talāq bā’in*, to do the breastfeeding?**

A — No. The father cannot engage the services of another woman to breastfeed the child over and above the desire of the child’s mother to do the work because the mother has a better right to breastfeed her child even after the expiration of her *‘idda* in any kind of divorce provided that she is not demanding a salary bigger than the third person is demanding.<sup>288</sup>

**238. Q — Suppose the mother, who is a divorcee is a *talāq bā’in*, is demanding bigger salary than a third person or the third person is offering her services for free to breastfeed the child, can the father be forced to accommodate the child’s mother and pay her a bigger salary? Why?**

A — No. The child’s father cannot be forced to accommodate the child’s mother who is demanding bigger salary for breastfeeding her child because it will be prejudicial to him and in violation of the verse of the Glorious Qur’ān herein below quoted:

لا تضار والدة بولدها ولا مولود له بولده . ( ٢ : ٢٢٢ )

which means: The mother should not be prejudiced because of her child and the father should not also be prejudiced because of his child.<sup>289</sup> In other words, while the mother cannot be forced to breastfeed her child, the father cannot likewise be compelled to spend extravagantly in the execution of his responsibility for the fosterage of the child just to accommodate a very demanding mother.

**239. Q — What is the prescribed period for fosterage?**

A — The unanimous opinion of the eminent scholars is that the prescribed period for fosterage is two years

<sup>288</sup>*Ibid.*, pp. 337-338.

<sup>289</sup>*Ibid.*, p. 338.

on the ground that the verse of the Glorious Qur'an states:

والوالدات يرضعن أولادهن حولين كاملين لمن أراد  
ان يتم الرضاعة وعلى المولود له رزقهن وكسوتهن  
بالمعروف . ( ٢ : ٢٣٣ )

which means: The mothers shall give suck to their offsprings for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. (S. II. 233, Qur'ān).<sup>290</sup>

**240. Q — Will the difference in religion prevent the parents' support? Explain.**

A — No. If the child embraces Islam and the father remains disbeliever, the latter is not relieved of his responsibility to support the former on the ground that the verse of the Glorious Qur'ān states:

وعلى المولود له رزقهن وكسوتهن بالمعروف . ( ٢ : ٢٣٣ )

The English translation of the verse is clear in the immediately preceding number. It may be noted that the verse does not distinguish whether or not the child or the father is a believer. Aside from that, the child is a part of the father and the responsibility of the latter to support the former is not to be affected by the change of religious affiliation of either of them. It carries with it the father's responsibility to support his child, he being a part of his.<sup>291</sup>

## Section 2. Acknowledgment of Children

**241. Q — What is the effect of an acknowledgment of a child by the father?**

A — Acknowledgment (*iqrār*) of a child by the father shall establish paternity and confer upon each the right to

<sup>290</sup>*Ibid.*, p. 338.

<sup>291</sup>*Ibid.*, p. 338.

inherit from the other exclusively provided that the following conditions are complied with:

1. The acknowledgment is manifested by the father's acceptance in public that he is the father of the child who does not impugn it, if the latter is of age otherwise the compliance of the other requirements will suffice;

2. The relation does not appear impossible by reason of disparity in age;<sup>292</sup>

3. The child is not publicly known to be the child of another person other than the acknowledging father.<sup>293</sup>

### Section 3. Adoption

#### 242. Q — Is there adoption in *Sharī'a*?

A — No. No adoption in any form shall confer upon any person the status and rights of a legitimate child.<sup>294</sup>

#### b) Care and Custody (Al Hadhāna)

#### 243. Q — This is the second right of a legitimate child, by the way, how many and what are the stages of care, custody and guardianship that the child is due to undergo?

A — There are three stages of care, custody and guardianship that a child is due to undergo and they are the following:

1. Care and custody (*al hadhāna*);
2. Guardianship for his person; and
3. Guardianship for his property.<sup>295</sup>

<sup>292</sup>Code of Muslim Personal Laws, Art. 63.; Badrān, *op. cit.*, p. 331.

<sup>293</sup>*Ibid.*, p. 331.

<sup>294</sup>*Ibid.*, Art. 64.

<sup>295</sup>Abū Zahra, *op. cit.*, p. 474.

**244. Q — Who among the children must be under care and custody?**

A — For the males, those who are below seven years of age and for the females, those who are below nine years old must be under care and custody.<sup>296</sup>

**245. Q — Who has the right of care and custody (*al hadhāna*)?**

A — There are three opinions on the issue as follows:

1. It is a right of a custodian or a guardian and she can therefore abandon it at her pleasure and when she ceases to do it she cannot be compelled to resume it. This is the opinion of Imām Shāfi'ī and Imām Ahmad and Al Thaur and Imām Mālik.

2. It is the right of a child and so the mother can be prevailed upon to take care of him. This is the view adopted by some of the eminent scholars of the school of Imām Abū Hanīfa.

3. It is the mutual right of both the custodian and the child and so the mother can be prevailed upon take care and custody of the child in the absence of reasonable grounds for her refusal. Reasonable ground for her refusal may arise, for example, when she is married with a husband who is not related to the ward within the prohibited degrees in marriage. This is the correct view of the school of Imām Abū Hanīfa.<sup>297</sup>

It is our humble opinion that the third view is well taken considering that the child may demand that he be taken under the care and custody of his mother because he did not petition her to give birth of him. He is born to this world at her own pleasure and, of course, with the mercy of Allāh and so she must take care of him . The mother may likewise demand to take care and custody of her child as he is the fruit of her heart.

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<sup>296</sup>*Ibid.*, p. 484.

<sup>297</sup>*Ibid.*, p. 482.

**246. Q — Who among the relatives of the child have preference in the care and custody (*al hadhāna*) of the child?**

A — The females are preferred over male relatives for the care and custody of children.<sup>298</sup>

**247. Q — What is the order of preference of female relatives who will assume care and custody of a child?**

A — With minor dissenting opinions set opposite a given number, the order of preference of female relatives who will assume care and custody of a child is as follows:

1. Mother;
2. Mother of mother and so on in the ascend-ing line. In the school of Imām Ahmad, mother of father is preferred over mother of mother.
3. Mother of father. In the school of Zufar, full blood sister or aunt is preferred;
4. Germane sisters;
5. Uterine sisters;
6. Consanguine sisters. It is said that aunt is preferred over consanguine sister. It is more tenable to have consanguine sister ahead of aunt because the former is a daughter of the father and the latter is a daughter of the grandfather.
7. Daughter of germane sister;
8. Daughter of uterine sister;
9. Daughter of consanguine sister;
10. Germane aunts in mother's side;
11. Uterine aunts in mother's side;
12. Consanguine aunts in mother's side;
13. Germane aunts in father's side;
14. Uterine aunts in father's side;

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<sup>298</sup>*Ibid.*, p. 474.

15. Consanguine aunts in father's side;
16. Aunts of mother;
17. Aunts of father.<sup>299</sup>

**248. Q — Suppose the aforementioned relatives in the immediately preceding question and answer are not available, who will take charge of *Al Hadhāna*?**

A — In the absence of the relatives mentioned in the immediately preceding question and answer, the *al hadhāna* shall devolve upon the father and the nearest paternal relatives in the following order:

1. Father;
2. Father of father and so on in the ascending lines.
3. Germane brother,
4. Consanguine brother;
5. Son of germane brother,
6. Son of consanguine brother;
7. Children of germane and consanguine brothers;
8. Germane uncle;
9. Consanguine uncle;
10. Children of uncles, beginning with the son of germane uncle and then the son of consanguine uncle.

Please note that females shall not be under the care and custody of a male relative who is not related to them within the prohibited degrees in marriage. Males shall not likewise be under the care and custody of female relatives who are not related to them within the prohibited degrees in marriage.<sup>300</sup>

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<sup>299</sup>*Ibid.*, p. 475; Badrān, *op. cit.*, p. 341.

<sup>300</sup>*Ibid.*, p. 478; *Ibid.*, p. 341.

**249. Q — In the absence of the relatives mentioned in the immediately preceding question and answer, who will be the next in rank to assume *al hadhāna*?**

A — In the absence of the relatives mentioned in the immediately preceding question and answer, *al hadhāna* shall be assumed by the following relatives:

1. Uterine brother;
2. Son of uterine brother;
3. Uterine uncle;
4. Germane uncle;
5. Consanguine uncle.

If two or more of the relatives entitled to assume care and custody of the minor are in the same degrees of relationship to him, like brothers and uncles, the most dedicated among them for the good and welfare of the minor shall be preferred and if they are equal in such aspect, the elder of them shall be chosen.<sup>301</sup>

**250. Q — Are the eminent jurists unanimously agreed on the order stated in the immediately preceding question and answer? Explain.**

A — No. They are not unanimously agreed on such an order. Some of them argued that in the absence of the relatives enumerated in question and answer No. 248 *supra*, the following relatives shall instead take the *al hadhāna*:

1. Maternal grandfather;
2. Uterine brother;
3. Sons of germane sisters;
4. Sons of consanguine sisters;
5. Sons of uterine brother;
6. Sons of uterine sister;
7. Uterine uncle;

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<sup>301</sup>*Ibid.*, pp. 341-342.

8. Germane uncle;
9. Consanguine uncle.<sup>302</sup>

Please note the difference between the order mentioned in this number and the other order mentioned in the number immediately preceding. The order in this number is enlarged adding to the order mentioned in the immediately preceding number the maternal grandfather, the sons of germane sisters, the sons of consanguine sisters and the sons of uterine sister as Nos. 1, 3, 4 and 6, respectively, lowering the uterine brother to No. 2, the sons of uterine brother to No. 5 and the uterine uncle, the germane uncle and the consanguine uncle to Nos. 7, 8 and 9, respectively. Please resolve the difference in favor of the benefit of the ward.

**251. Q — What are the qualifications of a female custodian or guardian?**

A — The qualifications of a female guardian are:

1. She must be free, of legal age and of sound mind;
2. She can be trusted with the minor in the sense that she is not always going out of her house;
3. She must not be an apostate;
4. She should not keep the ward in a place where he or she shall be staying with a person who is not related to him or her within the prohibited degrees in marriage;
5. She can tackle the affairs of the guardianship;
6. She must not be married to a husband who is not related to the ward within the prohibited degrees in marriage.<sup>303</sup>

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<sup>302</sup>*Ibid.*, p. 479.

<sup>303</sup>*Ibid.*, pp. 475-476; *Ibid.*, pp. 339-340.



It is observed that it is urged that the wards should not be kept in a place where they shall be living with any person who is not related to them within the prohibited degrees in marriage because it is very possible that such person will not be kind to them and so they will be consequently living in an atmosphere of horror which, in one way or the other, will have bad effects in their lives and characters.

**252. Q — Is it necessary that the female guardian must have the same religion with the ward? Give an exception, if there is any.**

A — No. It is not necessary that the female guardian must have the same religion with the ward unless the difference in religion is detrimental to the faith of the ward.<sup>304</sup>

The unity in religion is not a requirement for guardianship when the guardian is a female relative because the bases of the guardianship thereof is the guardian's compassion, kindness and great concern over the ward's welfare and this cannot be affected by the difference in religion. This is similar to the case of a christian wife who is divorced by her Muslim husband and so she can remain and serve as a guardian of their child who is a Muslim following his father's religion unless the difference in religion is prejudicial to the faith of the ward.

It will be different if the guardian is a male, as you will see it in the next immediately succeeding number, because the unity in religion is a requirement for guardianship. The reason behind it is that the rights of males to the guardianship are based on the right to inheritance.

**253. Q — What are the qualifications of a male custodian or guardian?**

A — The qualifications of a male guardian are:

1. He must be free, of sound mind, of legal age and capable of nursing and educating the ward;

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<sup>304</sup>*Ibid.*, p. 477.

2. He must be related to the ward within the prohibited degrees in marriage if the latter is a female;
3. He can be trusted with the ward;
4. He must have the same religion with the ward.<sup>305</sup>

**254. Q — How long will a care, custody or guardianship (*Al hadhāna*) last?**

A — The *Al Hadhāna* will last until the ward will reach the age of seven years for the boys and nine years for the girls.<sup>306</sup>

**255. Q — Are the eminent scholars unanimous on those ages mentioned in the immediately preceding number? What are the opinion of the four Orthodox (*sunnī*) schools (*mathāhib*) regarding the duration of *al hadhāna*?**

A — No. They are not unanimous. The opinions in such respect of the four schools of thought are the following:

1. According to Hanafia, the duration of *al hadhāna* for the boys is estimated to be seven years. Some of them argued it to be nine years. For the girls, there are two opinions. One is until she menstruates. The other is until she reaches the stage of loving. It is estimated to be in the ninth year of her age.

2. According to Mālikia, the duration is from the date of birth to the age of puberty.

3. According to Shāfi'ia, there is no definite period of *al hadhāna*.

4. According to Hanābila, the duration is seven years for both boys and girls.

If I may choose, I will prefer to have it with definite periods, *i.e.*, seven years for the boys and nine years for the girls.

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<sup>305</sup>*Ibid.*, p. 342.

<sup>306</sup>*Ibid.*, p. 484; *Ibid.*, p. 342.

**256. Q — Where shall be the venue of *Al Hadhāna*?**

A — The venue of *Al Hadhāna* is the family home of spouses. If, however, the spouses are divorced from each other and the wife, who is the guardian, is observing her *'idda*, the venue is still the family residence. If, on the other hand, the marriage is severed and she is no longer observing her *'idda*, the venue of *al hadhāna* may only be changed at her own volition even without the consent of the ward's father by transferring with the ward to another place provided that following conditions are present:

1. That the place where she transferred with ward is one where her contract of marriage with father of the ward has been celebrated; and

2. That said place is her native place.

It would be otherwise if the change of the venue with the permission of the father of the ward because; she may do so by just transferring with the ward to other place she desires.<sup>307</sup>

**257. Q — Suppose the guardian is not the mother of the ward, will the rule be the same as the rule mentioned in the immediately preceding number? State the rule, if there is any.**

A — No. It is with different rule. The rule is: Regardless of the two conditions mentioned in the immediately preceding number, she cannot transfer to any other place with the ward unless with the permission of the father of the ward.<sup>308</sup>

**258. Q — Suppose the guardian is a divorce mother in a *talāq bā'in*, is it permissible for her to hide the ward from the father to avoid seeing each other?**

A — No. It is not permissible to prevent the father from seeing his child. It is her obligation to make the ward available for the father.<sup>309</sup>

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<sup>307</sup>*Ibid.*, p. 481.

<sup>308</sup>*Ibid.*, p. 481.

<sup>309</sup>*Ibid.*, p. 345.

**259. Q — Who is responsible for the expenses of care and custody (*al hadhāna*) and the compensation of the guardian?**

A — It is the father who is responsible for the expenses of *Al Hadhāna* and the compensation of the guardian if the child has no wealth of his own.<sup>310</sup>

**260. Q — Suppose the guardian is the mother of the ward, will she be entitled to compensation?**

A — It depends. If the marriage is still subsisting or she is still observing her *'idda* for the revocable divorce (*talāq raj'ī*), she will not be entitled to a compensation because she is entitled to support and she will be double paid. If, however, she is observing her *'idda* prescribed for an irrevocable divorce (*talāq bā'in*), there are two opinions posed. One said that she will be entitled to it and another argued to the contrary. However, after the expiration of her prescribed *'idda*, she will be entitled to it.<sup>311</sup>

Personally, I will go with the view that she will not be paid compensation while still observing *'idda* because she is still entitled to support. It is a rule that for as long as she is observing *'idda* of any of its kind, she is under the support of the husband.

**261. Q — Will the mother have a better right to the guardianship (*al hadhāna*) of her child over third person who offers her services for free?**

A — Yes. She will have a better right over guardianship of her child than a nonrelative or even a relative who is not related to the ward within the prohibited degrees in marriage even if the said third person offers her services for free.<sup>312</sup>

**262. Q — Suppose a female relative of a ward within the prohibited degrees in marriage offered her serv-**

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<sup>310</sup>*Ibid.*, p. 345.

<sup>311</sup>*Ibid.*, pp. 345-346.

<sup>312</sup>*Ibid.*, p. 346.

**ices for the care and custody of the ward for free, will she be preferred over the mother? Explain.**

- A — It depends. If the mother is not demanding compensation for the care and custody (*al hadhāna*) of the child, she will undoubtedly be preferred. If, however, she is demanding a salary and the ward is poor but the father is not hard-up, she will still be preferred but she will be paid only proper compensation (*oḡr al mithl*) regardless of her demand. If, on the other hand, the father is hardup, the female relative, who is related to the ward within the prohibited degrees in marriage and who offers her services for free, shall be preferred whether or not the ward has wealth of his own. This is designed for the interest and welfare of the ward. However, the mother shall be given the option to take it for free or to give it up to the said female relative.<sup>313</sup>

**263. Q — What is the difference between the offering of free services in the care and custody (*Al Hadhāna*) and the offering of free services in the fosterage (*Al Radhā'a*)?**

- A — The difference between the offering of free services in *al hadhana* and in *al radhā'a* is as follows:

In *al radhā'a*, the female offeror of free services is always preferred whether (1) she is a close relative or not; (2) the *radhā'a* is at the expense of the mother or the father; (3) the father is hard-up or not, whereas in *al hadhāna*, she can only be preferred if (1) she is qualified to act as guardian; (2) the father is hard-up; (3) the expenses for *al hadhana* are from the wealth of the ward.<sup>314</sup>

**264. Q — When shall *al hadhāna* terminate?**

- A — According to the previous eminent scholars, *al hadhāna* is terminating for the boy when he can eat, drink and dress alone. It is extinguishing for the girl

<sup>313</sup>*Ibid.*, p. 346.

<sup>314</sup>*Ibid.*, p. 480.

when she menstruates. This calculation was based on the nature of the child and not on his age.

Thereafter, other eminent jurists estimated it on the bases of the age so that when dispute arises it can easily be adjudicated. They considered it terminating when the boy reaches seven years of age because it is the minimum age of puberty. Still others argued it to be nine years. With regard to the girl, it shall terminate upon reaching the age of nine years because at this juncture she is already going up to womanhood.<sup>315</sup>

**265. Q — After reaching seven or nine years of age, as the case may be, where shall the children stay?**

A — Upon reaching seven or nine years of age, as the case may be, but below the age of puberty, the children may choose the parent with whom he or she wants to stay.<sup>316</sup>

**266. Q — How about the unmarried daughter or son who has reached the age of puberty, where shall he or she stay?**

A — The unmarried daughter who has reached the age of puberty shall stay with the father; the son, under the same circumstances, shall stay with the mother.<sup>317</sup>

**267. Q — What is the reason behind the rule mentioned in the immediately preceding question and answer that the unmarried daughter who has reached the age of puberty shall stay with her father and the son, under the same circumstances, shall stay with his mother?**

A — The reason behind the rule, among other things, is that the unmarried daughter who has reached the age of puberty is urged to stay with her father because the latter is able and strong enough to control her considering that she is young and of marriageable age. The son, under the same circumstances, is incited to live

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<sup>315</sup>*Ibid.*, pp. 483-484.

<sup>316</sup>Code of Muslim Personal Laws of the Philippines, Art. 78.

<sup>317</sup>*Ibid.*, Am 78 (2).

with his mother because the latter is weak and he can help her. The three immediately preceding numbers assume that the spouses concerned are divorced from each other, hence, it is possible for the daughter to stay with her father and the son to live with his mother.

**268. Q — Who shall be guardian (*walī*) for marriage?**

A — The following persons shall have the authority to act as guardian (*walī*) for marriage in the order of precedence:

1. Father;
  2. Paternal grandfather;
  3. Brother and other paternal relatives;
  4. Paternal grandfather's executor or nominee;
- or
5. The court.<sup>318</sup>

**269. Q — Does it mean that only these persons mentioned in the immediately preceding question and answer have the authority to act as guardians for marriage?**

A — No, there are many others mentioned by the different schools of thought and other eminent jurists.

**270. Q — Who are those persons mentioned by the different schools of thought and other eminent jurists?**

A — There are many and you will know them in the succeeding numbers. According to the schools of Mālik, Shāfi'i and Hanbali, it is only the father who has the Authority to act as guardian for marriage. However, the Shāfi'i school allowed paternal grandfather to take the place of father in the absence of the latter. On the other hand, according to the school of Hanafī, all residuary heirs (*al 'asabāt*) may act as guardians for marriage in accordance with their order of precedence and preference in the inheritance of the ward.

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<sup>318</sup>*Ibid.*, Art. 79.

**271. Q — By the way, we have just mentioned the residuary heirs (*al ‘aṣabat*) by passing who, according to Imām Abū Hanīfa, can act as guardians for marriage, who are these persons?**

A — *Al ‘Aṣabātare* those male relatives who are related to the ward without any woman relative who interrupts the relation of the former to the latter and they are as follows in the order of precedence as far as guardianship for marriage is concerned:

1. Male descendants;
2. Male ascendants;
3. Germane, consanguine brother or brother's son;
4. Uncles or uncles' sons.<sup>319</sup>

It is my idea that guardianship for marriage should not be confined to fathers or even grandfathers. There may be several occasions where the fathers and/or grandfathers are not available and so somebody must take their place in order that the marriage of the bride be valid. If we limit it to fathers and even grandfathers, in effect we have thrown the marriage of a woman, who has no father or grandfather, into invalidity. It would then be terrible to tell her that she cannot be married because she has no father or grandfather. She misses her chance in this world because she loses her father or grandfather. I see no wrong therefore in extending it to the other relatives (*al ‘aṣabat*) in the absence of the father and grandfathers.

**272. Q — If both father and son are available, who shall take precedence to act as guardian for marriage?**

A — It depends. If we follow the schools of Mālik, Shafiī and Hanbali, the father shall take precedence because the son is disqualified. However, if we follow the school of Hanafi, then, we will say that if both father and

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<sup>319</sup>Abū Zahra, *op. cit.*, p. 198.



son are available to act as guardians for marriage, conflict of opinions arises among eminent jurists on who among them shall take precedence, viz:

1. According to the *Al Sheikhan* (two Sheikhs) the son shall be preferred taking into consideration the order of precedence of the *Al 'Asabāt* in the law of succession (*Al Mawāriṭh*).

2. According to Muhammad, the father has a better right to act as guardian for marriage of his daughter because he is more committed to her interest and welfare and has more experiences for the work. Above all, the father is heading the list of the qualified guardians for both marriage and property and the son is only for marriage, following the school of Imām Abu Hanifa.

3. It has been narrated that Abū Yūsuf has said that the father and the son are in the same degrees and situations in the sense that the father is more concerned for the welfare of his daughter and at the same time he can act as guardian for her property while the son takes precedence in the inheritance of his mother. It is really true that they are situated under similar circumstances but when they are together, the father takes precedence for guardianship for marriage.

4. Other reliable and eminent jurists recommend that it would be better for the son to leave it to the father in respect for him as a grandfather.<sup>320</sup>

**273. Q — If there is no available 'asabāt, who shall act as guardian?**

A — In the absence of the 'asabāt to act as guardian, there are two views on the issue, to wit:

1. According to Abū Yūsuf and Muhammad, in the absence of the 'asabāt, the duly constituted authority, to be represented by the Judge who is expressly empowered to do so, shall act as guardian.

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<sup>320</sup>*Ibid.*, p. 129.

2. According to Imām Abū Hanīfa, in the absence of the *‘asabāt*, the right to guardianship will devolve upon the maternal relatives, the nearer in the degree of relationship shall exclude the more remote. In the absence of all relatives, paternal and maternal, then, that will be the time that the duly constituted authority shall come in, Abū Hanīfa maintained.<sup>321</sup>

**274. Q — Please enumerate those who shall have the right to act as guardian (*walī*) for marriage in the order of precedence:**

A — The following shall have the right to act as guardian (*walī*) for marriage in the order of precedence following the opinion of Imām Abū Hanīfa mentioned above in question and answer Nos. 270 and 271, *supra*:

1. Son and descendants. Please read this together with question and answer No. 272, *supra*, to note the conflict of opinions on who shall take precedence between the son and the father.

2. Father and ascendants;

3. Germane and consanguine brothers and their respective sons;

4. Germane and consanguine uncles and their respective sons.<sup>322</sup>

**275. Q — In the absence of those persons (*al ‘asabāt*) enumerated in the immediately preceding question and answer, who shall act as guardian (*walī*) for marriage?**

A — Again, following the view of Imām Abū Hanīfa mentioned in paragraph 2 of question and answer No. 273 *supra*, the following persons shall act as guardians for marriage in the absence of those enumerated in the immediately preceding question and answer:

1. Mother or mother’s mother;

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<sup>321</sup>*Ibid.*, pp. 131-132.

<sup>322</sup>Badran, *op. cit.*, p. 105.

2. Daughter or son's daughter;
3. Mother's father,
4. Germane or consanguine sister;
5. Mother's son (uterine brother);
6. The distant kindred (*Thaw-ul-arhām*);
7. The court.<sup>323</sup>

**276. Q — What are the qualification of a guardian (*walī*) for marriage in addition to the relationship (*al qarāba*) which we have already discussed:**

A — The qualifications of a guardian (*walī*) for marriage in addition to the relationship (*al qarāba*) already discussed are:

1. He must be of legal age;
2. He must be of sound mind;
3. He must be free;
4. He must have the same religion with the ward. A Muslim cannot be a guardian for marriage of a nonMuslim or vice versa.<sup>324</sup>

**277. Q — Can those persons enumerated in question and answer Nos. 271, 274 and 275, supra, act as guardians of minor's property? Explain.**

A — Not all of them. As a matter of fact, it is only the father and the paternal grandfather who can act as guardians for both marriage and minor's property. If the guardian for the minor's property is the nominee of the father or the nominee of the paternal grandfather or the representative of the court, he cannot act as guardian for marriage at the same time. Apparently, it is the *Al 'Aṣabāt*, who shall act as guardians for marriage, beside the father and the paternal grandfather.<sup>325</sup>

<sup>323</sup>*Ibid.*, p. 105; Refer to Ibn 'Abindin p. 311, Vol. 2.

<sup>324</sup>*Ibid.*, p. 103.

<sup>325</sup>Abū Zahra, *op. cit.*, p. 122.

**278. Q — Who shall be the guardians of minor's property?**

A — There are several arrangements and orders of precedence posed by the different schools of thought that you will find in the succeeding numbers but the Code of Muslim Personal Laws of the Philippines states that the following persons shall exercise guardianship over the property of minors in the order of precedence:

1. Father;
2. Father's executor or nominee;
3. Paternal grandfather;
4. Paternal grandfather's nominee; or
5. The court.<sup>326</sup>

**279. Q — Are the different schools of thought unanimous that only those persons enumerated in the immediately preceding question and answer shall exercise guardianship over minor's property?**

A — No. As I have previously said that the different schools of thought have different arrangements and orders of precedence. Any party concerned may follow, the idea of the school he professes and prefers.

**280. Q — Please state the different arrangements and orders of precedence posed by the four orthodox (*Sunni*) schools of Muslim law regarding guardianship for minor's property.**

A — The different arrangements and orders of precedence posed by the four orthodox (*Sunni*) schools of Muslim law anent guardianship for minor's property are:

1. In the school (*math-hab*) of Mālik, the following persons shall act as guardians for minor's property in the order of precedence:

- a. Father;
- b. Father's nominee;

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<sup>326</sup>Code of Muslim Personal laws of the Phil. Art. 80; Abū Zahra, *op. cit.*, p. 543.

- c. The court;
- d. The court representative.

This view is supported by the school (*math-haqb*) of Imām Hanbalī. In other words, both Malikia and Hanabila omitted paternal grandfather to take the place of the father in the absence of the latter both in the guardianship for marriage and for minor's property.<sup>327</sup>

2. In the school of Shāfi'ī, the following persons shall act as guardians for minor's property in the order of precedence:

- a. Father;
- b. Paternal grandfather;
- c. Father's nominee;
- d. Paternal grandfather's nominee.

The idea of the school (*math-haqb*) of Imām Shāfi'ī allows the paternal grandfather to take the place of the father in the guardianship for both marriage and minor's property.<sup>328</sup>

3. In the school (*math-haqb*) of Hanafī, the following persons shall act as guardians for minor's property in the order of precedence:

- a. Father;
- b. Father's nominee;
- c. Paternal grandfather;
- d. Paternal grandfather's nominee.

It should be noted that in the school (*math-haqb*) of Hanafi, the paternal grandfather maintains his place as guardian both for marriage and for minor's property, although he is placed below the father's nominee. The opinion of Hanafia is the middle of the ideas of the other schools of thought. It did not discard the paternal grandfather as Mālik and Ahmad did. It did

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<sup>327</sup>*Ibid.*, pp. 544-545.

<sup>328</sup>*Ibid.*, p. 545.

not place him above the nominee of the father either as the Shāfi'i did considering that the father is the most concerned over the affairs and welfares of his child.<sup>329</sup>

The stand of the school (*math-haqb*) of Hanafī in this particular aspect is explicitly adapted by the Code of Muslim Personal Laws of the Philippines in its Article 80 which provision of the Code is quoted in question and answer No. 278, *supra* although majority of the Muslims in the Philippines are disciples of the school (*math-haqb*) of Imām Shāfi'i.

**c) Support (NAFAQA)**

**281. Q — This is the third right of a legitimate child, will you please define it?**

A — Support (*nafaqa*) includes everything that is indispensable for sustenance, dwelling, clothing and medical attendance according to the social standing of the person obliged to give it, and the need of the person entitled to the support until he completes his education, training or vocation even beyond the age of majority.<sup>330</sup>

**282. Q — How many and what are the causes that will make support obligatory? Explain.**

A — The causes that will make support obligatory are three kinds, namely: (1) marriage, (2) kinship, and (3) ownership. The support of wife is obligatory to husband because of marriage, the support of relatives is obligatory to relatives because of kinship and the support of slave is compulsory to his master because of ownership. Each kind of support is thoroughly discussed in its respective title except the support of slave by his master because I do not see it significant for us at this juncture.<sup>331</sup>

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<sup>329</sup>*Ibid.*, p. 545.

<sup>330</sup>*Ibid.*, Art. 65.

<sup>331</sup>Badrān, *op. cit.*, p. 151; Abū Zahra, *op. cit.*, p. 969.

**283. Q — What are the legal bases or support?**

A — The legal bases of support are the verses of the Glorious Qur'ān, the prophetic traditions (*al ahādīth*), the consensus of the learned scholars or jurists (*al ijimā*) and the reasoning by analogy (*al giyās*).<sup>332</sup> Now, we shall begin with the support of wife by her husband.

**1. Support of wife by her husband****284. Q — What are the requisites (*shurūt*) that make the support of wife by her husband obligatory?**

A — The requisites (*shurūt*) that make the support of the wife by her husband obligatory are:

1. That the wife has surrendered herself to the husband or the latter is given every opportunity to consummate the marriage;

2. That the marriage is valid;

3. That the wife is withheld for the requirement of the husband.<sup>333</sup>

**285. Q — Suppose the wife left the family dwelling without permission from her husband, will she be still entitled to support? Why?**

A — No. She will not be entitled to support until she returns to the family dwelling because she has no right to leave the said dwelling without permission from her husband.<sup>334</sup>

**286. Q — Suppose the wife refuses to transfer to the family residence fixed by her husband or she leaves it for valid reason or reasons, will she be still denied of her right of support? Reason.**

A — No. She will not be denied of her right to support provided that the reason or reasons for her refusal to transfer to the family home or her reason or reasons for leaving the same are valid.

<sup>332</sup>*Ibid.*, p. 151; *Ibid.*, p. 969.

<sup>333</sup>*Ibid.*, pp. 153-154.

<sup>334</sup>*Ibid.*, p. 156.

**287. Q — What are the reasons or grounds by which the wife will still be entitled to support even if she refuses to reside at the family residence fixed by her husband or she leaves it without permission from her husband?**

A — The reasons or the grounds by which the wife will still be entitled to support even if she refuses to reside at the family residence fixed by her husband or even if she leaves it without the permission from her husband are the following:

1. Her dower is not satisfied in accordance with the stipulations;

2. The family or conjugal dwelling fixed by the husband as the residence of the family is not in keeping with her social standing or is, for any reason, not safe for herself or the members of the family or her property; or

3. The family home fixed by her husband is a usurped (*magsūb*) property because if she resides there, she will be a party to the commission of the sin or the crime.<sup>335</sup>

**288. Q — Suppose the wife exercises any profession or occupation or engages in lawful business without her husband's consent, will she be entitled to support? Why?**

A — No. She will not be entitled to support because she is no longer withheld in the conjugal or the family house for the requirements of the husband.<sup>336</sup>

**289. Q — What is the amount of support?**

A — The amount of support shall be in proportion to the resources of the giver and to the needs of the recipient. This is actually the provision of Article 66 of the Code of Muslim Personal Laws of the Philippines

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<sup>335</sup>*Ibid.*, Art. 35; Abū Zahra *op. cit.*, pp. 274-275.

<sup>336</sup>Badrān, *op. cit.*, p. 157.



which is construed to be common to all kinds of support.

It would be better that we take the opinions of the four orthodox (*Sunni*) schools as follows:

1. The Hanafia stated that if the spouses are both affluent or both are in difficulties, there will be no problem because the amount of support shall be determined in accordance with their richness if they are both affluent or in accordance with their difficulties if they are both poor.

If one of them is affluent and the other is inferior, there are two opinions thereof of the school of Hanafi as follows:

a. The amount of support shall be determined proportionately to the affluence and the difficulty of the spouses *i.e.*, the middle of the support that can be possibly given to a rich and a poor recipient. However, if the hardup spouse is the husband, he shall only give what he can afford at the time and the difference between what he has given and the amount of a middle support which he is supposed to give were it not of his difficulty shall be his debt to whoever obliged to put it up.

b. The amount of support shall be determined in proportion to the resources of the husband only.

2. The Mālikia expressed that the amount of support shall be in proportion to the richness and difficulty of the spouses. It did not say anything about the taking into consideration only the resources of the husband in the determination of the amount of support.

3. The Shāfi'ia said that it is a fact that the support may be in terms of food, clothing or dwelling. With regard to food and clothing, they are to be estimated according to the resources of the husband. With regard to dwelling, it should be fixed according to the social standing of the wife because she will surrender herself to the husband considering her position in life.

4. The Hanābila argued that the affluence and difficulty of the spouses shall be considered in the matter of the determination of the amount of support.

In short, the Hanafia, the Milikia and the Hanabila agreed on the taking into consideration the affluence and the poverty of the spouses in the determination of the amount of support. You will please recall that the Hanafia has another opinion *i.e.*, the taking into consideration only the resources of the husband in the matter of fixation of the amount of support. The Shafi'ia is in accord with the Hanafia in this idea except in the case of the dwelling because it would be fixed in accordance with the social standing of the wife, the Shafi'ia maintained.<sup>337</sup>

**290. Q — Suppose the husband is poor and the wife is wealthy, will she still be entitled to support to be given by the husband? Explain.**

A — Yes. Despite her being wealthy, she will still be entitled to support to be given by her husband because the latter, though needy, is obliged to support the wife.<sup>338</sup> This is actually the provision of Article 70 (b) of the Code of Muslim Personal Laws of the Philippines adopting the opinions of Mālikia, Shāfi'ia and Hanābila. The next immediately succeeding number speaks of the opinions of the eminent jurists to clarify this point.

**291. Q — Suppose the husband is hard-up. He has no income at all and he has really nothing to support the wife, will he still be required to support the wife despite his financial difficulties? Explain.**

A — If the husband is hard-up as he has no income at all and has nothing therefore to support the wife, there are three opinions advanced in this regard by the eminent jurists, to wit:

1. The opinion of Al Zābiria based on the opinion of Caliph 'Umar (Allāh likes him) states that the

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<sup>337</sup>*Ibid.*, Art. 66; Al Huzairi, *op. cit.*, pp. 563-564.

<sup>338</sup>*Ibid.*, Art. 70 (b).

husband shall be relieved of the responsibility to support the wife. It is added by the Zahiria that if the wife is rich, she has to support the husband if he is incapacitated to look for his sustenance.

2. The opinions of the other three schools of thought, *i.e.*, the Malikia, the Shāfi'ia and the Hanabila, urge that the husband shall not be exonerated of his obligation to support the wife despite his financial difficulties and the latter can petition for *faskh* if the former cannot support her.

3. The opinion of the school of Hanafī argues that while the husband cannot be relieved of his obligation to support the wife despite his financial difficulties, the latter cannot petition either for *faskh* on the ground of the financial hardship of the former. This opinion is a middle ground in the sense that the wife is urged to advance the necessary sum for the support at the debt of the husband or if she has nothing to advance, she may incur debts at the obligation and payable by her husband when his finances improve.<sup>339</sup>

**292. Q — What is the duration of support of the wife by her husband?**

A — The duration of the support of the wife by her husband depends upon the following situations:

1. The wife shall be entitled to support during the marriage. In case of divorce (*talāq*), her right shall be extended up to the expiration of the prescribed *'idda*. However, if the wife is pregnant at the time of the separation, she shall be entitled to support until delivery.

2. Any divorced nursing mother who continues to breastfeed her child for two years shall be entitled to support until the time of weaning.<sup>340</sup>

<sup>339</sup>Abū Zahra, *op. cit.*, p. 286.

<sup>340</sup>*Ibid.*, Art. 67. (1 & 2).

**293. Q — Can the wife engage the services of a housemaid at the expense of the husband as part of the support? Explain.**

A — It depends. It is the consensus of the eminent jurists that the wife may engage the services of a housemaid at the expense of the husband and as part of the support that she is entitled to if the husband is financially sound.

If the husband is affluent, conflict of opinions arises on how many housemaids will the wife be entitled to, to wit:

1. According to Abū Hanīfa and Muhammad, the husband shall not be required to pay the stipends of two housemaids. One housemaid is good enough and two is excessive.

2. Abū Yūsuf argued that the engagement of two housemaids is reasonable if the husband is ready to finance it and the wife's equals in social standing are having two housemaids. Abū Yūsuf said in one narration that it can not be more than two housemaids. In another statement, he maintained that if the wife's equals are taking more than two housemaids, then she can also get more than two provided that the husband is financially prepared for all of these expenditures. The latter view is approximating the modern time.

However, if the husband is hard-up, the wife cannot engage the services of a housemaid. It is only the necessary support that can be required of him at this time of his financial difficulties and the engagement of the services of a housemaid is not a part of the necessary expenses.<sup>341</sup>

**294. Q — We have mentioned in question and answer No. 281 that support is a third right of a legitimate child, why are we not discussing it directly?**

A — We cannot discuss it directly because it cannot be clearly elucidated without first taking the support of

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<sup>341</sup>Abū Zahra, *op. cit.*, pp. 284-285.

relatives, hence, we begin with the support of the wife by her husband. We shall now take the support of relatives and all its kinds and thereafter we shall take briefly the support of children at the last but not the least. Anyway, most of its aspects will be thoroughly discussed under the topics of the support of descendants and the support of ascendants.

## 2. Support of relatives

**295. Q — Are the rules on the support of the relatives similar to the rules on the support of the wife?**

A — No. There are several incongruities between the support of the relatives and the support of the wife.

**296. Q — Who are the relatives that ought to be supported?**

A — In this regard, the eminent jurists in Islamic law differ as follows:

1. The Mālikī school limits the support between parents and legitimate children only.

2. The Shāfi'ī school allows it between ascend and descendants regardless of the degrees of relationship.

3. The Hanafī school extends it to those who within the prohibited degrees in marriage.

4. The Hanbalī school permits it to a relative can be an heir to a needy relative if the latter leaves property upon his death. In other words, the school of Imām Ahmad allows it between and among relatives who can be heirs to each other in case of death of one of them.<sup>342</sup>

**297. Q — What are the requisites that make support of relatives obligatory?**

A — The requisites that make support of relatives obligatory are the following:

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<sup>342</sup>*Ibid.*, pp. 485-486.

1. That the supporter and the needy are within the prohibited degrees in marriage. This is in accordance with the opinion of the Hanafī school. Imam Ahmad does not require this. The opinions of the other schools are explicit in the immediately preceding number.

2. That the relative demanding support is really in need.

3. That the needy relative is disabled or incapacitated to support himself.

4. That the giver has resources to give. This requisite does not apply to support between parents and children.

5. That the giver and the recipient have the same religion. This requisite does not apply to the support between ascendants and descendants.<sup>343</sup>

**298. Q — Who shall give support to a needy relative?**

A — The relative whose relation to the needy is the nearest in degree shall give the support. However, if there are many relatives whose degrees or strengths of relation the needy are the same, they shall divide the support equally.<sup>344</sup>

**299. Q — What are the relations on which the support to and by the different relatives are based?**

A — The relations on which the support to and by the different relatives are based are the following:

1. The relations to ascendants;
2. The relations to descendants; and
3. The relations to collateral relatives.<sup>345</sup>

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<sup>343</sup>*Ibid.*, pp. 486-490.

<sup>344</sup>*Ibid.*, p. 493.

<sup>345</sup>*Badrān, op. cit.*, p. 347.

**300. Q — It appears apparently that we are not only discussing the support as a third right of a legitimate child, but we are also discussing it in its general term, is it not?**

A — That is right. As a matter of fact, we made it clear in question and answer No. 282 that there are three causes that make support obligatory, namely: marriage, kinship and ownership. We have already referred to a marriage when we discussed the support of the wife by her husband. We are now taking kinship, and the support of a legitimate child is just a part of it. Under kinship are the support of relatives, the support of ascendants, the support of descendants, the support of collateral relatives and the support of children. The latter is actually a part of the support of descendants.

### 3. Support of ascendants

**301. Q — Who is obliged to support the ascendants?**

A — The eminent jurists are unanimous that the child is obliged to support his parents if he is of age and even if he is a minor if he has wealth of his own when his father or his mother is hard-up provided that, in the case of the mother, she is not married with another husband other than the child's father.<sup>346</sup> With regard to other ascendants, please refer to the next immediately following number.

**302. Q — What are the requirements for the support of ascendants other than parents?**

A — The requirements for the support of ascendants other than parents are:

1. That the ascendant is hard-up financially.
2. That the ascendant is incapacitated to work for his living. This requirement is not applicable to parents because the child is obliged to support them when

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<sup>346</sup>*Ibid.*, p. 247.

they are hard-up even if they are not incapacitated and even if the child is in a financial difficulty. Some jurists argue that this requirement is not applicable to ascendants because they are to be treated like parents.<sup>347</sup>

**303. Q — Will the difference in regional affect the right to support and be supported? Explain.**

A — No. The difference in religion will not affect the right to support and be supported as far as parents and children are concerned because support by and between them is made obligatory on account of the mercy joining them and of the fact that the child is part of his parents and so this cannot be obliterated by the difference of their religious affiliations.<sup>348</sup>

**304. Q — What is the rule of the support to a father or a grandfather when there are several descendants around to give support?**

A — The rule is that he shall be supported by the one who is nearest among them in the degree of relationship regardless of the right to inheritance and of religious affiliation. If, however, two or more of them have equal degrees of relationship to him, the amount of support shall be equally borne by them.<sup>349</sup>

**305. Q — Suppose the father needs support and his son, who is nearer in degree of relationship to him, is hard-up but his grandson, who is farther in degree of relationship, is the one financially sound to give the support, can the latter be instead required to give the support? How?**

A — Yes. The court of competent jurisdiction may order the grandson to give the support for and in behalf of the son with the condition that the amount of support shall be reimbursed by the son to the grandson when the

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<sup>347</sup>*Ibid.*, p. 348.

<sup>348</sup>*Ibid.*, p. 349.

<sup>349</sup>*Ibid.*, p. 350.



son's financial condition improves. However, if the grandson gives the support without the corresponding court order, he cannot demand the reimbursement from the son.<sup>350</sup>

**306. Q — Suppose the grandfather, who needs support, has the daughter of his daughter and the son of the son of his son. Both are financially sound to give the support. The son of the son of his son has a better right to the inheritance of the said grandfather although he is farther in the degree of relationship than the daughter of the daughter. The question is: Who will be required to give the support? Why?**

A — The daughter of the daughter shall be required to give the support because she is nearer in the degree of relationship to him even though the son of the son of his son has a better right to his (grandfather's) inheritance.<sup>351</sup>

**307. Q — What is the rule on the support of paternal grandfathers and maternal grandfathers by the grandchildren? Explain.**

A — The eminent scholars have different opinions on the giving of support to paternal and maternal grandfathers by the grandchildren. Majority of the schools of thought including the *jamhūr* argued that it is obligatory to them because when the children are urged to do good to their parents, grandparents are also meant. The school of Mālik dissents on the ground that grandfathers are not real fathers.<sup>352</sup>

**308. Q — Suppose both parents need support and the child is only capable of supporting one of them, who among them shall be preferred?**

A — There are two opinions advanced to this question. Some eminent jurists said that the mother shall have

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<sup>350</sup>*Ibid.*, p. 350.

<sup>351</sup>*Ibid.*, p. 350.

<sup>352</sup>*Ibid.*, pp. 350-451.

preference because womanhood is construed to be an incapacity to look for livelihood. Other eminent scholars maintained that the amount of support that the child can give shall be divided between his parents, if the mother is not married at all. However, if she is still married with the child's father and the latter is incapacitated to support her despite her urgent need, the son shall bear the support. On the other hand, if she is married to another man other than the child's father, the child is not obliged to support. At most, the child maybe ordered by the court to support her if she is really hard-up but the amount of support to be advanced by the child shall be reimbursable by her husband should his financial condition improves.<sup>353</sup>

#### 4. Support of descendants

**309. Q — Does the discussion of the support of descendants hereon include the discussion of support of children? Explain.**

A — Yes. It includes because children are part and parcel of descendants. However, after the discussion of the support of relatives and all its kinds including this discussion on the support of descendants, we shall briefly discuss the support of children in a separate topic even only to show that support is a third right of a legitimate child.

**310. Q — What is the rule on the support of descendants?**

A — The eminent scholars are unanimous that it is an obligation of a father to support his children regardless of sex. This is based on the verse of the Glorious Qur'an hereto quoted:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ • (٢ : ٢٣٣)

The meaning in English of the just quoted verse of the Glorious Qur'an has been given, *supra* and we do not

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<sup>353</sup>*Ibid.*, p. 351.

need to repeat it here. The son is entitled to support until he reaches the age of majority and becomes capable of supporting himself. The daughter is entitled to support regardless of her age and capability to support herself. However, it is an elementary rule on the support that, regardless of sex, when a child has wealth of his own, he or she shall be supported with his or her wealth.<sup>354</sup>

**311. Q — Is the immediately preceding rule applicable to grandchildren?**

- A — It depends. Actually, there exists a conflict of opinions on the support of grandchildren. The Māliki school argued that it is not obligatory to the father to support his grandchildren. The three other schools of law maintained that it is obligatory to him. The most popular (jamhūr) said that the obligation of the father to support his grandchildren is extended to the lowest descendants. They based their argument on the following verse of the Glorious Qurʾān:

بِوَسِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ . (٤ : ١١)

According to them, the term *aulād* in this verse means the children to the lowest descendants. They cited many other verses of the Glorious Qurʾān.<sup>355</sup>

Personally, I will go with the idea of the Jamhūr.

**312. Q — What are the requirements of the support of descendants?**

- A — The requirements of the support of descendants are the following:

1. That the descendant, who needs the support, has no wealth with which to support himself.
2. That he is a minor or a woman regardless of her age. Man of age, who knows how to support him-

<sup>354</sup>*Ibid.*, pp. 351-352; Kitab Al Ahkām Al Shariʿia fi Al Ahwāl Al Shakhsiya ʿalā Mathhab Al Imām Abī Hanīfa, pp. 118-119.

<sup>355</sup>*Ibid.*, p. 352; Abu Zahra, *op. cit.*, p. 485.

self and is not incapacitated, is not entitled to support.

3. That the ascendant obliged to support is capable of earning his subsistence.<sup>356</sup>

**313. Q — What are the governing rules on the support of children? Explain it taking into account that it is a third right of a legitimate child to be supported by his parents.**

A — The governing rules on the support of children are as follows:

1. The support of children is a sole responsibility of the child's father.

2. Even if he is hard-up, he shall exert effort to put up enough subsistence of his children.

3. If he has the means and he refuses to give the support, he shall be compelled to give it to the extent of imprisoning him.

4. If his earning is not adequate for the support of his children and although he is obliged to support them, the court may order the mother to give the support for and in behalf of the father, if she has the means. If, on the other hand, she has nothing, the grandfather shall be ordered by the court to give it. The father is under obligation to reimburse the support advanced by the mother, grandfather or the others, who may follow the order of preference, when he improves his finances.

5. Upon the death of the father or his incapacity to look for his livelihood, the responsibility to support his children shall devolve upon the ascendants of the said children, males or females accordingly.

6. If there are many relatives to whom responsibility of support to decendants devolves, they shall give the support proportionate to their shares in the

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<sup>356</sup>*Ibid.*, p. 352.

inheritance if they can all be heirs to the needy descendant in case of his death and regardless of their degrees of relationship to him. However, if they cannot all be heirs to him in case of his death, the support shall devolve upon the ascendant whose degree of relationship is nearer to the needy even if he or she is not an heir. If none of them can be an heir and they have the same degrees of relationship to him, support shall be borne by them all equally. If under the same circumstance but they have different degrees of relationship to him, he whose degree of relationship is more proximate shall bear the support.<sup>357</sup>

**314. Q — Does the support of children vary when their ages differ? If so, state the rules.**

A — Yes. The support of minor is different from the support of those who are of age and the rules are as follows:

1. If the child is a minor and has wealth of his own, he shall be supported out of his own wealth. If such wealth is on hand, it shall be spent for the purpose by the father. If it is not on hand and by the corresponding order of the court, the father shall advance the necessary support which shall be reimbursed to him when the wealth of the child comes on hand.

If the minor has no means, the support shall be borne by the father. Even if the father is in a financial difficulty if he is capable of looking for his livelihood, he is obliged to work hard and support the minor. If the father has not found job and has no means therefore to support the minor, the mother shall advance the support reimbursable by the father when his finance improves. If the mother is likewise hard-up, the paternal grandfather will take care of it if financially able to do so. If the paternal grandfather is not financially able, then the responsibility shall devolve upon anyone of the minor's relatives who are financially sound. At any rate, the support advanced by the

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<sup>357</sup>*Ibid.*, p. 353.

mother, paternal grandfather or any third person on the strength of the court order is always reimbursable by the father when his finance improves.

If the father is hard-up and is incapacitated to look for his livelihood, the obligation to support the minor shall go EO the relatives of the minor who shall bear his support if his father is no longer living.

2. If the child is of age and has a wealth, he shall be supported out of such wealth regardless of sex. If he is a male, of age and has no wealth but capable of looking for his subsistence, the father is not obliged to support him. If, however, he is incapacitated or cannot find his livelihood and has no wealth, the father is obliged to support him even though he is of legal age.

If the child is a female and has no wealth, the father is obliged to support her even though she is of legal age and capable of looking for her sustenance.<sup>358</sup>

### 5. Support of collateral relatives

**315. Q — What are the rules on the support of collateral relatives?**

A — Each of the four orthodox (*Sunnī*) schools has an opinion on the rules of support of collateral relatives and they are as follows:

1. According to Hanafia, it is only those collateral relatives who are within the prohibited degrees in marriage by consanguinity are entitled to support each other.

2. According to Mālikia, support is not at all required for and between collateral relatives. It is only required for and between parents and children.

3. According to Shafi'ia, support is not at all obligatory for and between collateral relatives. It is only obligatory for and between ascendants and descendants.

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<sup>358</sup>*Ibid.*, pp. 354-355.

4. According to Hanābila, it is only required for and between those relatives who can be heirs to each other in case death overtakes one of them even if they are not within the prohibited degrees in marriage.<sup>359</sup> The opinion of the school of Imām Ahmad Bin Hanbal in this respect appears to be more acceptable.

**316. Q — What are the requirements of the support of collateral relatives?**

A — The requirements of the support of collateral relatives are the following:

1. The giver has the resources to give.
2. The recipient is poor and has no earnings.
3. The recipient is a relative within the prohibited degrees in marriage by consanguinity, Hanafia scored. According to Mālikia and Shāfi'ia, collateral relatives are not entitled to receive support from one another. Hanābila rejoined by saying that the recipient is an heir of the giver or vice versa even though they are not within the prohibited degrees in marriage.

4. The giver and the recipient have the same religion.<sup>360</sup>

**317. Q — Suppose there are ascendant and collateral relative due to support what are the rules? Explain.**

A — When there are ascendant and collateral relative due to support, the rules are:

1. If in the case of the death of the recipient, both ascendant and collateral relative will consequently become heirs, they shall support him proportionate to their shares in the inheritance.

2. If in the case of the death of the recipient, one will consequently become heir and the other will not, the support shall be borne by the ascendant whether or not he will be an heir.<sup>361</sup>

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<sup>359</sup>*Ibid.*, pp. 356-357.

<sup>360</sup>*Ibid.*, p. 357.

<sup>361</sup>*Ibid.*, p. 359.

**318. Q — Suppose there are many ascendants present together with several collateral relatives to give support, is the rule different from the rules just mentioned in the immediately preceding number? Explain.**

A — Yes. The rule is different from the rules we have just mentioned in the immediately preceding number. In this instance, it will then be governed by a rule that as if there are several ascendants only. Example: There are full blood brother, mother and mother's father present. In this given example, the support shall be borne by the mother who is the nearest related to the recipient. If there are mother, father's father and son of full blood brother around, the support shall be shouldered by the ascendants proportionate to their shares as heirs. In this case, the son of a full blood brother is excluded by the father's father (paternal grandfather).<sup>362</sup>

**319. Q — Suppose there are collateral relatives and descendants present to give the support, what is the rule?**

A — When there are collateral relatives and descendants present to give the support, the rule is simple, to wit: The descendants shall take care of the support even if the collateral relatives will be heirs in case of death of the needy relative.<sup>363</sup>

**320. Q — Suppose there are ascendants together with descendants present to give the support, what is the rule?**

A — When there are ascendants and descendants present to give the support, the rule is: The nearest in the degree of relationship to the needy shall bear the support. If they have the same degrees of relationship to him, he who will have the precedence and preference in the inheritance shall carry it. If they will all become heirs in case of the death of the needy, they shall bear it proportionate to their respective shares

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<sup>362</sup>*Ibid.*, p. 359.

<sup>363</sup>*Ibid.*, p. 359.



in the inheritance except if among them is a son of the needy because he shall alone bear the support of his parents even if the parents' fathers are still living.<sup>364</sup>

## 6. Support of children

**321. Q — We have taken most of the aspects of the support of children under the previous topics. We shall take it now briefly even only to demonstrate the fact that support is a third right of a legitimate child. By the way, what is the rule of the support of children by their father? Explain.**

A — The rules of the support of children by their father are as follows:

1. If the child is rich, the expenses shall be taken from his wealth regardless of the age or sex.

2. If he is poor and minor, the expenses shall be borne by the father.

3. If he is matured, meaning that he is of age and capable of looking for his sustenance and nothing whatsoever is hindering him from doing so and he is a male, he shall bear his expenses. If, however, there exists a cause preventing him from working out his livelihood as when he is a student, the father will take care of the expenses.

4. If the child is a female and she is poor, the father shall bear the expenses regardless of her age and whether or not she is capable of working out her existence.<sup>365</sup>

**322. Q — Suppose the father refuses to support the child despite his being affluent, what can the latter do? Explain.**

A — The child may petition the court of competent jurisdiction for support and if the case is proved to be

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<sup>364</sup>*Ibid.*, p. 360.

<sup>365</sup>All Ibyani, *op. cit.*, pp. 81-84 Vol. 2.

meritorious, the Judge thereof shall fix the amount and order the father to give him the support. The court may even come to the extent of ordering the attachment of the property of the father for the purpose, if he still resists.<sup>366</sup>

**323. Q — Suppose the father is poor and has no means to support his children, who will be the next to support them?**

A — If the father is poor and has no means to support the children, the mother shall, through the order of the court, support them if she has the means but reimbursable by the father when his finances improve. If she is not available or she has no means, the paternal grandfather shall be ordered by the Court to support them also at the obligation and reimbursable by the father when he improves his finance.<sup>367</sup>

**324. Q — Actually, we have concluded the discussions on the support made obligatory because of marriage and the support made obligatory because of kinship; by the way, what are the differences between the two? Explain.**

A — The differences between support made obligatory because of marriage and support made obligatory because of kinship are the following:

1. The former is a price for withholding the wife for the requirements of the husband, hence, it is obligatory to the husband to support the wife even if the latter is wealthy and the former is poor or incapacitated to look for his living, whereas, the latter is either based on the fact that the recipient is a part of the giver, or one is within the prohibited degrees in marriage (*mahram*) to the other, or they are being heirs to each other, hence, generally it is only obligatory when the recipient is really in need and the giver has enough to give.

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<sup>366</sup>*Ibid.*, pp. 84-85.

<sup>367</sup>*Ibid.*, p. 85.

2. The former is obligatory even if the wife is not in need and whether or not the husband is affluent, whereas, the latter shall only be obligatory when the recipient is really in difficulty and the giver is financially at ease. This is not applicable to support between parents and children. We have made this clear, *supra*.

3. When the former becomes obligatory, it will be a debt of the husband if he does not give it on time and the wife has advanced her own money. When it becomes a debt, it can only be settled by payment or by condonation of the wife. It cannot therefore cease by the death of one or both of the spouses. Whereas, the latter can only be a debt of the giver if there is a corresponding court order. It is, however, possible to become a debt without court order, like the support of the father to his minor child, but it can be extinguished by the death of the minor unless there is a specific court order allowing it to ripen into a debt of the father upon the latter's failure to furnish it on time and a third person advanced it.

**325. Q — When shall support be paid?**

A — Article 69 of the Code of Muslim Personal Laws of the Philippines states that support shall be paid as follows:

1. The obligation to support shall be demandable from the time the recipient needs it for maintenance, but it shall not be paid except from the date it is extrajudicially demanded.

2. Payment shall be made daily, weekly or monthly in advance, and when the recipient dies, his heirs shall not be obliged to return what he had received in advance.

3. If the recipient is the wife, the rule established in the foregoing paragraph shall apply even though the marriage is dissolved.

It is believed that the aforequoted provisions of the Code have not violated any precept of the *Shari'ah*. The system of payment is at the discretion of the con-

cerned parties considering among other things the source of income of the giver. It may be agreed upon to be daily, weekly or monthly. Whatever may be their agreement on the matter, I do not think any one will interfere in their internal affairs.

**326. Q — When shall the obligation to support cease? Explain.**

A — Article 70 of the Code of Muslim Personal Laws of the Philippines provides that the obligation to support shall cease:

1. Upon the death of the recipient;
2. When the resources of the obligor have been so reduced that he cannot give the support without neglecting his own needs and those of his family, except that in the case of the spouses, the husband, though needy, is obliged to support the wife; or
3. When the recipient commits any act which would give rise to disqualification to inherit or denial of support under Muslim law.

The abovequoted provisions of the Code are without prejudice to the amount of support which was advanced by a third person on the strength of the court order and reimbursable by the person who is directly obliged to give it. In other words, when it becomes a debt of the giver at the sanction of the court order, it cannot be extinguished by the death of the giver or the recipient. This is like the expenses incurred by the wife when the husband fails to give her the support on time or the support of children which was advanced by the wife in compliance with court order because of the inability of the husband to give it at the time. These amounts of support advanced by the wife become debt of the husband and so it cannot be extinguished by the death of one or both of the spouses. The aforequoted provisions of the Code are applicable only to the support to be given yet and not to those long time due and became debt of the giver.

Apparently, the aforesaid provisions of the Code are applicable to all kinds of support. With regard to

the obligation of the husband to support the wife, it shall be extinguished by:

1. Condonation of support by the wife; or
2. Death of one of the spouses unless there has been a prior court order allowing the wife to incur debt for the purpose in which case it cannot be extinguished by the death of anyone or both of them because it has ripen into the debt of the husband.

**327. Q — It seems to me that we have only mentioned three rights of a legitimate child, how about his right to have an established relation to his parents (*al nasab*)?**

A — Actually, the established relation (*al nasab*) between the child and his parents is a fourth right of a legitimate child. We have mentioned in question and answer No. 292 that the established relation of a child to his parents is the basis of his right to fosterage, care, custody, guardianship, and support. In other words, it is not only a right but also a basis of the other rights of a legitimate child.

## CHAPTER FIVE

### PARENTAL AUTHORITY

**328. Q — Who shall exercise parental authority?**

A — The father and the mother shall jointly exercise just and reasonable parental authority and fulfill their responsibility over their legitimate and acknowledged children. In case of disagreement, the father's decision shall prevail unless there is a judicial order to the contrary.<sup>368</sup>

**329. Q — How many stages of care that a child or a person shall undergo and what are they? Explain.**

A — There are three stages of care that a child or a person shall undergo and they are as follows:

1. Care, custody and guardianship (*Al Hadhāna*). We have thoroughly discussed this subject matter, *supra* and please refer to question and answer Nos. 243 to 267.

2. Parental authority over the persons of the children. This stage shall be undertaken by the child after passing the age of *Al Hadhāna* and even after he reaches the age of puberty. This includes the guardian for marriage which we have already discussed it, *supra* and please refer to question and answer Nos. 268 to 276. We shall discuss here the subject further.

3. Parental authority over the property of the children.<sup>369</sup> This is actually the guardianship for minor's property which we have also discussed, *supra* and please refer to question and answer Nos. 278 to 280.

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<sup>368</sup>*Ibid.*, Art. 71 (1).

<sup>369</sup>Abū Zahra, *op. cit.*, p. 536.

**330. Q — After having read the care, custody and guardianship (*al hadhāna*), the guardianship for marriage and the guardianship for minor's property, we are surprised to find that father and mother are allowed to jointly exercise parental authority over their children, what is the basis of this particular provision of the Code of Muslim Personal Laws of the Philippines? Explain.**

A — This particular provision of the Code demonstrates the fact that the members of the Presidential Commission that drafted the Code had exercised some form of *ijtihad*, albeit modest, considering among other things the actual trend of the family affairs in this modern world that parental care over children is really and in truth exercised jointly by the father and the mother. It is believed that such proviso of the Code does not violate any tenet of the Islamic law because the father is there actually exercising it. The mother is just joining the father and in case of conflict, the father has the say.

**331. Q — Who shall exercise parental authority over children born out of wedlock? Explain.**

A — The mother shall exercise parental authority over her children born out of wedlock, but the court may, when the best interests of the children so require, appoint a general guardian.<sup>370</sup>

**332. Q — What is the duty of children to their parents? Explain.**

A — The children shall respect, revere, and obey their parents always unless the latter cast them into disbelief.<sup>371</sup>

Please note that you are urged to respect, revere and obey your parents always except in one thing, *i.e.*, when they strive to make you join in worship with God things you have no knowledge. Despite the exception, you are likewise ordered to be kind, considerate and

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<sup>370</sup>*Ibid.*, Art. 71 (2).

<sup>371</sup>*Ibid.*, Art. 72 (1).

courteous to them even if they command you to do things which you should not do and you should disobey them. The exception is the mandate of the hereto quoted verse of the Glorious Qur'ān:

وان حاهدك على ان تشرك بهي ما ليس لك به علم فلا تطعهما  
ومن حبهما في الدنيا معروف (٢١ : ١٥)

which means: But if they strive to make you join in worship with Me things of which you have no knowledge, obey them not, yet bear them company in this life with justice (and consideration). (S. XXXI. 15, Qur'ān).

**333. Q — How about grandparents, are they not entitled to respect and reverence by the grandchildren?**

A — Grandparents are likewise entitled to respect and reverence, and shall be consulted whenever practicable by all the members of the family on all important questions.<sup>372</sup>

**334. Q — What is the duty of parents or person exercising parental authority to the children?**

A — Every parent and every person exercising parental authority shall see to it that the rights of the children are respected, and their duties complied with, and shall particularly, by precept and example, imbue them with religious and civic consciousness, love of country, veneration of the national heroes and attachment to the ideal of permanent world peace.<sup>373</sup>

**335. Q — What are the effects of the parental authority upon the persons of the unemancipated children?**

A — As effects of the parental authority, the parents have, with respect to their unemancipated children:

1. The duty to support them, have them in their company, educate and instruct them in keeping

<sup>372</sup>*Ibid.*, Art. 72 (2).

<sup>373</sup>*Ibid.*, Art. 73.



with their means, and represent them in all actions which shall redound to their benefits and

2. The power to correct, discipline, and punish them moderately.<sup>374</sup>

**336. Q — What are the effects of parental authority upon property of children? Explain.**

A — The effects of parental authority upon property of children are

1. The father, or in his absence the mother, shall be the legal administrator of the property of the child under parental authority. If the property is worth more than five thousand pesos, the father or the mother shall give a bond to be approved by the court.

2. The court may appoint a guardian was in the absence of one who is natural or testamentary.<sup>375</sup>

Please note the amount in pesos mentioned above which is only applicable to the Muslims in the Philippines. Actually, we do not find yet a clear Islamic precept requiring the filing of a bond for the administration of the property of the children by their parents. We are aware of the doctrine that the child is a part and parcel of the parents but for his interests we made it a requirement in order to protect his interest. We do not look at it with favor that the parents are given every chance to misuse or misappropriate the child's property without a guarantee that the child can recover the same upon reaching the age. We do not believe that such requirement violates Islamic precept. On the contrary, we believe that it complies with the requirement of the *Shari'ah* for the protection of the interests and welfare of the children.

**337. Q — What is the relation of parental authority upon property of children mentioned in the immediately preceding number and the guardianship**

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<sup>374</sup>*Ibid.*, Art. 74.

<sup>375</sup>*Ibid.*, Art. 75.

**of minor's property enunciated in question and answer No. 278, supra? Explain.**

- A — In the question and answer No. 278 *supra*, the father's nominee is placed next to the father considering that the father is the most concerned over the affairs, interests and welfare of his child and if he is not available or he does not want to act as guardian of his child's property, he may nominate somebody to take his place. That is actually the provisions of Article 80 of the Code of Muslim Personal Laws of the Philippines adopting the view of the school of Abū Hanīfa.

The effects of parental authority upon property of children mentioned in the immediately preceding number is actually the provisions of Article 75 of the same Code. In this particular provisions, the members of the Presidential Commission who drafted the Code had again exercised some form of *ijtihad*, albeit modest, by allowing the mother to take automatically the place of the father in the absence of the latter in the matter of the administration of the child's property considering among other things the present tendency in the modern society.

Apparently, in case of conflict between the father's nominee and the child's mother over guardianship and administration of the minor's property, the father's nominee shall have the say because, firstly, he represents the father and he is as the father and, secondly, the provisions of Article 80 of the Code should prevail upon the provisions of Article 75 because the former is the latest.

**338. Q — Is parental authority transferable?**

- A — No. Parental authority can neither be renounced nor transferred except as otherwise allowed by Islamic law.<sup>376</sup>

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<sup>376</sup>*Ibid.*, Art. 76.

**339. Q — When shall parental authority cease?**

A — The parental authority shall terminate in any of the following:

1. Upon the death of the parents or the child, or upon emancipation.

2. The widowed mother who contracts a subsequent marriage shall lose parental authority and custody over all children by the deceased husband, unless the second husband is related to them within the prohibited degrees of consanguinity.

3. The court may deprive a person of parental authority or suspend the exercise thereof if he treats his children with excessive harshness, gives them corrupting or immoral orders and counsel, or abandons them.<sup>377</sup>

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<sup>377</sup>*Ibid.*, Art. 77.

## GLOSSARY

‘Ālim	:	(plural, ‘Ulama’) scholar or jurist.
Al ‘Asabāt	:	Paternal male relatives of a deceased person.
Dokhūl	:	Literally means penetration and technically means consummation of marriage.
Fardh	:	Obligatory.
Faqīh	:	(plural, Fuqahā’) a learned man who can give religious verdicts.
Faskh	:	Annulment of marriage.
Furūdh	:	Legitimate.
Had	:	(plural, hudud) Allāh’s boundary limits for <i>halāl</i> and <i>haram</i> .
Al Hadhāna	:	Care, custody and guardianship of children below seven or nine years of age in case of a boy or a girl, respectively.
Al Hadīth	:	(plural, Al Ahādith) prophetic traditions of our Prophet Muhammad (p.b.u.h.). His sayings and creeds.
Halāl	:	Lawful.
Haram	:	Unlawful, prohibited, forbidden and punishable from the point of view of religion.
‘Idda	:	A period of waiting prescribed for a woman whose marriage has been dissolved by death or by divorce the completion of which shall enable her to contract a new marriage.
Ihrām	:	Signifies the state of ritual consecration of a person while on pilgrimage to Mecca.
Ijab	:	An offer.

- Al Ijma' : Consensus of learned scholars or jurists.
- Īlā : A kind of divorce where a husband makes a vow to abstain from any carnal relation (*īlā*) with his wife and keeps such *īlā* for a period of not less than four months.
- Imām : A person who leads others in prayer or the Muslim Caliph.
- Al Infāq : Support.
- Al irdhā' : Fosterage.
- Kāfir : A disbeliever of Allāh.
- Khitba : Literally means message and technically means the expression of man's desire either directly or indirectly to marry a woman.
- Khul' : A kind of divorce where the wife may, after having offered to return or renounce her dower or to pay any other lawful consideration for her release (*khul'*) from the marriage bond, petition the court for divorce. The court shall, in meritorious cases and after fixing the consideration, issue the corresponding decree.
- Khulwa : Complete isolation of the husband with his wife. It is actually the surrender of the wife to the husband for the latter to consummate his marriage with the former.
- Li'ān : A kind of divorce where the husband accuses his wife in court of adultery, a decree of perpetual divorce may be granted by, the court after due hearing and after the parties shall have performed the prescribed acts of imprecation (*li'ān*).
- Mahr : A bridal money or a dower.
- Mahram : A male or a female whom a woman or a man, as the case may be, can never marry because of close relationship.
- Mahr musamā : Fixed dower.
- Mahr mithl : Proper dower.

- Makruh** : Disliked but not forbidden, not approved of, undesirable although not punishable.
- Maradh al maut** : Death-illness.
- Mathh-hab** : (plural, *mathahib*) any of the four orthodox (*sunni*) schools of Muslim law.
- Al Mawāriṭh** : The law on succession or inheritance.
- Mubāh Muslim** : Ordered without obligation.
- Personal Law** : It includes all laws relating to personal status, marriage and divorce, matrimonial and family relations, property relations between spouses, succession and inheritance.
- Mut'a** : A temporary marriage which was allowed in the early period of Islam when one is away from his home and later on it was prohibited.
- Al Nasab** : An established relation between parents or one of them, and the children.
- Qabūl** : An acceptance.
- Al Qiyās** : Verdicts or judgements given by the scholars on the bases of the following:
1. Glorious Qur'ān;
  2. Prophet's traditions (*sunna*);
  3. Ijma';
  4. Qiyas.
- Qiyas* is only practiced when the judgment of a given case is not found in the first three fundamental sources of Islamic law. It is also defined as reasoning by analogy.
- Rukn** : (plural, *arkān*) an essential requisite without which a marriage, for example, cannot be valid. It is an ingredient of marriage. Its compliance perfects the validity of marriage.
- Sharī'a** : (Muslim law) refers to all the ordinances and regulations governing Muslims as found principally in the Glorious Qur'ān and the Hadith.

- Shart : (plural, shurūt) a requirement with or without which a marriage, for example, can be valid though it may not be executory.
- Shighar : A kind of marriage wherein one marries the daughter or sister of another in exchange for marrying his daughter or sister to the latter without *mahr* given to each side. It is a true exchange of marriage, the *mahr* of one is considered the *mahr* of the other.
- Shurūt Inqād : The requirements of contract.
- Shurūt Luzūm : The requirements of permanence of the contract of marriage.
- Shurūt Nafād : The requirements of the execution of marriage.
- Shurūt Sīhha : The requirements of the correctness of the contract of marriage.
- Tafwīdh : A kind of divorce wherein if the husband has delegated to the wife the right to effect a *talāq* at the time of the celebration of the marriage or thereafter, she may repudiate the marriage and the repudiation would have the same effect as if it were pronounced by the husband himself.
- Tahlīl : Literally means legalization or justification and technically signifying the subsequent valid and consummated marriage contracted by an intervening husband with a wife who has been thrice repudiated by her former husband and thereafter the intervening husband divorces her and after the expiration of the prescribed *'idda* the former husband may remarry her.
- Tahrīm Bin-Nasab : Prohibition of marriage by consanguinity.
- Tahrīm Bil-Musahara : Prohibition of marriage of affinity.
- Tahrīm Bir-Radhā'a : Prohibition of marriage due to fosterage.
- Talāq : Divorce.

- Talāq bā'in Kubrā : A kind of irrevocable divorce where in the husband repudiated his wife thrice and so he cannot; remarry her anymore without the compliance of "*tahlīl*".
- Talāq bā'in Sūgra : It arises when the husband repudiates his wife either for the first or the second time (*talāq raj'ī*) and fails to reconcile with her within the prescribed *'idda*. Therefore, the *talāq* becomes irrevocable and the husband can only rejoin her through the benefit of a new contract of marriage.
- Talāq raj'ī : A kind of divorce wherein the husband may rejoin his wife by just resumption of cohabitation.
- Ta'ridh : An indirect expression of a man to marry a certain woman.
- Tasrih : A direct expression of a man to marry a certain woman.
- Taukīl : This term may arise in the marriage affairs when the husband delegated to a third person other than his wife the right to divorce his wife.
- Tuhr : Literally means cleanliness and technically signifies the period of cleanliness of a woman, a period wherein she is not menstruating.
- Wājib : Compulsory.
- Yaqin : The stage of certainty that a person, desiring to marry, reaches when he fears that he will certainly fall into fornication if he will not get married. Therefore, marriage becomes obligatory (*fardh*) to him.
- Zihār : A kind of divorce where the husband has injuriously assimilated (*zihār*) his wife to any of his relatives within the prohibited degrees of marriage. As a consequence, the spouses shall mutually refrain from having carnal relation until he shall have performed the prescribed expiation.



## REFERENCES

- 'Abd Al Bāqī, Muhammad Fu'ād. *Tafsīl Āyāt Al Qur'ān Al Hakim*. Cairo: Matba'atu 'Issā Al Bābī Al Halabī wa Shurākaho.
- 'Abd Al Baqi, Muhammad Fu'ād. *Al Mu 'jam Al Mufahris li Alfaz Al Qur'ān Al Karim*. Cairo: Dār wa Matābī' Al Sha'b.
- Abū Al Nūr, Muhammad Al Ahmadi. *Manhāj Al Sunan Fī Al Zawāj*. Cairo: Dār Al Nasr Matba'a, 1972.
- Abū Zahra, Muhammad. *Al Ahwāl Al Shakhshia*. Cairo: Dār Al Fikr Al Arabic, 1957.
- Alauya, Saaduddin A. Lecture on the substantive provisions of the Code of Muslim Personal Laws of the Philippines, delivered by the author in a National Seminar on the said Code, sponsored by the Mindanao State University and held at its main Campus at Marawi City on April 26-28, 1979 (unpublished).
- 'Alī, 'Abdullah Yusuf. *The Meaning of the Glorious Qur'ān, Text, Translation and Commentary*. Cairo: Dār Al Kitāb Al Masrī.
- Al 'Asqalānī, Al Hāfiz Shahab Al Din Abi Al Fadhl. *Ṣaḥīh Al Bukhārī Sharh Fath Al Bārī* Cairo: Shirkatu Maktabati wa Matba'ati Mustafa Al Bābī Al Halabī wa Aulādihi, 1959.
- Badrān, Badrān Abū Al 'Ainain. *Al Zawāj wa Al Talāq fī Al Islām*. Cairo: Matba'atu Dar Al Ta'lif, 1957.
- Al Bahūti, Mansur Bin Yunus Bin Idris. *Kashāf Al Qanā'*. Riyādh: Makta batu Al Nasr Al Hadītha
- Code of Muslim Personal Laws of the Philippines (Presidential Decree No. 1083).
- Al Gandur, Doctor Ahmad. *Al Talāq fī Al Shari'a Al Islamia wa Al Qānūn* Cairo: Dār al Mā'arif, 1967.
- Al Husarī, Al Ustath Ahmad. *Al Nikah wa Al Qadhaya Al Muta'alliqatu bihi* Cairo: Maktabatu Al Kulliyat Al Azharia, 1967.

- Al Huzairī, ‘Abd Al Rahmān. *Kitāb Al Fiqh ‘alā Al Mathāhib Al Arba’a*. Bairut Dār Al Kitāb Al ‘Arabie, 1950.
- Ibn ‘Abidin. *Radd Al Mukhtār*. Cairo: Shirkatu Maktabati Mustafa Al Bābī Al Halabī wa Aulādihi, 1966.
- Ibn Quddama, Abu Muhammad ‘Abdullah Bin Ahmad Bin Muhammad. *Al Mugni li Ibn Quddāma*. Cairo: Maktabatu Al Qahira or Bairut: Dar Al Kitāb Al ‘Arabie, 1972.
- Ibn Taimia, Ahmad Sheikul Islam: Compilation of Legal Opinions. Madinal al Munaw-warah: Mujamma al Malik Fahad litara ‘al al Mushaf al sharef, 1995.
- Ibrāhīm, Ezzedīn and Johnson-Davies, Denys. An-Nawawi’s Forty Hadith. Damascus: The Holy Koran Publishing House, 1977.
- Al Ibyānī, Muhammad Zaid. *Sharh Al Ahkam Al Shari’a fī Al Ahwal Al Shakhsia*. Bairut-Bagdad: Maktabatu Al Nahdha.
- Al Jabbūrī, Hussain Khalf. *Al Zawāj wa Bayān Ahkāmihī fī Al Shari’a Al Islāmia*. Najf Al Ashraf, Iraq: Matba’atu Al Adab, 1972.
- Al Jazā’irī, Abū Bakr Jābir; Minjāh Al Muslim, Cairo: Maktabatu Al Kulliyat Al Azharia, 1979.
- Ja’ul Haqiq, Ali Sheikhul Ashar. Buhuth wa Fatwa Islammiyya Cairo: Maktabatu Al Qahira, 1972.
- Al Kashki, Al Shaikh Muhammad ‘Abd Al Rahīm. *Al Mirāth Al Muqārin*. Bagdad: Dār Al Nathir, 1969.
- Khan, Dr. Muhammad Muhsīn. The Translation of the Meaning of *Sahih Al Bukhari*. Ankara. Hilal Yayinlari, 1976.
- Kitāb Al Ahkām Al Shari’a fī Al Ahwāl Al Shakhsia ‘Alā Math-hab Al Imām abī Hanīfa*. Bairut: Dār Al Afāq Al Jādida, 1978.
- Maudūdi, S. ‘Abul A’la. The Meaning of the Qur’ān Delhi: Board of Islamic Publications, 1973.
- Al Qaradawi, Yusuf. The Lawful and the Prohibited in Islam. International Federation of Student Organizations, 1992.
- Muhammad-Uileh, Al Haj. Woman in Islamic Shari’a Delhi: Islamic Publications, 1983.
- Sabiq, Al Sayid. *Fiqhu Al Sunna*. Bairut Dār Al Kitāb Al ‘Arabie, 1977.

Sha'raw; Al Sheilon. *Fatwa Islammiyya*. Cairo: Maktabatu al Kulliyat Al Azharia, 1980.

Dr. Sharradi: *Yas'alanaba fi Dalim Wal Haya*.

Al Shaukānī, Muhammad Bin 'Alī Bin Muhammad. *Nail Al Autār*.  
Cairo: Shirkatu Maktabati wa Mataba'ati Mustafa Al Bābī  
Al Halabī wa Aulādihi.

Siddiqī, 'Abdul Hamīd. *Sahih Muslim*, translated into English New  
Delhi: Kitāb Bhavan, 1977.

**APPENDIX A**

**PRESIDENTIAL DECREE NO. 1083**

A DECREE TO ORDAIN AND PROMULGATE A CODE  
RECOGNIZING THE SYSTEM OF FILIPINO MUSLIM  
LAWS, CODIFYING MUSLIM PERSONAL LAWS, AND  
PROVIDING FOR ITS ADMINISTRATION AND FOR  
OTHER PURPOSES.

WHEREAS, pursuant to the spirit of the provision of the Constitution of the Philippines that, in order to promote the advancement and effective participation of the National Cultural Communities in the building of the New Society, the State shall consider their customs, traditions, beliefs and interests in the formulation and implementation of its policies;

WHEREAS, Islamic law and its principles of equity and justice, to which the Filipino Muslim communities adhere, provide an essential basis for the fuller development of said communities in relation to the search for harmonious relations of all segments of the Filipino nation to enhance national unity;

WHEREAS, the enforcement, with the full sanction of the State, of the legal system of the Filipino Muslims shall redound to the attainment of a more ordered life amongst them;

WHEREAS, it is the intense desire of the New Society to strengthen all the ethno-linguistic communities in the Philippines within the context of their respective ways of life in order to bring about a cumulative result satisfying the requirements of national solidarity and social justice;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution of the Philippines, do hereby ordain and promulgate the "Code of Muslim Personal Laws of the Philippines" as part of the law of the land and hereby decree:

## **BOOK ONE**

### **GENERAL PROVISIONS**

#### **TITLE I. — TITLE AND PURPOSES OF CODE**

Article 1. *Title.* — This decree shall be known as the “Code of Muslim Personal Laws of the Philippines.”

Art. 2. *Purpose of Code.* — Pursuant to Section 11 of Article XV of the Constitution of the Philippines, which provides that “The State shall consider the customs, traditions, beliefs and interests of national cultural communities in the formulation and implementation of state policies,” this Code:

- (a) Recognizes the legal system of the Muslims in the Philippines as part of the law of the land and seeks to make Islamic institutions more effective;
- (b) Codifies Muslim personal laws; and
- (c) Provides for an effective administration and enforcement of Muslim personal laws among Muslims.

#### **TITLE II. — CONSTRUCTION OF CODE AND DEFINITION OF TERMS**

Art. 3. *Conflict of Provisions.* — (1) In case of conflict between any provision of this Code and laws of general application, the former shall prevail.

(2) Should the conflict be between any provision of this Code and special laws or laws of local application, the latter shall be liberally construed in order to carry out the former.

(3) The provisions of this Code shall be applicable only to Muslims and nothing herein shall be construed to operate to the prejudice of a non-Muslim.

Art. 4. *Construction and interpretation.* — (1) In the construction and interpretation of this Code and other Muslim laws, the court shall take into consideration the primary sources of Muslim law.

(2) Standard treatises and works on Muslim law and jurisprudence shall be given persuasive weight in the interpretation of Muslim law.

Art. 5. *Proof of Muslim law and 'āda.* — Muslim law and 'āda not embodied in this Code shall be proven in evidence as a fact. No 'āda which is contrary to the Constitution of the Philippines, this Code, Muslim law, public order, public policy or public interest shall be given any legal effect.

Art. 6. *Conflict in Islamic schools of law.* — (1) Should there be any conflict among the orthodox (*Sunnī*) Muslim schools of law (*Madhāhib*), that which is in consonance with the Constitution of the Philippines, this Code, public order, public policy and public interest shall be given effect.

(2) The Muslim schools of laws shall for purposes of this Code, be the Hanafī, the Hanbalī, the Mālikī and the Shafī'i.

Art. 7. *Definition of terms.* — Unless the context otherwise provides:

(a) "Āgama Arbitration Council" means a body composed of the Chairman and a representative of each of the parties to constitute a council to take all necessary steps for resolving conflicts between them.

(b) "Ada means customary law.

(c) "General Register" means the General Register of marriages, divorces, revocation of divorces, conversions and such other deeds or instruments kept by the Registrar under this Code.

(d) "Ihrām" signifies the state of ritual consecration of a person while on pilgrimage to Mecca.

(e) "Madhhab" (plural, *Madhāhib*) means any of the four orthodox (*Sunnī*) schools of Muslim law,

(f) "Month" means a period of thirty days.

(g) "Muslim" is a person who testifies to the oneness of God and the Prophethood of Muhammad and professes Islam.

(h) "Muslim Law" (*Shari'a*) refers to all the ordinances and regulations governing Muslims as found principally in the Qur'an and the *Hadīth*.

(i) "Muslim Personal Law" includes all laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property, relations between spouses as provided for in this Code.

**BOOK TWO**  
**PERSONS AND FAMILY RELATIONS**

**TITLE I. — CIVIL PERSONALITY (*SHAKHSIYAH*  
*MADANIYYA*)**

Art. 8. *Legal capacity.* — Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.

Art. 9. *Restrictions on capacity.* — The following circumstances, among others, modify or limit capacity to act: age, insanity, imbecility, the state of being a deaf-mute, the condition of death illness (*marad-ul-maut*), penalty, prodigality, absence, family relations, alienage, insolvency, and trusteeship. The consequences of these circumstances are governed by this Code and other Islamic laws, and, in a suppletory manner, by other laws.

Art. 10. *Personality, how acquired.* — Birth determines personality but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born alive, however briefly, at the time it is completely delivered from the mother's womb.

Art. 11. *Extinction of personality.* — (1) Civil personality is extinguished by death. The effect of death upon the rights and obligations of a deceased person is determined by this Code, by contract, and by will.

(2) After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead.

Art. 12. *Simultaneous death.* — If, as between two or more persons who are called to succeed each other, there is a doubt as to which of them died first, whoever alleges the death of one prior to the other shall prove the same; in the absence of such proof, It is presumed that they died at the same time and there shall be no transmission of rights from one to the other. However, the successional rights of their respective heirs shall not be affected.

**TITLE II. — MARRIAGE AND DIVORCE**

**Chapter One**

**APPLICABILITY CLAUSE**

Art. 13. *Application.* — (1) The provisions of this Title shall apply to marriage and divorce wherein both parties are Muslims, or

wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.

(2) In case of a marriage between a Muslim and a non-Muslim, solemnized not in accordance with Muslim law or this Code, the Civil Code of the Philippines shall apply.

(3) Subject to the provisions of the preceding paragraphs, the essential requisites and legal impediments to marriage, divorce, paternity and filiation, guardianship and custody of minors, support and maintenance, claims for customary dower (*mahr*), betrothal, breach of contract to marry solemnization and registration of marriage and divorce, rights and obligations between husband and wife parental authority, and the property relations between husband and wife shall be governed by this Code and other applicable Muslim laws.

## Chapter Two

### MARRIAGE (*NIKAH*)

#### Section 1. — *Requisites of Marriage*

Art. 14. *Nature.* — Marriage is not only a civil contract but a social institution. Its nature, consequences and incidents are governed by this Code and the *Sharī'a* and not subject to stipulation, except that the marriage settlements may to a certain extent fix the property relations of the spouses.

Art. 15. *Essential requisites.* — No marriage contract shall be perfected unless the following essential requisites are complied with:

- (a) Legal capacity of the contracting parties;
- (b) Mutual consent of the parties freely given;
- (c) Offer (*ījāb*) and acceptance (*qabūl*) duly witnessed by at least two competent persons after the proper guardian in marriage (*walī*) has given his consent; and
- (d) Stipulation of customary dower (*mahr*) duly witnessed by two competent persons.

Art. 16. *Capacity to contract marriage.* — (1) Any Muslim male at least fifteen years of age and any Muslim female of the age of puberty or upwards and not suffering from any impediment under



the provisions of this Code may contract marriage. A female is presumed to have attained puberty upon reaching the age of fifteen.

(2) However, the *Shari'a* District Court may, upon petition of a proper *wali*, order the solemnization of the marriage of a female who, through less than fifteen but not below twelve years of age, has attained puberty.

(3) Marriage through a *wali* by a minor below the prescribed ages shall be regarded as betrothal and may be annulled upon the petition of either party within four years after attaining the age of puberty, provided no voluntary cohabitation has taken place and the *wali* who contracted the marriage was other than the father or paternal grandfather.

Art. 17. *Marriage ceremony.* — No particular form of marriage ceremony is required but the *ijāb* and the *qabūl* in marriage shall be declared publicly in the presence of the person solemnizing the marriage and two competent witnesses. This declaration shall be set forth in an instrument in triplicate, signed or marked by the contracting parties and said witnesses, and attested by the person solemnizing the marriage. One copy shall be given to the contracting parties and another sent to the Circuit Registrar by the solemnizing officer who shall keep the third.

Art. 18. *Authority to solemnize marriage.* — Marriage may be solemnized:

- (a) By the proper *wali* of the woman to be wedded;
- (b) Upon authority of the proper *wali*, by any person who is competent under Muslim law to solemnize marriage; or
- (c) By the judge of the *Shari'a* District Court or *Shari'a* Circuit Court or any person designated by the judge, should the proper *wali* refuse without justifiable reason, to authorize the solemnization.

Art. 19. *Place of solemnization.* — Marriage shall be solemnized publicly in any mosque, office of the *Shari'a* judge, office of the District or Circuit Registrar, residence of the bride or her *wali*, or at any other suitable place agreed upon by the parties.

Art. 20. *Specification of dower.* — The amount or value of dower may be fixed by the contracting parties (*mahr-musamma*) before, during or after the celebration of the marriage. If the amount or the value thereof has not been so fixed, a proper dower (*mahr-mithl*) shall,

upon petition of the wife, be determined by the court according to the social standing of the parties.

Art. 21. *Payment of dower.* — Subject to the stipulation of the parties, the dower may be fully or partially, paid before, during, or after the marriage. The property or estate of the husband shall be liable for the unpaid dower, or any part thereof.

Art. 22. *Breach of contract.* — Any person who has entered into a contract to marry but subsequently refuses without reasonable ground to marry the other party who is willing to perform the same shall pay the latter the expenses incurred for the preparation of the marriage and such images as may be granted by the court.

### Section 2 . — *Prohibited Marriages*

Art. 23. *Bases of prohibition.* — No marriage may be contracted by parties within the prohibited degrees:

- (a) Of consanguinity;
- (b) Of Affinity, and
- (c) Of fosterage.

Art. 24. *Prohibition by consanguinity (tahrīmih-nasab).* — No marriage shall be contracted between:

- (a) Ascendants and descendants of any degree;
- (b) Brothers and sisters, whether germane, consanguine or uterine; and
- (c) Brothers or sisters and their descendants within the third civil degree.

Art. 25. *Prohibition by affinity (tahrīm-bil-musāhara).* — (1) No marriage shall be contracted between:

- (a) Any of the spouses and their respective affinal relatives in the ascending line and in the collateral line within the third degree.
- (b) Stepfather and stepdaughter when the marriage between the former and the mother of the latter has been consummated;
- (c) Stepmother and stepson when the marriage between the former and the father of the latter has been consummated; and

(d) Stepson or stepdaughter and the widow, widower or divorcee of their respective ascendants.

(2) The prohibition under this article applies even after the dissolution of the marriage creating the affinal relationship.

Art. 26. *Prohibition due to fosterage (tahrīm-bir-radā'a)*. — (1) No person may validly contract marriage with any woman who breastfed him for at least five times within two years after his birth.

(2) The prohibition on marriage by reason of consanguinity shall likewise apply to persons related by fosterage within the same degrees, subject to exceptions recognized by Muslim law.

### Section 3. — *Subsequent Marriages*

Art. 27. *By a husband*. — Notwithstanding the rule of Islamic law permitting a Muslim to have more than one wife but not more than four at a time, no Muslim male can have more than one wife unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases.

Art. 28. *By widow*. — No widow shall contract a subsequent marriage unless she has observed an *'idda* of four months and ten days counted from the date of the death of her husband. If at that time the widow is pregnant, she may remarry within a reasonable time after delivery. In such case, she shall produce the corresponding death certificate.

Art. 29. *By divorcee*. — (1) No woman shall contract a subsequent marriage unless she has observed an *'idda* of three monthly courses counted from the date of divorce. However, if she is pregnant at the time of the divorce, she may remarry only after delivery.

(2) Should a repudiated woman and her husband reconcile during her *'idda* he shall have a better right to take her back without need of a new marriage contract.

(3) Where it is indubitable that the marriage has not been consummated when the divorce was effected, no *'idda* shall be required.

Art. 30. *Marriage after three talāq*. — (1) Where a wife has been thrice repudiated (*talāq bā'in kubrā*) on three different occasions by her husband, he cannot remarry her unless she shall have married another person who divorces her after consummation of the intervening marriage and the expiration of the *'idda*.

(2) No solemnizing officer shall perform the subsequent marriage mentioned in the preceding paragraph unless he has ascertained that there was no collusion among the parties.

#### Section 4. *Bātil and Fāsīd Marriages*

Art. 31. *Bātil marriages*. — The following marriages shall be void (*bātil*) from the beginning:

- (a) Those contracted contrary to Articles 23, 24, 25 and 26;
- (b) Those contracted in contravention of the prohibition against unlawful conjunction; and
- (c) Those contracted by parties one or both of whom have been found guilty of having killed the spouse of either of them.

Art. 32. *Fāsīd marriages*. — The following marriages shall be irregular (*fāsīd*) from their performance:

- (a) Those contracted with a female observing *‘idda*;
- (b) Those contracted contrary to Article 30;
- (c) Those wherein the consent of either party is vitiated violence, intimidation, fraud, deceit or misrepresentation.
- (d) Those contracted by a party in a condition of death illness (*marad-ul-maut*) without the same being consummated;
- (e) Those contracted by a party in a state of *ihram*; and
- (f) Mixed marriages not allowed under Islamic law.

Art. 33. *Validation, of irregular marriages*. — (1) Irregular marriages may be made regular by a new marriage contract in the following cases:

- (a) Those referred to in Article 32 (a), after the impediment has been removed;
- (b) Those referred to in Article 32 (b), upon compliance with the requirement of Article 30;
- (c) Those referred to in Article 32 (c), after the causes vitiating consent have ceased;
- (d) Those referred to in Article 32 (d), in case the party recovers;

(e) Those referred to in Article 32 (e), When the party is no longer in a state of *ihram*; and

(f) Those referred to in Article 32 (f), after conversion to a faith that could have made the marriage valid.

(2) The effects of the new marriage under the first paragraph shall retroact to the date of the celebration of the irregular marriage.

### Section 5. — *Rights and Obligations between Spouses*

Art. 34. *Mutual rights and obligations.* — (1) The husband and the wife are obliged to live together, observe mutual respect and fidelity, and render mutual help and support in accordance with this Code.

(2) When one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonor or material injury upon the other, the injured party may petition the court for relief. The court may counsel the offender to comply with his or her duties, and take such measures as may be proper.

(3) The husband and the wife shall inherit from each other in accordance with this Code.

(4) The husband and the wife shall have the right to divorce in accordance with this Code.

Art. 35. *Rights and obligations of the husband.* — The husband shall fix the residence of the family. The court may exempt the wife from living with her husband on any of the following grounds:

(a) Her dower is not satisfied in accordance with the stipulations; or

(b) The conjugal dwelling is not in keeping with her social standing or is, for any reason, not safe for the members of the family or her property.

Art. 36. *Rights and obligations of the wife.* — (1) The wife shall dutifully manage the affairs of the household. She may purchase things necessary for the maintenance of the family, and the husband shall be bound to reimburse the expenses, if he has not delivered the proper sum.

(2) The wife cannot, without the husband's consent, acquire any property by gratuitous title, except from her relatives who are within the prohibited degrees in marriage.

(3) The wife may, with her husband's consent, exercise any profession or occupation or engage in lawful business which is in keeping with Islamic modesty and virtue. However, if the husband refuses to give his consent on the ground that his income is sufficient for the family according to its social standing or his opposition is based on serious and valid grounds, the matter shall be referred to the *Agama* Arbitration Council.

(4) The wife shall have the right to demand the satisfaction on her *mahr*.

(5) Unless otherwise stipulated in the marriage settlements, the wife retains ownership and administration of her exclusive property.

(6) The wife shall be entitled to an equal and just treatment by the husband.

#### Section 6. — *Property Relations between Spouses*

Art. 37. *How governed.* — The property relations between husband and wife shall be governed in the following order:

- (a) By contract before or at the time of the celebration of marriage;
- (b) By provisions of this Code; and
- (c) By custom.

Art. 38. *Regime of property relations.* — The property relations between the spouses, in the absence of any stipulation to the contrary in the marriage settlements or any other contract, shall be governed by the regime of complete separation of property in accordance with this Code and, in a suppletory manner, by the general principles of Islamic law and the Civil Code of the Philippines.

Art. 39. *Stipulation in the marriage settlements.* — Every stipulation in the marriage settlements or contract referred to in the preceding article shall be void and without effect whatsoever, should the marriage not take place. However, stipulations that do not depend upon the contract of marriage shall be valid.

Art. 40. *Ante-nuptial property.* — The wife shall not lose ownership and administration of all properties brought by her to the marriage in the absence of any written agreement to the contrary,

and she may dispose of the same by deed or otherwise even without the consent of her husband.

Art. 41. *Exclusive property of each spouse.* — The following shall be the exclusive property of either spouse:

(a) Properties brought to the marriage by the husband or the wife;

(b) All income derived by either spouse from any employment, occupation or trade;

(c) Any money or property acquired by either spouse during marriage by lucrative title;

(d) The dower (*mahr*) of the wife and nuptial gifts to each spouse;

(e) Properties acquired by right of redemption, purchase or exchange of the exclusive property of either; and

(f) All fruits of properties mentioned in the foregoing paragraphs.

Art. 42. *Ownership and administration.* — Each spouse shall own, possess, administer, enjoy and dispose of his or her own exclusive estate even without the consent of the other. However, the court may, upon petition of either spouse, grant to the other the administration of such property.

Art. 43. *Household property.* — Household property which customarily pertains to or is used by either spouse shall be *prima facie* presumed to be the property of said spouse.

Art. 44. *Right to sue and be sued.* — The wife may, independently of the husband, sue or be sued in the following cases:

(a) When the litigation is between husband and wife;

(b) If the suit concerns her exclusive property;

(c) If the litigation is incidental to her profession, occupation or business;

(d) If the litigation concerns the exclusive property of the husband, the administration of which has been transferred to her; or

(e) Such other appropriate cases as may be allowed by the general principles of Islamic law and other laws.

### Chapter Three

### DIVORCE (TALAQ)

#### Section 1. — *Nature and Form*

Art. 45. *Definition and forms.* — Divorce is the formal dissolution of the marriage bond in accordance with this Code to be granted only after the exhaustion of all possible means of reconciliation between the spouses. It may be effected by:

- (a) Repudiation of the wife by the husband (*talāq*);
- (b) Vow of continence by the husband (*ilā*);
- (c) Injurious assimilation of the wife by the husband (*zihār*);
- (d) Acts of imprecation (*liān*);
- (e) Redemption by the wife (*khul'*);
- (f) Exercise by the wife of the delegated right to repudiate (*tafwīd*); or
- (g) Judicial decree (*faskh*).

Art. 46. *Divorce by talāq.* — (1) A divorce by *talāq* may be effected by the husband in a single repudiation of his wife during her non-menstrual period (*tuh̄r*) within which he has totally abstained from carnal relation with her. Any number of repudiations made during one *tuh̄r* shall constitute only one repudiation and shall become irrevocable after the expiration of the prescribed *'idda*.

(2) A husband who repudiates his wife, either for the first or second time, shall have the right to take her back (*ruju'*) within the prescribed *'idda* by resumption of cohabitation without need of a new contract of marriage. Should he fail to do so, the repudiation shall become irrevocable (*talāq bāin sugrā*).

Art. 47. *Divorce by ilā.* — Where a husband makes a vow to abstain from any carnal relation (*ilā*) with his wife and keeps such *ilā* for a period of not less than four months, she may be granted a decree of divorce by the court after due notice and hearing.

Art. 48. *Divorce by zihār.* — Where the husband has injuriously assimilated (*zihār*) his wife to any of his relatives within the prohibited degrees of marriage, they shall mutually refrain from having carnal relation until he shall have performed the prescribed expiation. The wife may ask the court to require her husband to perform



the expiation or to pronounce a regular *talāq* should he fail or refuse to do so, without prejudice to her right of seeking other appropriate remedies.

Art. 49. *Divorce by li'ān*. — Where the husband accuses his wife in court of adultery, a decree of perpetual divorce may be granted by the court after due hearing and after the parties shall have performed the prescribed acts of imprecation (*li'ān*).

Art. 50. *Divorce by khūl'*. — The wife may, after having offered to return or renounce her dower or to pay any other lawful consideration for her release (*khūl'*) from the marriage bond, petition the court for divorce. The court shall, in meritorious cases and after fixing the consideration, issue the corresponding decree.

Art. 51. *Divorce by tafwid*. — If the husband has delegated (*tafwid*) to the wife the right to effect a *talāq* at the time of the celebration of the marriage or thereafter, she may repudiate the marriage and the repudiation would have the same effect as if it were pronounced by the husband himself.

Art. 52. *Divorce by faskh*. — The court may, upon petition of the wife, decree a divorce by *faskh* on any of the following grounds:

(a) Neglect or failure of the husband to provide support for the family for at least six consecutive months:

(b) Conviction of the husband by final judgment sentencing him to imprisonment for at least one year;

(c) Failure of the husband to perform for six months without reasonable cause his marital obligation in accordance with this Code;

(d) Impotency of the husband;

(e) Insanity or affliction of the husband with an incurable disease which would make the continuance of the marriage relationship injurious to the family;

(f) Unusual cruelty of the husband as defined under the next succeeding article; or

(g) Any other cause recognized under Muslim law for the dissolution of marriage by *faskh* either at the instance of the wife or the proper *walī*.

Art. 53. *Faskh on the ground of unusual cruelty*. — A decree of *faskh* on the ground of unusual cruelty may be granted by the court upon petition of the wife if the husband:

- (a) Habitually assaults her or makes her life miserable by cruel conduct even if this does not result in physical injury;
  - (b) Associates with persons of ill-repute or leads an infamous life or attempts to force the wife to live an immoral life;
  - (c) Compels her to dispose of her exclusive property or prevents her from exercising her legal rights over it;
  - (d) Obstructs her in the observance of her religious practice;
- or
- (e) Does not treat her justly and equitably as enjoined by Islamic law.

Art. 54. *Effects of Irrevocable talaq or faskh.* — A *talāq* or *faskh*, as soon as it becomes irrevocable, shall have the following effects:

- (a) The marriage bond shall be severed and the spouses may contract another marriage in accordance with this Code;
- (b) The spouses shall lose their mutual rights of inheritance;
- (c) The custody of children shall be determined in accordance with Article 78 of this Code;
- (d) The wife shall be entitled to recover from the husband her whole dower in case the *talāq* has been effected after the consummation of the marriage, or one-half thereof if effected before its consummation;
- (e) The husband shall not be discharged from his obligation to give support in accordance with Article 67; and
- (f) The conjugal partnership if stipulated in the marriage settlements, shall be dissolved and liquidated.

Art. 55. *Effects of other kinds of divorce.* — The provisions of the article immediately preceding shall apply to the dissolution of marriage by *ilā*, *zihār*, *liʿān* and *khūlʿ* subject to the effects of compliance with the requirements of the Islamic law relative to such divorces.

## Section 2. — *ʿIdda*

Art 56. *Idda defined.* — *ʿIdda* is the period of waiting prescribed for a woman whose marriage has been dissolved by death or by divorce the completion of which shall enable her to contract a new marriage.

Art. 57. *Period.* — (1) Every wife shall be obliged to observe as follows:

(a) In case of dissolution of marriage by death, four months and ten days counted from the death of her husband;

(b) In case of termination of marriage by divorce, for three monthly courses; or

(c) In case of a pregnant woman, for a period extending until her delivery.

(2) Should the husband die while the wife is observing *'idda* for divorce, another *'idda* for death shall be observed in accordance with paragraph 1 (a).

### TITLE III. — PATERNITY AND FILIATION

Art. 58. *Legitimacy, how established.* — Legitimacy of filiation is established by evidence of valid marriage between the father and the mother at the time of the conception of the child.

Art. 59. *Legitimate children.* — (1) Children conceived in lawful wedlock shall be presumed to be legitimate. Whoever claims illegitimacy of or impugns such filiation must prove his allegation.

(2) Children born after six months following the consummation of marriage or with two years after the dissolution of the marriage shall be presumed to be legitimate. Against this presumption no evidence shall be admitted other than that of the physical impossibility of access between the parents at or about the time of the conception of the child.

Art. 60. *Children of subsequent marriage.* — Should the marriage be dissolved and the wife contracts another marriage after the expiration of her *'idda*, the child born within six months from the dissolution of the prior marriage shall be presumed to have been conceived during the former marriage, and if born thereafter, during the latter.

Art. 61. *Pregnancy after dissolution.* — If, after the dissolution of marriage, the wife believes that she is pregnant by her former husband, she shall, within thirty days from the time she became aware of her pregnancy, notify the former husband or his heirs of that fact. The husband or his heirs may ask the court to take measures to prevent a simulation of birth.

Art. 62. *Rights of legitimate child.* — A legitimate child shall have the right:

- (a) To bear the surnames of the father and of the mother;
- (b) To receive support from the father or, in his default, from his heirs in accordance with Articles 65 and 68; and
- (c) To share in the legitime (*furūd*) and other successional rights which this Code recognizes in his favor.

Art. 63. *Acknowledgment by father.* — Acknowledgment (*igrar*) of a child by the father shall establish paternity and confer upon each the right to inherit from the other exclusively in accordance with Article 94, provided the following conditions are complied with:

- (a) The acknowledgment is manifested by the father's acceptance in public that he is the father of the child who does not impugn it; and
- (b) The relation does not appear impossible by reason of disparity in age.

Art. 64. *Adoption.* — No adoption in any form shall confer upon any person the status and rights of a legitimate child under Muslim law, except that said person may receive a gift (*hiba*).

#### TITLE IV. — SUPPORT (NAFAQA)

Art. 65. *Support defined.* — Support (*nafaqa*) includes everything that is indispensable for sustenance, dwelling, clothing and medical attendance according to the social standing of the person obliged to give it, and the education of the person entitled to the support until he completes his education, training or vocation even beyond the age of majority.

Art. 66. *Amount.* — The amount of support shall be in proportion to the resources of the giver and to the needs of the recipient.

Art. 67. *Support for wife and infant.* — (1) The wife shall be entitled to support during the marriage. In cases of divorce (*talāq*), her right shall be extended up to the expiration of the *'idda*. However, in case the wife is pregnant at the time of the separation, she shall be entitled to support until delivery.

(2) Any divorced nursing mother who continues to breastfeed her child for two years shall be entitled to support until the time of weaning.

Art. 68. *Support between ascendants and descendants.* — The ascendants and descendants shall be obliged to support each other in the order in which they are called to succeed by intestacy the person who has a right to claim support.

Art. 69. *Payment.* — (1) The obligation to support shall be demandable from the time the recipient needs it for maintenance, but it shall not be paid except from the date it is extrajudicially demanded.

(2) Payment shall be made daily, weekly or monthly in advance, and when the recipient dies, his heirs shall not be obliged to return what he had received in advance.

(3) If the recipient is the wife, the rule established in the foregoing paragraph shall apply even though the marriage is dissolved.

Art. 70. *Extinguishment of support.* — The obligation to support shall cease:

- (a) Upon the death of the recipient;
- (b) When the resources of the obligor have been so reduced that he cannot give the support without neglecting his own needs and those of his family, except that in the case of the spouses, the husband, though needy, is obliged to support the wife; or
- (c) When the recipient commits any act which would give rise to disqualification to inherit or denial of support under Muslim law.

## **TITLE V. — PARENTAL AUTHORITY**

### **Chapter One**

#### **NATURE AND EFFECTS**

Art. 71. *Who exercises.* — (1) The father and the mother shall jointly exercise just and reasonable parental authority and fulfill their responsibility over their legitimate and acknowledged children. In case of disagreement, the father's decision shall prevail unless there is a judicial order to the contrary.

(2) The mother shall exercise parental authority over her children born out of wedlock, but the court may, when the best interests of the children so require, appoint a general guardian.

Art. 72. *Duty to parents.* — (1) Children shall respect, revere, and obey their parents always unless the latter cast them into disbelief.

(2) Grandparents are likewise entitled to respect and reverence, and shall be consulted whenever practicable by all members of the family on all important questions.

Art. 73. *Duty to children.* — Every parent and every person exercising parental authority shall see to it that the rights of the children are respected, and their duties complied with, and shall particularly by precept and example, imbue them with religious and civic consciousness, love of country, veneration of the national heroes and attachment to the ideal of permanent world peace.

Art. 74. *Effects upon person of children.* — The parents have, with respect to their unemancipated children:

(a) The duty to support them, have them in their company, educate and instruct them in keeping with their means, and represent them in all actions which shall redound to their benefits; and

(b) The power to correct, discipline, and punish them moderately.

Art. 75. *Effects upon property of children.* — (1) The father, or in his absence the mother, shall be the legal administrator of the property of the child under parental authority. If the property is worth more than five thousand pesos, the father or the mother shall give a bond to be approved by the court.

(2) The court may appoint a guardian (*wasi*) in the absence of one who is natural, or testamentary.

Art. 76. *Parental authority non-transferable.* — Parental authority can neither be renounced nor transferred except as otherwise provided in this Code and the general principles of Islamic law.

Art. 77. *Extinguishment of parental authority.* — (1) Parental authority terminates upon the death of the parents or the child, or upon emancipation.

(2) Subject to Article 78, the widowed mother who contracts a subsequent marriage shall lose parental authority and custody over all children by the deceased husband, unless the second husband is related to them within the prohibited degrees of consanguinity.

(3) The court may deprive a person of parental authority or suspend the exercise thereof if he treats his children with excessive harshness, gives them corrupting or immoral orders and counsel, or abandons them.

## Chapter Two CUSTODY AND GUARDIANSHIP

Art. 78. *Care and custody.* — (1) The care and custody of children below seven years of age whose parents are divorced shall belong to the mother or, in her absence, to the maternal grandmother, the paternal grandmother, the sister and aunts. In their default, it shall devolve upon the father and the nearest paternal relatives. The minor above seven years of age but below the age of puberty may choose the parent with whom he wants to stay.

(2) The unmarried daughter who has reached the age of puberty shall stay with the father; the son, under the same circumstances, shall stay with the mother.

Art. 79. *Guardian for marriage (wali).* — The following persons shall have authority to act as guardian for marriage (*wali*) in the order of precedence:

- (a) Father;
- (b) Paternal grandfather;
- (c) Brother and other paternal relatives;
- (d) Paternal grandfather's executor or nominee; or
- (e) The court.

Art. 80. *Guardian of minor's property.* — The following persons shall exercise guardianship over the property of minors in the order of precedence:

- (a) Father;
- (b) Father's executor or nominee;
- (c) Paternal grandfather,
- (d) Paternal grandfather's nominee; or
- (e) The court.

**TITLE VI. — CIVIL REGISTRY****Chapter One****REGISTRY OF MARRIAGE,  
DIVORCE AND CONVERSIONS**

Art. 81. *District Registrar.* — The Clerk of Court of the *Shari'a* District Court shall, in addition to his regular functions, act as District Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within the territorial jurisdiction of said court. The Clerk of Court of the *Shari'a* Circuit Court shall act as Circuit Registrar of Muslim Marriages, Divorces, Revocations of Divorces, and Conversions within his jurisdiction.

Art. 82. *Duties of District Registrar.* — Every District Registrar shall exercise supervision over Circuit Registrars in every *Shari'a* District. He shall, in addition to an entry book, keep and bind copies of certificates of Marriage, Divorce, Revocation of Divorce, and Conversion sent to him by the Circuit Registrars in separate general registers. He shall send copies in accordance with Act No. 3753, as amended, to the office of the Civil Registrar-General.

Art. 83. *Duties of Circuit Registrar.* — Every Circuit Registrar shall:

(a) File every certificate of marriage (which shall specify the nature and amount of the dower agreed upon), divorce or revocation of divorce and conversion and such other documents presented to him for registration;

(b) Compile said certificates monthly, prepare and send any information required of him by the District Registrar;

(c) Register conversions involving Islam;

(d) Issue certified transcripts or copies of any certificate or document registered upon payment of the required fees;

(e) Send to the District Registrar during the first ten days of each month a copy of the entries made during the previous month;

(f) Index the same for easy reference and identification in case any information is required; and

(g) Administer oaths, free of charge for civil registry purposes.

Art. 84. *Cancellation or correction of entry.* — Any entry in the District or Circuit Register may, upon verified petition of any inter-



ested party, be corrected upon order of the *Sharī'a* District Court, subject to the provisions of the Rules of Court. Every Registrar shall be civilly responsible for any unauthorized alteration made in the registry to any person suffering damage thereby. However, the Registrar may exempt himself from such liability if he proves that he has taken every reasonable precaution to prevent the unlawful alteration.

Art. 85. *Registration of revocation of divorce.* — Within seven days after the revocation of a divorce by *ruju'*, the husband shall, with the wife's written consent, file a sworn statement thereof with the Circuit Registrar in whose records the divorce was previously entered.

Art. 86. *Legal effects of registration.* — The books making up the registry of marriage, divorce, revocation of divorce, conversion, and all other documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the facts therein contained. However, nothing herein provided shall affect the intrinsic validity or invalidity of the acts registered.

Art. 87. *Applicability of other civil registry laws.* — To the extent not inconsistent with the provisions of this Code, the provisions of other registry laws governing other civil registrars shall be observed by district or circuit registrars.

## Chapter Two

### OTHER ACTS AFFECTING CIVIL STATUS

Art. 88. *Where registered.* — All other acts, events, or judicial decrees affecting civil status not mentioned in Chapter One of this Title shall be recorded in the existing civil registry of the city or municipality in accordance with special laws.

## BOOK THREE

### SUCCESSION

#### TITLE I. — GENERAL PROVISIONS

Art. 89. *Succession defined.* — Succession is a mode of acquisition by virtue of which the estate of a person is transmitted to his heirs or others in accordance with this Code.

Art. 90. *Successional rights, when vested.* — The rights to succession are transmitted from the moment of the death of the decedent. The right to succession of any heir who predeceases the decedent shall not be transmitted by right of representation to his own heirs.

Art. 91. *Requisites of succession.* — No settlement of the estate of a deceased person shall be effected unless:

- (a) The death of the decedent is ascertained;
- (b) The successor is alive at the time of the death of the decedent; and
- (c) The successor is not disqualified to inherit.

Art. 92. *Inheritance (Mirāth).* — The inheritance of a person includes all properties of any kind, movable or immovable, whether ancestral or acquired either by onerous or gratuitous title, as well as all transmissible rights and obligations at the time of his death and those that accrue thereto before partition.

Art. 93. *Disqualifications to succession.* — The following shall be disqualified to succeed:

- (a) Those who have intentionally caused directly or indirectly the death of the decedent;
- (b) Those who have committed any other act which constitutes a ground for disqualification to inherit under Islamic law; and
- (c) Those who are so situated that they cannot inherit under Islamic law.

Art. 94. *Succession from acknowledging person.* — Without prejudice to the order of succession of heirs, mutual rights of inheritance shall obtain:

- (a) Between the acknowledging father and the acknowledged child; and
- (b) Between the kinsman acknowledged through another person and the acknowledger.

Art. 95. *Succession by illegitimate child.* — A child who was the cause of the mother's having been divorced by *li'ān* shall have mutual rights of succession only with the mother and her relatives.

Art. 96. *Succession between divorced persons.* — (1) The husband who divorces his wife shall have mutual rights of inheritance with her while she is observing her *'idda*. After the expiration of the *'idda*, there shall be no mutual rights of succession between them.

(2) The husband who, while in a condition of death-illness, divorce his wife shall not inherit from her, but she shall have the right to succeed him even after the expiration of her *'idda*.

Art. 97. *Succession by concieved child.* — A child concieved at the time of the death of the decedent shall be considered an heir provided it be born later in accordance with Article 10; its corresponding share shall be reserved before the estate is distributed.

Art. 98. *Succession by absentee.* — The share of an heir who is missing or otherwise absent at the time of the death of the decedent shall be reserved:

- (a) Until he reappears and claims it;
- (b) Until he is proven dead; or
- (c) Until the lapse of ten years after which he shall be presumed dead by decree of the court.

Art. 99. *Order of succession.* — The heirs of a decedent shall inherit in the following order:

- (a) Sharers (*ashāb-ul-furūd*) shall be entitled to fixed shares;
- (b) Residuaries (*ashāb-ul-mirāth*) shall be entitled to the residue;
- (c) In the absence of the foregoing, the distant kindred (*dhaw-ul-arhām*) who are blood relatives but are neither sharers nor residuaries; and

(d) In default of the above, the acknowledged kinsman, universal legatee, or the public treasury (*bait-ul-māl*), in that order.

Art. 100. *Modes of succession.* — Succession may be:

- (a) By will (*wasīya*);
- (b) By operation of this Code; or
- (c) By combination of both.

**TITLE II. — TESTAMENTARY SUCCESSION****Chapter One****WILLS**

Art. 101. *Will defined.* — A will (*wasiya*) is a declaration whereby a person is permitted, with the formalities prescribed by law, to control the disposition after his death of not more than one-third of his estate, if there are heirs, or the whole of it, if there are no heirs or distant kindred.

Art. 102. *Formalities.* — (1) The making of a will is strictly a personal act; it cannot be left in whole or in part to the discretion of a third person or accomplished through the instrumentality of an agent.

(2) A will may be declared orally or in writing in a manner that shows clearly the intention of the testator to execute it in the presence of at least two competent, credible and disinterested witnesses.

Art. 103. *Proof of will.* — (1) No nuncupative will shall pass any property of the decedent unless it is proved and allowed in accordance with a solemn oath or affirmation of all the witnesses who attested to its declaration.

(2) No will of any other kind, holographic or formal, shall pass any property unless it is proved and allowed in accordance with this Code.

Art. 104. *Testamentary waqf.* — An endowment for Islamic purposes to take effect after the death of the donor (*waqf-bil-wasiya*) partakes of the nature of a testamentary disposition.

Art. 105. *Capacity to make a will.* — Any person of sound and disposing mind and who is not expressly prohibited by Islamic law may make a will. Persons of either sex under the age of puberty cannot make a will.

Art. 106. *Disposable third.* — (1) The testator, in his will, cannot dispose of more than one-third of his estate. Any bequest in excess thereof shall not be given effect unless ratified by the heirs. In any case, the bequest must be accepted by the legatee.

(2) A bequest to any sharer or residuary shall not be valid unless ratified by the testator's heirs existing at the time of his death.

Art . 107. *Bequest by operation of law.* — Should the testator die without having made a bequest in favor of any child of his son who predeceased him, or who simultaneously dies with him such child shall be entitled to one-third of the share that would have pertained to the father if he were alive. The parent or spouse, who is otherwise disqualified to inherit in view of Article 93 (c), shall be entitled to one-third of what he or she would have received without such disqualification.

Art. 108. *Revocation of will.* — A will may be expressly or impliedly revoked by the testator at any time before his death. Any waiver or restriction of this right shall be void.

Art. 109. *Partial invalidity of will.* — The invalidity of one of several provisions of a will shall not result in the invalidity of the others, unless it is to be presumed that the testator would not have made such other provisions if the first invalid provision had not been made.

### TITLE III. — LEGAL SUCCESSION

#### Chapter One

#### SHARERS

Art. 110. *Who are sharers.* — The following persons shall be entitled to the inheritance as sharers to the extent set forth in the succeeding articles;

- (a) The husband, the wife;
- (b) The father, the mother, the grandfather, the grandmother;
- (c) The daughter and the son's daughter in the direct line;
- (d) The full sister, the consanguine sister, the uterine sister and the uterine brother.

Art. 111. *Share of surviving husband.* — The husband surviving together with a legitimate child or a child of the decedent's son shall be entitled to one-fourth of the hereditary estate; should there be no such descendants, he shall inherit one-half of the estate.

Art. 112. *Share of surviving wife.* — The wife surviving together with a legitimate child or a child of the decedent's son shall be entitled to one-eighth of the hereditary estate: in the absence of such descendants, she shall inherit one-fourth of the estate;

Art. 113. *Share of surviving father.* — The father succeeding together with the legitimate son of the decedent or a son of the decedent's son shall be entitled, as sharer, to one-sixth of the hereditary estate. The father who succeeds together with a legitimate daughter of the decedent or a daughter of the decedent's son shall inherit, as sharer, one-sixth of the inheritance without prejudice to his share as residuary.

Art. 114. *Share of surviving mother.* — The mother succeeding as sharer together with a child or a child of the decedent's son, or with two or more brothers or sisters of the decedent, shall be entitled to one-sixth of the hereditary estate. Should she survive without any such descendant or with only one brother or sister, she shall inherit one-third of the estate.

Art. 115. *Share of paternal grandfather.* — The paternal grandfather succeeding together with the child of the decedent or, in default thereof, with his descendants in the direct male line however distant, shall be entitled to one-sixth of the hereditary estate. Should he survive with any sharer other than the brothers or sisters of the decedent, he shall be entitled to one-sixth without prejudice to his right as a residuary.

Art. 116. *Share of paternal grandmother.* — The paternal grandmother succeeding in default of the mother, father, or intermediate grandfather of the decedent shall be entitled, as sharer, to one sixth of the hereditary estate.

Art. 117. *Share of surviving daughter.* — (1) If the decedent leaves no son but one daughter, the latter shall be entitled to inherit, as sharer, one-half of the hereditary estate. Two or more daughters shall share equally two-thirds thereof. Should one or more daughters survive with one or more sons of the decedent, the latter shall be entitled to double the share of the former.

(2) Should a lone daughter of the decedent survive together with his son's daughter, the two thirds share shall be divided between them, one-half thereof to pertain to the former and one-sixth to the latter.

Art. 118. *Share of son's daughter.* — The son's daughter shall, in the absence of any child of the decedent, be entitled to one-half of the hereditary estate. Two or more daughters of the decedent's son shall share the two-thirds of the estate *per capita*.

Art. 119. *Share of full sister.* — Should the decedent leave neither descendants, father nor full brother the full sister shall be

entitled as sharer to the extent of one-half of the hereditary estate. Two or more full sisters shall inherit two-thirds of the estate *per capita*.

Art. 120. *Share of consanguine state.* — Should the decedent leave neither descendant, full brother, nor full sister, the consanguine sister shall be entitled to one-half of the hereditary estate. Two or more consanguine sisters shall inherit two-thirds of the estate *per capita*.

Art. 121. *Share of of uterine brother or sister.* — The share of a uterine brother or sister shall be one-sixth of the hereditary estate should there be no surviving descendant, father, paternal grandfather, or full brother and sister of the decedent. Two or more uterine brothers or sisters shall inherit one-third of the estate *per capita*.

Art. 122. *Participation of full brother.* — (1) One or more full brothers and sisters surviving together, or one or more, consanguine brothers or sisters surviving together, shall participate in the hereditary estate, a brother to inherit double the share of a sister.

(2) The provision of the next succeeding article notwithstanding, the full brother shall, if nothing is left for him after the distribution of shares and he survives with uterine brothers, participate with the latter in the one-third of the hereditary estate *per capita*.

Art. 123. *Exclusion among heirs.* — The exclusion of heirs from inheritance shall be governed by the following rules:

(a) In the same line, the relative nearest in degree excludes the more remote.

(b) Full-blood relatives exclude the consanguine and the uterine.

(c) Whoever is related to the decedent through any person shall not inherit while the latter is living, except in the case of a mother concurring with her children.

(d) Heirs who, in a particular case, do not succeed by reason of disqualification on any ground shall not exclude others.

## Chapter Two

### RESIDUARY HEIRS

Art. 124. *Residuaries.* — Any residue left after the distribution of the shares of the sharers shall be partitioned among the residuaries

in accordance with the following articles. An heir may succeed as residuary. In his own right (*asaba-bin-nafs*), In another's right (*asaba-bil-qhair*), or together with another (*asaba-ma'al qhair*).

Art. 125. *Residuaries in their own right.* — The following persons are residuaries in their own right:

- (a) Male descendants of the decedent in the direct line, however distant in degree;
- (b) Male ascendants of the decedent in the direct line, however distant in degree;
- (c) Full-blood or consanguine brothers of the decedent and their male descendants, however distant in degree; and
- (d) Full-blood or consanguine paternal uncles of the decedent and their male descendants, however distant in degree.

Art 126. *Residuaries in another's right.* — The following persons shall succeed as residuaries in another's right:

- (a) Daughters surviving with the son of the decedent;
- (b) Son's daughters surviving with their own brothers;
- (c) Full sisters surviving with their full brothers; and
- (d) Consanguine sisters surviving with their consanguine brothers.

Art. 127. *Residuaries together with another.* — Full-blood or consanguine sisters surviving with daughters of the decedent or with the son's daughters, however distant in degree from the decedent, are residuaries together with another.

Art. 128. *Preference among residuaries.* — Preference among residuaries shall be governed by the following rules:

- (a) The residuary nearer in degree shall be preferred to the more remote of the same class.
- (b) The residuary with full-blood relationship shall be referred to those of the half-blood of the same degree of relationship in the same class.
- (c) The residuaries of the same class, degree and blood relationships shall share equally, subject to the rule of the male having a share double that of the female in proper cases.



Art. 129. *Reduction of shares.* — If the totality of all the shares assigned to each of the sharers exceeds the whole inheritance, the shares shall be reduced proportionately.

Art. 130. *Reversion of residue.* — If, after distributing the portions of the sharers a residue is left in the inheritance and there is no surviving residuary heir, the same shall revert in its entirety to the lone sharer or to all the sharers in proportion to their respective shares. However, the husband or the wife shall not be entitled to any part of the reverted portion as long as there are other sharers or distant kindred.

### Chapter Three

#### DISTANT KINDRED (*DHAW-UL-ARHAM*)

Art. 131. *Relatives included.* — Distant kindred includes the following:

- (a) The daughter's children and the children of the son's daughter and their descendants;
- (b) The excluded grandfather and the excluded grandmother;
- (c) The sister's children, the brother's daughters, the sons of the uterine brother and their descendants; and
- (d) The paternal aunts, the uterine uncles and the maternal aunts and uncles.

Art. 132. *Extent and distribution of shares.* — In default of all shares and residuaries, the distant kindred shall inherit the entire hereditary estate, the same to be distributed among them in accordance with Articles 123 and 128.

#### TITLE IV. — SETTLEMENT AND PARTITION OF ESTATE

Art. 133. *Administration.* — The administration of the estate of a decedent shall, for purposes of settlement, vest at the time of his death in the executor appointed in the will or, in the absence thereof, in his heir or administrator to whom the court has granted letters of administration.

Art 134. *Governing school of law.* — (1) In every petition for probate of will or for the settlement of the estate of a decedent, all

matters relating to the appointment of administrator, powers and duties of administrator or executor, the court shall take into consideration the school of *law* (*madhhab*) of the decedent.

(2) If the decedent's *madhhab* is not known, the *Shafī'i* school of law may be given preference together with the special rules of procedures adopted pursuant to this Code.

Art. 135. *Order of preference of claims.* — The estate of a decedent shall be applied to claims and charges in the following order:

- (a) unpaid taxes;
- (b) reasonable funeral expenses;
- (c) the expenses for probate, administration and other judicial expenses;
- (d) the debts of the decedent;
- (e) the legacies to the extent of the disposable one-third;
- (f) the distribution of shares among heirs; and
- (g) unpaid dower.

Art. 136. *Liability of heirs.* — The liability of the heirs of a decedent for the payment of the latter's debts shall not exceed the hereditary estate. Each heir shall be liable only for the payment of the decedent's debt in proportion to his share.

## BOOK FOUR

### ADJUDICATION AND SETTLEMENT OF DISPUTES AND RENDITION OF LEGAL OPINIONS

#### TITLE I. — THE *SHARĪ'A* COURTS

Art. 137. *Creation.* — These are hereby created, as part of the judicial system, courts of limited jurisdiction, to be known respectively as *Sharī'a* District Courts and *Sharī'a* Circuit Courts, which shall exercise powers and functions in accordance with this Title.

*Sharī'a* courts and the personnel thereof shall be subject to the administrative supervision of the Supreme Court.

## Chapter One

### **SHARĪĀ DISTRICT COURTS**

Art. 138. *Sharīā judicial district.* — Five special judicial districts, each to have one *Sharīā* District Court presided over by one judge, are constituted as follows:

- (a) The First *Sharīā* District comprise the Province of Sulu;
- (b) The Second *Sharīā* District, the Province of Tawi-Tawi;
- (c) The Third *Sharīā* District, the Provinces of Basilan, Zamboanga del Norte and Zamboanga del Sur, and the Cities of Dipolog, Pagadian and Zamboanga;
- (d) The Fourth *Sharīā* District, the Provinces of Lanao del Norte and Lanao del Sur, and the Cities of Iligan and Marawi; and
- (e) The Fifth *Sharīā* District the Provinces of Maguindanao, North Cotabato and Sultan Kudarat, and the City of Cotabato.

Art. 139. *Appointment of judges.* — The judicial function in the *Sharīā* District Courts shall be vested in *Sharīā* District judges to be appointed by the President of the Philippines.

Art. 140. *Qualifications.* — No person shall be appointed *Sharīā* District judge unless, in addition to the qualifications for judges of Courts of First Instance fixed in the Judiciary Law, he is learned in Islamic law and jurisprudence.

Art. 141. *Tenure.* — *Sharīā* District judges shall be appointed to serve during good behavior until they reach the age of sixty-five years, or become incapacitated to discharge the duties of their office, unless sooner removed for the same causes and in the same manner provided by law for judges of Courts of First Instance.

Art. 142. *Compensation.* — *Sharīā* District judges shall receive the same compensation and enjoy the same privileges as the judges of Courts of First Instance.

Art. 143. *Original jurisdiction.* — (1) The *Sharīā* District Court shall have exclusive original jurisdiction over:

- (a) All cases involving custody, guardianship, legitimacy, paternity and filiation arising under this Code;
- (b) All cases involving disposition, distribution and settlement of the estate of deceased Muslims, probate of wills,

issuance of letters of administration or appointment of administrators or executors regardless of the nature or the aggregate value of the property;

(c) Petitions for the declaration of absence and death and for the cancellation or correction of entries in the Muslim Registries mentioned in Title VI of Book Two of this Code;

(d) All actions arising from customary contracts in which the parties are Muslims, if they have not specified which law shall govern their relations; and

(e) All petition for *mandamus*, prohibition, injunction, *certiorari*, *habeas corpus*, and all other auxiliary writs and processes in aid of its appellate jurisdiction.

(2) Concurrently with existing civil courts, the *Sharī'a* District Court shall have original jurisdiction over:

(a) Petitions by Muslims for the constitution of a family home, change of name and commitment of an insane person to an asylum;

(b) All other personal and real actions not mentioned in paragraph 1 (d) where in the parties involved are Muslims except those for forcible entry and unlawful detainer, which shall fall under the exclusive original jurisdiction of the Municipal Circuit Courts; and

(c) All special civil actions for interpleader or declaratory relief wherein the parties are Muslims or the property involved belongs exclusively to Muslims.

Art. 144. *Appellate jurisdiction.* — (1) *Sharī'a* District Courts shall have appellate jurisdiction over all cases tried in the *Sharī'a* Circuit Courts within their territorial jurisdiction.

(2) The *Sharī'a* District Court shall decide every case appealed to it on the basis of the evidence and records transmitted as well as such memoranda, briefs or oral arguments as the parties may submit.

Art. 145. *Finality of decisions.* — The decisions of the *Sharī'a* District Courts whether on appeal from the *Sharī'a* Circuit Court or not shall be final. Nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution.

Art. 146. *Clerks and other subordinate employees.* — *Shari'a* District Courts shall have the same officers and other personnel as those provided by law for Courts of First Instance.

The pertinent provisions of the Judiciary Law regarding the number, qualifications, appointment, compensation, functions, duties and other matters relative to the personnel of the Courts of First Instance shall apply to those of the *Shari'a* District Courts.

Art. 147. *Permanent stations; offices.* — (1) The *Shari'a* District Courts shall have their respective permanent stations in the following places:

- (a) First *Shari'a* District, Jolo, Sulu;
- (b) Second *Shari'a* District, Bongao, Tawi-Tawi
- (c) Third *Shari'a* District, Zamboanga City;
- (d) Fourth *Shari'a* District, Marawi City;
- (e) Fifth *Shari'a* District, Cotabato City;

(2) The *Shari'a* District Courts may hold sessions anywhere within their respective districts.

(3) The provinces, cities or municipalities concerned shall provide such courts with adequate court office, supplies and equipment in accordance with the provisions of the Judiciary Law.

Art. 148. *Special procedure.* — The *Shari'a* Districts Courts shall be governed by such special rules of procedure as the Supreme Court may promulgate.

Art. 149. *Applicability of other laws.* — The provisions of all laws relative to the Courts of First Instance shall, insofar as they are not inconsistent with this Code, be applicable to *Shari'a* District Courts.

## Chapter Two

### ***SHARĪĀ* CIRCUIT COURTS**

Art. 150. *Where established.* — (1) *Shari'a* Circuit Courts shall be established as follows:

- (a) Six such courts in the Province of Sulu;
- (b) Eight in the Province of Tawi-Tawi;

(c) Ten in and for the Provinces of Basilan, Zamboanga del Norte and Zamboanga del Sur, and the Cities of Dipolog, Pagadian, and Zamboanga;

(d) Twelve in and for the Provinces of Lanao del Norte and Lanao del Sur and the Cities of Iligan and Marawi;

(e) Fifteen in and for the Provinces of Maguindanao, North Cotabato and Sultan Kudarat and the City of Cotabato.

(2) The territorial jurisdiction of each of the *Shari'ah* Circuit Courts shall be fixed by the Supreme Court on the basis of geographical contiguity of the municipalities and cities concerned and their Muslim population.

Art 151. *Appointment of judges.* — Each *Shari'ah* Circuit Court shall be presided over by a *Shari'ah* Circuit Judge to be appointed by President of the Philippines.

Art. 152. *Qualifications.* — No person shall be appointed judge of the *Shari'ah* Circuit Court unless he is a natural-born citizen of the Philippines, at least twenty-five years of age, and has passed an examination in the *Shari'ah* and Islamic jurisprudence (*fiqh*) to be given by the Supreme Court for admission to special membership in the Philippine Bar to practice in the *Shari'ah* Courts.

Art. 153. *Tenure.* — *Shari'ah* Circuit judges shall be appointed to serve during good behavior until they reach the age of sixty-five years or become incapacitated to discharge the duties of their office unless sooner removed for the same causes and in the same manner provided by law for judges of Municipal Circuit Courts.

Art. 154. *Compensation.* — *Shari'ah* Circuit judges shall receive the same compensation and enjoy the same privileges as judges of Municipal Circuit Courts.

Art. 155. *Jurisdiction.* — The *Shari'ah* Circuit Courts shall have exclusive original jurisdiction over:

(1) All cases involving offenses defined and punished under this Code.

(2) All civil actions and proceedings between parties who are Muslims or have been married in accordance with Article 13 involving disputes relating to:

(a) Marriage;

(b) Divorce recognized under this Code;

- (c) Betrothal or breach of contract to marry;
- (d) Customary dower (*mahr*);
- (e) Disposition and distribution of property upon divorce;
- (f) Maintenance and support, and consolatory gifts (*mut'a*); and
- (g) Restitution of marital rights.

(3) All cases involving disputes relative to communal property.

Art. 156. *Clerk and other subordinate employees.* — (1) *Shari'a* Circuit Courts shall have the same officers and other personnel as those provided by law for Municipal Circuit Courts.

(2) The pertinent provisions of the Judiciary Law regarding the number, qualifications, appointment, compensation, functions, duties and other matters relative to the personnel of the Municipal Circuit Courts shall apply to those of the *Shari'a* Circuit Courts.

Art. 157. *Place of sessions; stations.* — *Shari'a* Circuit Courts may hold sessions anywhere within their respective circuits, but each shall have a principal station to be fixed by the Supreme Court.

Art. 158. *Special procedure.* — The *Shari'a* Circuit Courts shall be governed by such special rules of procedure as the Supreme Court may promulgate.

Art. 159. *Applicability of other laws.* — The provisions of all laws relative to Municipal Circuit Courts shall, to the extent that they are not inconsistent with this Code, be applicable to the *Shari'a* Circuit Courts.

## TITLE II. — THE AGAMA ARBITRATION COUNCIL

Art. 160. *Constitution.* — The *Shari'a* District Court or the *Shari'a* Circuit Court may, in appropriate cases, constitute an *Agama* Arbitration Council in the manner specified in this Title.

Art. 161. *Divorce by talāq and tafwid.* — (1) Any Muslim male who has pronounced a *talāq* shall, without delay, file with the Clerk of Court of the *Shari'a* Circuit Court of the place where his family resides a written notice of such fact and the circumstances attendant thereto, after having served a copy thereof to the wife concerned. The *talāq* pronounced shall not become irrevocable until after the

expiration of the prescribed *'idda*. The notice filed shall be conclusive evidence that *talāq* has been pronounced.

(2) Within seven days from receipt of notice, the Clerk of Court shall require each of the parties to nominate a representative. The representatives shall be appointed by the Court to constitute, together with the Clerk of Court as Chairman an *Agama* Arbitration Council. The *Agama* Arbitration Council shall submit to the Court a report on the result of the arbitration, on the basis of which and such other evidence as may be allowed, the Court shall issue the corresponding order.

(3) The provisions of this article shall be observed should the wife exercise *tafwīd*.

Art. 162. *Subsequent marriages*. — Any Muslim husband desiring to contract a subsequent marriage shall, before so doing, file a written notice thereof the Clerk of Court of the *Sharī'a* Circuit Court of the place where his family resides. Upon receipt of said notice, the Clerk shall serve a copy thereof to the wife or wives. Should any of them object, an *Agama* Arbitration Council shall be constituted in accordance with the provisions of paragraph (2) of the preceding article. If the *Agama* Arbitration Council fails to obtain the wife's consent to the proposed marriage, the Court shall, subject to Article 27, decide whether or not to sustain her objection.

Art. 163. *Offenses against customary law*. — The *Sharī'a* Circuit Court, in cases involving offenses against customary law which can be settled without formal trial, may, at its discretion, direct the *Sharī'a* Clerk of Court to constitute a council of not less than two nor more than four members, with him as chairman, to settle the case amicably.

### TITLE III. — JURISCONSULT IN ISLAMIC LAW

Art. 164. *Creation of office and appointment*. — (1) There shall be a Jurisconsult in Islamic Law, who shall be appointed by the President of the Philippines and hold office for a term of seven years, without prejudice to reappointment, unless sooner removed for cause or incapacitated to discharge the duties of his office.

(2) The office of the Jurisconsult shall be under the administrative supervision of the Supreme Court of the Philippines which shall also fix its permanent station, preferably in the City of Zamboanga.



Art. 165. *Qualifications.* — No person shall be appointed Jurisconsult in Islamic Law unless he is a citizen of the Philippines, at least forty years of age, of good moral character and proven integrity, and an eminent scholar in the Qur'ān and *Hadīth* and in Islamic jurisprudence as well as proficient in Arabic.

Art 166. *Functions.* — The Jurisconsult shall, on the written request of any interested party, have the authority to render legal opinions, based on recognized authorities, regarding any question relating to Muslim Law. For this purpose, he may, if he deems it necessary, consult or ask for a consensus of the *'ulama*.

(2) The Jurisconsult shall consider and act on ever, such request unless, in his opinion and for good reason, the question need not be answered.

(3) The Office of the Jurisconsult shall keep a compile and cause the publication of all his legal opinions.

Art. 167. *Compensation.* — Until otherwise provided by law, the Jurisconsult shall receive an annual compensation of forty-eight thousand pesos which shall not be diminished during his term of office.

Art. 168. *Office personnel.* — The Jurisconsult may, in accordance with the Civil Service Law and subject to the approval of the Supreme Court, appoint and fix the compensation of such personnel as may be necessary for the performance of his functions.

## BOOK FIVE

### MISCELLANEOUS AND TRANSITORY PROVISIONS

#### TITLE I. — MUSLIM HOLIDAYS

Art. 169. *Official Muslim holidays.* — The following are hereby recognized as legal Muslim holidays:

(a) *'Āmun, Iadīd* (New Year), which falls on the first day of the first lunar month of *Muharram*;

(b) *Maulid-un-Nabī*<sup>7</sup> (Birthday of the Prophet Muhammad), which falls on the twelfth day of the third lunar month of *Rabi-ul-Awwal*;

(c) *Lailatul Isrā Wal Mi'rāj* (Nocturnal Journey and Ascension of the Prophet Muhammad), which falls on the twenty-seventh day of the seventh lunar month of *Rajab*;

(d) *'Id-ul Fitr (Hari Raya Puasa)*, which falls on the first day of the tenth lunar month of *Shawwal*, commemorating the end of the fasting season; and

(e) *'Īd-ul-Adhā (Hari Raya Haji)*, which falls on the tenth day of the twelfth lunar month of *Dhū'l-Hijja*.

Art. 170. *Provinces and cities where officially observed.* — (1) Muslim holidays shall be officially observed in the Provinces of Basilan, Lanao del Norte, Lanao del Sur, Maguindanao, North Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte and Zamboanga del Sur, and in the Cities of Cotabato, Iligan Marawi, Pagadian, and Zamboanga and in such other Muslim provinces and cities as may hereafter be created.

(2) Upon proclamation by the President of the Philippines, Muslim holidays may also be officially observed in other provinces and cities.

Art. 171. *Dates of observance.* — The dates of Muslim holidays shall be determined by the Office of the President of the Philippines in accordance with the Muslim Lunar Calendar (*hijra*).

Art. 172. *Observance by Muslim employees.* — (1) All Muslim government officials and employees in places other than those enumerated under Article 170 shall also be excused from reporting to office in order that they may be able to observe Muslim holidays.

(2) The President of the Philippines may, by proclamation, require private offices, agencies or establishments to excuse their Muslim employees from reporting for work during a Muslim holiday without reduction in their usual compensation.

## TITLE II. — COMMUNAL PROPERTY

Art. 173. *What constitute.* — The following are communal properties:

(a) Customary heirloom, which shall include artifacts and ancestral implements or things of cultural value handed down from a common ancestor;

(b) Ancestral property, which shall comprehend hallowed ancestral plot, ancestral shrine, royal court, and similar properties; and

(c) Charitable trust property.

Art. 174. *Administration or disposition.* — (1) Except as otherwise provided in this Code, communal property shall be administered or disposed of in accordance with Muslim law, *‘ada* and special provisions of law.

(2) Any provision of existing law to the contrary notwithstanding, the trustee of any communal property shall be the person who is in lawful possession thereof, either personally or through an agent.

(3) The *Shari‘a* Circuit Court may appoint a trustee of a communal property when there is a dispute as to its custody, possession, or administration.

### TITLE III. — CUSTOMARY CONTRACTS

Art. 175. *How construed.* — Any transaction whereby one person delivers to another any real estate, plantation, orchard or any fruit-bearing property by virtue of *sanda*, *sanla*, *arindao*, or similar customary contract, shall be construed as a mortgage (*rihān*) in accordance with Muslim law.

### TITLE IV. — CONVERSIONS

Art. 176. *Effect of registration of conversion to Islam.* — (1) Registration of a person’s conversion to Islam shall constitute a *prima facie* proof that he professes Islam.

(2) Whoever disputes the profession or renunciation of Islam by any person shall have the burden of proving the contrary.

Art. 177. *Regulation on conversion.* — No conversion of a minor below the age of eighteen years shall be registered by the District or Circuit Registrar without the written consent or permission of the parents or guardian, except when such minor has been emancipated from parental authority in accordance with law.

Art. 178. *Effect of conversion to Islam on marriage.* — The conversion of non-Muslim spouses to Islam shall have the legal effect of ratifying their marriage as if the same had been performed in accordance with the provisions of this Code or Muslim law, provided that there is no legal impediment to the marriage under Muslim law.

Art. 179. *Effect of change of religion.* — The change of religion by a Muslim shall not have the effect of extinguishing any obligation or liability whatsoever incurred prior to said change.

## TITLE V. — PENAL PROVISIONS

### Chapter One

#### RULE ON BIGAMY

Art. 180. *Law applicable.* — The provisions of the Revised Penal Code relative to the crime of bigamy shall not apply to a person married in accordance with the provisions of this Code or, before its effectivity, under Muslim law.

### Chapter Two

#### SPECIFIC OFFENSES

Art. 181. *Illegal solemnization of marriage.* — Any person who shall, without authority, solemnize any marriage purportedly under this Code, or shall do so in a manner contrary to the provisions thereof, shall be punished by imprisonment of not less than two months but not more than two years, or a fine of not less than two hundred pesos but not more than two thousand pesos, or both, in the discretion of the court.

Art. 182. *Marriage before expiration of 'idda.* — Any widow or divorced woman who, having been married under Muslim law or under this Code, contracts another marriage before the expiration of the prescribed 'idda shall suffer the penalty of a fine not exceeding five hundred pesos.

Art. 183. *Offenses relative to subsequent marriage, divorce, and revocation of divorce.* — A person who fails to comply with the requirements of Articles 85, 161, and 162 of this Code shall be penalized by *arresto mayor* or a fine of not less than two hundred pesos but not more than two thousand pesos, or both, in the discretion of the court.

Art. 184. *Failure to report for registration.* — Except as provided in the article immediately preceding, a person who knowingly fails to perform his duty under this Code to report for registration any fact concerning the civil status of persons shall be punished by a fine of not less than one hundred pesos but not more than one thousand pesos.

Art. 185. *Neglect of duty by registrars.* — Any district registrar or circuit registrar who fails to perform properly his duties in accordance with this Code shall be penalized in accordance with Section 18 of Act 3753.

## TITLE VI. — TRANSITORY AND FINAL PROVISIONS

Art. 186. *Effect of Code on past acts.* — Acts executed prior to the effectivity of this Code shall be governed by the laws in force at the time of their execution, and nothing herein except as otherwise specifically provided, shall affect their validity or legality or operate to extinguish any rights acquired or liability incurred thereby.

(2) A marriage contracted by a Muslim male prior to the effectivity of this Code in accordance with non-Muslim law shall be considered as one contracted under Muslim law provided the spouses register their mutual desire to this effect.

Art. 187. *Applicability clause.* — The Civil Code of the Philippines, the Rules of Court and other existing laws, insofar as they are not inconsistent with the provisions of this Code, shall be applied suppletorily.

Art. 188. *Separability clause.* — If, for any reason, any article or provision of this Code is held to be invalid, the same will not affect the other articles or provisions hereof.

Art. 189. *Repealing clause.* — All laws, proclamations, executive orders, rules and regulations, or any part thereof, inconsistent with the provisions of this Code are hereby correspondingly modified or repealed.

Art. 190. *Effectivity.* — This Code shall take effect immediately.

DONE in the City of Manila this 4th day of February in the year of Our Lord nineteen hundred and seventy-seven.

By the President

JUAN C. TUVERA  
Presidential Assistant

## APPENDIX B

REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
MANILA

### EN BANC RESOLUTION

PROVIDING FOR THE SPECIAL RULES OF PROCEDURE IN  
THE *SHARĪĀ* COURTS (*IJRA-A TALMAHAKIM AL  
SHARĪĀ*).

Pursuant to the Constitution of the Philippines and Articles 148 and 158 of Presidential Decree No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines, and to achieve an expeditious and inexpensive determination of the cases referred to herein, the Court Resolved to promulgate the following Rules on Procedure of the *Shari'ah* Courts.

#### I. GENERAL PROCEDURE

Section 1. *Commencement of Actions (Da'wa)*. — All actions and proceedings in the *Shari'ah* Court shall be commenced by complaint which shall be prepared at least in triplicate by the plaintiff (*mudda'i*) or his counsel (*wakil*) or by the clerk of court.

Section 2. *Complaint*. — The complaint shall contain:

- (1) The title of the case, the case number assigned to it, and the date of filing;
- (2) The name and address of the plaintiff and/or his counsel; and the name and address of the defendant (*mudda aalai'*); and
- (3) A concise statement of the cause of action and the relief prayed for.

Section 3. *Service of Summons.* — Summons together with the copy of the complaint shall be served upon the defendant.

Section 4. *Answer.* — The defendant shall file an answer within ten (10) days from receipt of the summons either personally or by counsel, or with the assistance of the clerk of court.

Section 5. *Failure to Answer.* — Should the defendant fail to answer the complaint within ten (10) days from service, the court shall proceed to receive the evidence *ex parte* upon which judgement shall be rendered.

Section 6. *Pre-Trial.* — (1) Not later than thirty (30) days after the answer is filed, the case shall be calendared for pre-trial. Should the parties fail to arrive at an amicable settlement (*sulkh*), the court shall clarify and define the issues of the case which shall be set forth in a pre-trial order.

(2) Within ten (10) days from receipt of such order, the parties or counsels shall forthwith submit to the court the statement of witnesses (*shuhud*) and other evidence (*bayyina*) pertinent to the issues so clarified and defined, together with the memoranda setting forth the law and the facts relied upon by them.

(3) Should the court find, upon consideration of the pleadings evidence and memoranda, that a judgment may be rendered without need of a formal hearing, the court may do so within fifteen (15) days from the submission of the case for decision.

Section 7. *Hearing or Trial.* — (1) The plaintiff (*mudda'i*) has the burden of proof, and the taking of an oath (*yamin*) rests upon the defendant (*mudda' aalai'*). If the plaintiff has no evidence to prove his claim, the defendant shall take an oath and judgment shall be rendered in his favor by the court. Should the defendant refuse to take an oath, the plaintiff shall affirm his claim under oath in which case judgment shall be rendered in his favor. Should the plaintiff refuse to affirm his claim under oath, the case shall be dismissed.

(2) If the defendant admits the claim of the plaintiff, judgment shall be rendered in his favor by the court without further receiving evidence.

(3) If the defendant desires to offer defense, the party against whom judgment would be given on the pleadings and admissions made, if no evidence was submitted, shall have the burden to prove his case. The statements submitted by the parties at the pre-trial

shall constitute the direct testimonies of the witnesses as basis for cross-examination.

Section 8. *Judgment*. — (1) The judgment shall be rendered within fifteen (15) days from the termination of the trial, or disposition of the case, should there be no formal trial or hearing.

(2) The judgment shall become final and executory upon the expiration of the period to appeal. Once the judgment becomes final and executory, the court *motu proprio* shall immediately issue the writ of execution for the satisfaction of the judgment.

Section 9. *Appeal*. — An appeal shall be made by filing a notice of appeal addressed to the court and by paying the docket fee within fifteen (15) days from receipt of judgment.

Section 10. *Appeal to the Shari'a District Court*. — Within five (5) days from the perfection of the appeal, the clerk of court shall transmit the original record to the appropriate appellate court.

Section 11. *Appeal to the Supreme Court*. — Upon receipt of the original records, transcripts and exhibits, the clerk of court of the *Shari'a* District Court shall notify the parties of such fact.

Section 12. *Legal Opinion (Fatwa)*. — Before judgment is rendered, any court may seek the opinion (*fatwa*) of the Jurisconsult of Islamic Law created under the Code of Muslim Personal Laws in matters concerning difficult questions of Muslim Law and jurisprudence (*figh*).

Section 13. *Pleading and Motion Disallowed*. — The court shall not allow the filing of the following pleadings, petitions or motions, to wit:

- (a) Motion to dismiss or to quash;
- (b) Motion for a bill of particulars;
- (c) Motion for extension of time to file pleadings or any other paper;
- (d) Motion to declare defendant in default;
- (e) Reply, third party complaints, or intervention;
- (f) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
- (g) Petition for relief from judgment;



- (h) Motion for new trial or reopening of trial; and
- (i) Any dilatory motion for postponement.

## II. OATH (YAMIN)

Section 13-A. *Administration of Oath.* — (1) an oath (*yamin*) legally binding in a manner and form observed under Muslim Law may by order of the court be administered upon any of the parties who are Muslims to established a fact, or to affirm any evidence presented. Such oath may constitute as proof in the absence of any other evidence.

(2) No person shall be allowed to take an oath unless he is qualified under Muslim Law and is fully aware of solemnity of the oath or the import of the solemn affirmation. Any person who is to take an oath or solemn affirmation in accordance with Muslim Law shall be given reasonable time to think it over.

(3) The court shall set an appropriate time, date and place of oath-taking or of solemn affirmation by such person. If, at any time before such appointed date, the party who is required to take an oath or a solemn affirmation refuses to do so (*nukul*), the court may in its discretion direct the person, if he is the plaintiff, to withdraw his claim, or in case of the defendant, to admit the claim of the plaintiff.

Section 14. *Mutual Oath (Tahalif).* — In cases of claims and counter-claims where neither of the parties would give way at the pre-trial, the court may in its discretion require both parties mutual oath (*tahalif*) on any particular fact or facts upon which the court may render judgment.

Section 15. *Mutual Imprecation (Li'ān).* — If a Muslim husband accuses his wife of adultery and fails to prove the same in accordance with Muslim Law, the court may require the husband and the wife, if she is a Muslim, to perform the prescribed acts of imprecation (*li'ān*) and, thereafter, the court shall dissolve the marriage by issuing the appropriate divorce decree in accordance with the provisions of the Code of Muslim Personal Laws.

## III. SUPPLEMENTAL PROCEEDINGS

Section 16. *Suppletory Rule in Civil Cases.* — The court shall adhere to the sources of Muslim Law relating to the number, status, or quality of witnesses (*adala*) and evidence required to prove any

fact. Except as herein provided, the Rules of Court shall apply in a suppletory manner.

Section 17. *Suppletory Rule in Special Offenses.* — Subject to the next preceding section, all special cases or offenses cognizable by the court may be filed in such form and heard in such manner as prescribed by the applicable laws and the Rules of Court. However, the court may apply in a suppletory manner, the principles of Muslim Law.

#### IV. ARBITRATION PROCEEDINGS

Section 18. *Agama Arbitration, how conducted.* — The Agama Arbitration Council, after its constitution pursuant to the provision of the Code of Muslim Personal Laws, shall conduct the arbitration proceedings in accordance with the method it deems appropriate, taking into consideration the circumstances of the dispute, the conciliation of the parties, the interests of the children, if any, and other third parties involved, and the need for a speedy settlement of the dispute. However, no arbitration proceedings shall take place *ex parte*.

Section 19. *Effectivity.* — These special rules of procedures shall take effect immediately.

Approved unanimously September 20, 1983.

**QUIZZER IN  
MUSLIM PERSONAL LAW  
WITH LEGAL OPINION RENDERED**

**SAADUDDIN A. ALAUYA, SR.**

**Fourth Edition**

**2007**

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**ISBN 978-971-23-4808-2**

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ISBN 978-971-23-4808-2



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TYPOGRAPHY & CREATIVE LITHOGRAPHY

84 P. Florentino St., Quezon City

Tel. Nos. 712-41-08 • 712-41-01

This work is dedicated to the  
Islamic cause  
In compliance with the verses  
Of the Glorious Qur'an:

بِأَيِّهَا الَّذِينَ ءَامَنُوا ادْخُلُوا فِي السَّلَامِ كَافَّةً  
وَلَاتَتَّبِعُوا خُطُوَاتِ الشَّيْطَانِ إِنَّهُ لَكُمْ عَدُوٌّ مُّبِينٌ  
(سورة البقرة آية ٢٠٨)

وَلَاتَهِنُوا وَلَا تَحْزَنُوا وَأَنْتُمْ الْأَعْلَوْنَ إِنْ كُنْتُمْ  
مُؤْمِنِينَ (سورة آل عمران آية ١٣٩)

وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ  
الْكَافِرُونَ (سورة المائدة آية ٤٤)

وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ  
الظَّالِمُونَ (سورة المائدة آية ٤٥)

وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ  
الْفَاسِقُونَ (سورة المائدة آية ٤٧)

## ABOUT THE AUTHOR

ATTY. SAADUDDIN A. ALAUYA is presently a Jurisconsult in Islamic Law. Born in Bacolod Grande, Lanao del Sur, Philippines in 1937, he finished his Arabic and Islamic Studies at the Kamilol Islam Institute, Marawi City, in 1955, his Bachelor of Arts in Political Science in 1961, and Bachelor of Laws at the Manuel L. Quezon University, Manila, in 1965. He took the 1965 Bar Examinations and passed it on the same year. He completed his special study on Islamic Judicature at the King Abdulazis University, Mecca, Saudi Arabia, in 1980; and his Masters in Public Administration at the Mindanao State University, Marawi City, 1986. He also earned a certificate in Governmental Management from the Mindanao State University, in 1986.

Atty. Alauya is a member of both the Integrated Bar of the Philippines and the Philippine Shari'a Bar and a Shari'a Bar reviewer and examiner.

He has been a member of the Presidential Commission that drafted the "Code of Muslim Personal Laws of the Philippines" which was approved into law on February 4, 1977 and of the Special Committee that drafted the "Special Rules of Procedure in the Shari'a Courts" (Ijraat Al Mahakim Al Shari'a) which was approved unanimously by the Supreme Court on September 20, 1983. He has also been a Municipal Circuit Judge of the Second Municipal Circuit Court of Lanao del Sur, from 1971 to 1980. He has likewise been an Assistant Professor at the College of Shari'a and Islamic Studies of the King Abdulazis University and Umm Al Qura University in Mecca, Saudi Arabia, from 1980 to 1983.

Hon. Saaduddin A. Alauya, Sr. has been a Jurisconsult in Islamic Law from August 20, 1996 to August 21, 2003 and as such given the rank of Associate Justice of the Court of Appeals. He has retired under RA 910 as amended upon the expiration of his seven years fixed term of office on August 21, 2003.

He has also been a Professor of the Mindanao State University, Marawi City specifically in its College of Law and the

Graduate Program of the King Faisal Center for Islamic and Arabic Studies from 1983 to 1988. He is also a former elected provincial Vice Governor of Lanao del Sur including Marawi City from 1988 to 1992 and a former chairman of the Code Commission on Muslim Laws, Autonomous Region in Muslim Mindanao, from 1994 to 1995.

He was sent in the years 1977, 1978 and 1979 by the Supreme Court of the Philippines to the Royal Kingdom of Saudi Arabia and its neighboring Muslim countries for court trial observations and researches on Islamic Procedural Laws and on other aspects of the Islamic Law and Jurisprudence in preparation of the implementation of the Shari'a Law in the Philippines. He has attended here and abroad conferences, meetings, seminars, or symposia, either as resource person or participant.

Justice Alauya, Sr. is the author of Quizzer in Muslim Personal Law, Muslim Inheritance Law, Islamic Procedure and Evidence and Fundamental of Islamic Jurisprudence with Appendix: Islamic Penal Law.

In the Name of Allah, Most Beneficent,  
Most Merciful!

## PREFACE

Praise be to Allah, the Lord of the worlds and peace be upon the Apostle of Allah, his family and Companions!

The fundamental sources of the *Shari'a* Law were revealed in the Holy Cities of Mecca and Medina in Arabic language. Obviously, the non-Arabic speaking populations of the world who desire to know about it face difficulty. They find scanty literatures on the subject written in their own languages as most, if not all, of the books and other reading materials in the Islamic *Shari'a* are written in Arabic language. The Muslims in the Philippines and the non-Muslims thereof meet the same obstacle. To help meet the need, I write this book under the title: *Quizzer in Muslim Personal Law with legal opinion rendered.*

This book is far yet to be comprehensive of the entire Muslim Personal Law. It is my hope that this will not be the last but just one attempt for establishing linking bridges between the Arab and the non-Arab speaking populations of the world and for uniting them under common understanding of the Islamic *Shari'a*.

May Allah guide our steps!

SAADUDDIN A. ALAUYA, SR.

January, 2007  
Marawi City, Philippines



## PREFACE TO THE FOURTH EDITION

The first edition of this work was published by the Mindanao State University, Marawi City in 1984. The second edition of which was also published by National Book Store, Inc. in 1986. Thereafter, it has been out of stock.

This edition is made available to answer the urgent needs of the *Shari'a* Bar reviewees, students and practicing lawyers as well as the general reading public.

Grateful acknowledgments is due to the owners and publishers of Rex Book Store, Mr. Juanito F. Fontelera, for their enthusiasm in making possible the speedy publication of this edition.

SAADUDDIN A. ALAUYA, SR.

January, 2007

## ACKNOWLEDGMENT

My employment as an Assistant Professor of the College of *Shari'a* and Islamic Studies of the Umm Al Qura University, Holy City of Mecca, Royal Kingdom of Saudi Arabia has enabled me to update my background and preparation in Muslim Personal Laws and in some other aspects of Islamic law and jurisprudence. To His Excellency, Dr. 'Abdullah' Omar Nasif, Rector of the King Abdulaziz University and of its branch in Mecca at the time and now named as Umm Al Qura University, I wish to express my thanks and gratitudes for all the favors and the opportunities he has kindly given me to undertake this work.

My acknowledgment of gratitudes is also due to the Honorable, Dr. Muhammad Sa'd Al Rashid, former Dean of the College of Shari'a and Islamic Studies for his recommendation and guidance. It is also due to the Honorable, Dr. Nasir Bin Sa'd Al Rashid, Director of the Center for Academic Research and Revival of Islamic Heritage for his sympathetic approach and courage for the completion of this work. I am also grateful to Dr. Maqsud Al Rahman Hilali for helping me in editing the entire manuscript.

I am also specially grateful to the following friends: Chancellor Salipada S. Tamano of the MSU King Faisal Center for Islamic and Arabic Studies for creating a committee to read the entire manuscript, the members of the committee: Professors Ahmad Muhammad H. Hassoubah, Mustapha Lomala M. Dimaro and Hamid Aminoddin Barra for reading the entire manuscript.

In a work of this nature, I can hardly claim originality, for of course the Law of Allah does not change with the change of the scholar or the writer who analyzes it or has a commentary on it. Language or terminology may vary but the law is the law and will remain the same forever. My humble contribution in this modest work is the adaptation, the organization of materials and the writing of the laws and its commentaries in English and in the style of English writing as well as in question and answer form with a view to making them effective and easily under-

standable to those who cannot read, speak or understand Arabic language. In negotiating the work, I consulted the works of many eminent writers, scholars and jurists whose works are mostly written in Arabic letters, scripts and language and are cited as references of this work. I have neither copied nor translated their works. My thinking is simply guided by their works and therefore I acknowledge my gratitude to each and every one of them.

**SAADUDDIN A. ALAUYA, SR.**

January, 2007

## TRANSLITERATION OF ARABIC WORDS AND NAMES

The following table shows the system which I have followed in transliterating the letters of the Arabic alphabet:

ا	consonant	a		ع	.....	'(Inverted apostrophe)
ا	long vowel*	ā		غ	.....	g
ا	.....	, (Apostrophe)		ف	.....	f
ب	.....	b		ق	.....	q
ت	.....	t		ك	.....	k
ث	.....	th		ل	.....	l
ج	.....	j		م	.....	m
ح	.....	h		ن	.....	n
خ	.....	kh		هـ	.....	h
د	.....	d		و	consonant	w
ذ	.....	th		و	long vowel*	ū
ر	.....	r		و	diphthong	au
ز	.....	z		ي	consonant	y
س	.....	s		ي	long vowel*	ī
ش	.....	sh		ي	diphthong	ai
ص	.....	ṣ				
ض	.....	dh				
ط	.....	ṭ				
ظ	.....	ẓ				

Short vowels: َ (fatha)    a

ِ (kasra)     i

ُ (dhamma) u

The *final h* preceded by the *short a* is scarcely pronounced and I have left it out. Hence, 'idda' where the Arabic spelling would require 'iddah.

\*Where it is really pronounced long, like talaq, abu, yaqin, etc.

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