

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2000-2021

From: Amjed

Sent: Tuesday, September 29, 2020

Subject: Marriage Contract/Pre Agreement -People of the Book

Question:

Asalamulikum,

InShaAllah you are doing well. Do you have a marriage contract or pre-Nuptial agreement for marriage to the People of the book.

JazakaAllah Khair,

Amjed

My Answer:

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I really don't. And I really see problems in that....

There are very thorny issues in application including the religion of any off springs, the Islamic cove of "believers' women نساء المؤمنین" not believing women, food and drinks, the concept of Tahara in contrast to cleanliness, etc.

I just did not want to deal with these issues in a Westen context. Sorry...

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

Professor, Islamic Finance & Economics

www.kahf.net <<http://www.kahf.net/>> ; www.kahf.com/blog <<http://www.kahf.com/blog>>

FATAWA MARRIAGE, DIVORCE, PROPERTY 2019

From: Dr. Mohsen

Sent: Thursday, March 7, 2019

Subject: wife's jewellery

As-salamu alaykum dear Prof. Monzer, Hope you are fine.

Please take the time to answer the following question:

Few months back I was going to my parents house for delivery of my first child. My mother wanted me to wear all the Gold jewellery and come. I had some at home and the remaining in the Banks locker. I asked my husband to get the remaining jewellery from the locker but he didn't take me to the bank nor got it. He kept saying he will not. As per him it didn't make sense for me to take all my jewellery to my home for delivery. I told him as it belonged to me I want it but he was not listening to me.. I started crying so my mother spoke to my husband in a harsh and rude (her tone was high) way as she was angry cos I was pregnant and my husband made me cry. she asked him to get it that day only it doesn't matter.. My husband was upset and angry as he thought my mother was accusing him that he has taken my jewellery and misused that's why she wanted to see the gold to cross check if it's there or not. My mother did speak to him in angry Tone but she didn't accuse him directly.

My husband still thinks that my mother accused him of taking my jewellery, while I tell him that It's also his mistake as he didn't listen to me when I was pleading him to get the jewellery from bank. Now my husband and mother are not in talking terms and this has also resulted in differences in our marriage. Question is 1.Isn't my husband at fault for not giving something which belonged to me. As all the gold was gift from my mother and his parents, I'm the rightful owner of the gold Jewellery. He denied my right when I was pleading him. Which resulted in the argument between my mother and him. 2. My husband wants me to return the gold to my mother (it was a gift from her during my wedding) cos he says it still hurts him and it's about his respect now and thinks my mother did accuse him of taking away my jewellery so he doesn't want it to be with me. If I return the gold to her it might severe ties With her. I don't have a father and my mother has struggled a lot for her children. Please advice me on this.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in DearSr.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

While you are right fully on being the owner of the jeweleries, I cannot nswer your questions that relate to relations between family members as I am not a specialist in this are. I suggest that you seek advice from a professional family relations specialist not from an Imam of a mosque.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

Professor, Islamic Finance & Economics

monzer@kahf.com; www.kahf.net; www.kahf.com/blog

From: Dr. Mohsen

Date: February 15, 2019

Subject: Should I get married?

Dear Prof. Monzer,

As-salamu alaykum

Hope you are fine.

Please take the time to answer this question:

Jasmine

As salamu alaykum. I would like this question of mine to be answered privately, which it includes of not posting my question open to the public to benefit others, because someone (my local Sheikh) who knows me might recognize what I am asking. I am sending my question to you to get a second opinion on what I should do in my situation. I am 23 years old, living in Northern Virginia, living with my dad, his family (uncle, aunt, & grandma), my stepmom, baby sister, and my sister who is 21 years old. My family have been facing financial crisis since 2014, when my dad married my stepmom (Christian). My dad and my real mom (Christian & currently in her 60's) divorced in 2013 for multiple of reasons, which I am fine, because she does not like Islam. However, I am still in touch with her. She is currently recovering from a severe stroke, living with her daughter who is from another man that my mom used to be married to before she met my dad. My dad is 53 years old who has a good job. My stepmom is in her 30's who has a good job, but does not pay for many things nor does she helps my dad, including not taking well care of her baby who was born in November. My uncle is living with us, because he is divorced, does not have a good job, pays for some expenses for the house (my dad as well but he does not spend like how my uncle does, which my uncle pays for almost everything and my dad never gave money back to him as a repayment). My uncle is also in a financial crisis as well. My grandma, aunt, and sister do not work. My grandma receives money from the government, but it is not enough to cover for many things. My sister and I are students at our local university (4 years). I work at my school as a part time, but the pay is not good enough. I am also a part time student, which I have been since I transferred from my community college (I was able to finish within 2 years to get my associate degree). When I came to university, my first semester, I took two classes, rest of the semesters I only took one class minus last summer. My sister was full time student during the duration when I was in community college in the fall of 2015 (I think) which it was her first time being a university student. When I came to my 4 year university, she was still a full time student, but for this semester she is a part time student taking three classes only. The reason why she became a part time student, because my stepmom asked my dad to get a new house for them. My dad and stepmom were living in 2014 till this past summer 30 minutes away from us, in an expensive apartment. They moved in with us cause my dad wanted to save some money. My dad wanted to get a loan for the house that they are planning to move next year, he had to show that he is paying less expenses to get the loan. He made me to pay for my first installment in December, he is suppose to return the money back to me, but on Friday he told my grandma and aunt that he owes 5,000 dollars for taxes. No one in the family is able to give him this amount of money. My dad also agreed with me a few months ago that each month he is suppose to give me 200 dollars for gas and food, but when this news came, he told me on Saturday that he might not be able to do not. He wants my sister and I to pay our own expenses such as school, gas, food, and so on. In addition, he told me this past Saturday that he owes like 8,000 dollars for taxes, so I am uncertain what he is doing. I spoke to my local Sheikh about this situation, I wanted to know whether I should stop my studies or stop my studies for the time being and get marry. He told me that getting marry right now is not an option. He told me that he will figure

out what the masjid can do for me, but I should find another job, complete my studies, once I am done with my studies, I should get marry. Is the advice my local Sheikh gave to me a wise decision?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in Dear Br.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I suggest that you should consult a family councillor not me or the Imam of the mosque.

Meanwhile I suggest that you must not quit school, rather you must complete a bachler's degree because that is what give you an opprtunity for good salary. Also unless, it is physically necessary for you, delay marriage until you sort out the financial and income matters.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

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From: Dr. Mohsen

Sent: Tuesday, January 22, 2019

Subject: Husband is demanding my gold jewellery

Dear Prof. Monzer,

As-salamu alaykum

Hope this message finds you in the best of health and Iman.

I am wondering if you have some time to answer this question:

Khatijah

Assalamu Alaikkum dear sir.

I would like to know if my husband has the right to demand my gold jewellery which was gifted to me by my parents on the occasion of my wedding more than two decades ago.

He says he needs the jewellery to ease his financial difficulties.

But because he has verbally abused me and my parents for our past mistakes, we aren't keen on giving the gold to him.

My question is....is my husband entitled to use my gold jewellery to lessen the burden of our family expenses....

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Khadijah

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The jewelry given to you, by your parents or by anyone else including your inlaws, is exclusively your. No body else has any authority on any part of them including your husband and the persons who gave them to you as gifts (this is of course after the gifts are physically handed to you). You do not need to give your

property to your husband or spend it on the family. But I must add, out of your kindness you may help your husband by contributing to easing his financial difficulties and/or spending on him, your children and your household. This kindness is of course highly rewarded. In my personal case I still until today feel grateful for my wife's help, with then selling her own jewelry when I was in financial stress although I have compensated her with much more than she spent.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

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FATAWA MARRIAGE, DIVORCE, PROPERTY 2018

From: Dr. Mohsen

Sent: Sunday, December 30, 2018

Subject: Financial trouble in marriage

Dear Prof. Monzer,

Hope you are fine.

Please take the time to answer this question:

Financial Problems/Marriage Problems

Yvonne from Austria

Assalamu aleikom dear brothers and sisters. I have an important question. I am 21 and My husband and I are living in my dad's house for a couple of months now. Before that, me and my husband lived together alone in our own flat and everything was fine. I have to say, that my father is not an easy person to handle, although he has a very good heart, he has a psychological issue. (I am a revert, my father and other family members are not Muslims). The situation in our home became unbearable for all of us. My marriage is breaking apart because my father has a different way of living than my husband and me and I am sitting between them 2 trying to respect my father and his wishes but also my husband ones. Right now, my husband is at the point where he wants to move out and divorce me because we fight a lot and he cannot take this situation anymore. And I cannot be the wife for him which I want to be a 100% because of my father. I work half-time because I also re-do my last year of school so I can start studying for nursery next year insha Allah. My husband can't find a job because he is a refugee here. He is allowed to work but no one really wants to give him a chance. We live in Austria. As you know, a non-Muslim country. Right now, we cannot afford to rent our own flat because we have so much to pay, like 2000€ for my brackets. So my question is, is it allowed to take a loan from the bank so we can pay off the things we have and to take a flat on rent?! I don't want to engage in riba or something but my husband and me included cannot take this any longer. Please I need your advice. Kazakh Allahu kheiran.

Kind regards,

Mohsen

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Dr. Mohsen

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I remember this question was answered earlier.

Anyway, I do not see the issue as really taking a loan for any real financial need, it is rather to ease some family dispute. I suggest taking other means for such an objective; other than taking an interest-based loan.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

Professor
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www.Kahf.net; www.Kahf.com/blog

From: Dr. Mohsen
Sent: Thursday, December 13, 2018
Subject: Financial Problems/Marriage Problems
Questioner: Yvonne

Assalamu Alaykum dear brothers and sisters.

I have an important question.

I am 21 and My husband and I are living in my dad's house for a couple of months now.

Before that, me and my husband lived together alone in our own flat and everything was fine.

I have to say, that my father is not an easy person to handle, although he has a very good heart, he has a psychological issue. (I am a revert, my father and other family members are not Muslims).

The situation in our home became unbearable for all of us. My marriage is breaking apart because my father has a different way of living than my husband and me and I am sitting between them 2 trying to respect my father and his wishes but also my husband ones.

Right now, my husband is at the point where he wants to move out and divorce me because we fight a lot and he cannot take this situation anymore. And I cannot be the wife for him which I want to be a 100% because of my father.

I work half-time because I also re-do my last year of school so I can start studying for nursery next year insha Allah.

My husband can't find a job because he is a refugee here. He is allowed to work but no one really wants to give him a chance.

We live in Austria. As you know, a non-Muslim country.

Right now, we cannot afford to rent our own flat because we have so much to pay, like 2000€ for my brackets.

So my question is, is it allowed to take a loan from the bank so we can pay off the things we have and to take a flat on rent?! I don't want to engage in riba or something but my husband and me included cannot take this any longer.

Please I need your advice.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in Dear Sr.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I think it is a matter of choosing the least evil not really any choice between Haram and Halal. If you think it is a matter of breaking your marriage and taking a loan will solve it, take it. But I think you are not considering all your options. You still have other options including taking some marriage and spiritual counselling, resorting to friends and relatives, discussing the matter with your father (apparently he accepted to house you free so he cares about you) and also approaching him for a possible loan with no interest. I believe from reading your email that you did not exhaust your optional. Add to all the above praying to God and asking him His help and Guidance and having Him make the choice to you through the prayer and the supplication of Istikharah (asking God to select to you).

Wa Allahu A'lam
Wa Alhamdu Lillahi Rab al Alamin
Wassalam
Best Regards
Dr. Monzer Kahf
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From: Afroz
Sent: Tuesday, December 4, 2018
Subject: Property distribution before development

Assalamualaikum Brother,
We are four brothers and four sisters. We have to divide our father's property, Mother doesn't want her share and so we are distributing her share equally between all of us. We are aware of Islamic ruling i.e. brothers will get the double of sisters. As we don't have enough money for construction on own and even the area is not big enough to take out sisters share on land before giving for development. So we brother are planning to give complete area for development and after development we are getting Five flats and one penthouse. Though we are not investing any amount during development the property value will become more after development when compared to before development. In this case is it permissible to calculate sisters share in cash on land value before development and sell one flat after development for giving sisters share or do we need to distribute the property only after development. Kindly let us know what will be best as per Islamic law. Waiting for your early reply.

Jazak Allah Khair

Afroz

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Afroz

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Fairness and justice requires that you either divide the inherited estate now and pay now the share of each one to its owner at the current prices. The shares will be (if your mother gave her share equally among the 8 of you) 10.333 to the male and 5.666 out of 64 to the female. (mother share is 8/64, 56/64 is divided to 12 shares 2 for each male and one for each female, each child gets 1/64 from mother share). Or if you decide to build as you mentioned where none of you will pay any additional amount and you will divide after building then same shares will be at the prices of the time of sale of one flat after building.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

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From: Dr. Mohsen

Sent: Monday, September 24, 2018

Subject: Early marriage but no earning

I am 24 year old man coming from the middle class family I am still a university student of baby banking and finance second year my problem is that I still need to go for two years in a college but even after that there are not very good career prospective and earning in my country unemployment is very high for educated youth I either want to go to banking sector or teaching one but for that I need to have at least masters so still four to five years to go but my problem right now is that I can't control my sexual urges and I want to get married as soon as possible in a halal Islamic way but I have no earning as one of fundamental Islamic requirement for marriage for men my brother is 7 years older than me and is settled earning ND married so my question is what should I do in this situation islamically should I talk to my parents ND brother for help in marriage and finance is that islamically correct ?? I don't watch any porns or vulgar movies but I used to a year back but whenever I stare at any girl in my college or watch vulgarity in TV I feel aroused sometimes while sitting I feel aroused so what is applicable in my situation islamically, I have some idea that Islam prescribe fasting to control sexual urges please help me islamically?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in Dear Br.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

You seem to be a bit late for university, at 24 you should have completed you BA at least two years ago! However, the advice of fasting is suggested by the Prophet, pbuh. You should really trial it but at the same time if you thing that your family can help you, it is better to ask them for help to get married as soon as you think it is appropriate. It is common that parents and older sibling help in marriage.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

Professor, Islamic Finance & Economics

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From: Abuelezz

Sent: Monday, September 24, 2018

Subject: Property Rights of the wife in the West after Divorce

Assalamu alaykum Dr. Monzer,

We really missed a great opportunity to have you this summer but InShaAllah we will try to arrange next one ahead of time.

Dr. Monzer I have a matter I would like to get your opinion on it.

A lot of men complain after divorce that their wives took half of their wealth and she went to the non-Muslim judge and non-Islamic law. Some even accuse their ex-wives of being Kaffir for doing that and other tell the woman that she is still married to them if she gets divorced by a Canadian court.

We have two problems here the first is the validity of divorce issued by the Canadian court and the second the rights resulted from that divorce.

I think this is a denial of the reality of living in the West. They can't ignore the Urf established by the laws and the regulations of the country they live in when they enter any contract not just marriage contract.

المعروف عرفا كالمشروط شرطا

So when some men enter the marriage contract and they stay silent about such serious regulations IS this NOT considered an implied acceptance?

أليس هذا قبولا ضمنيا بالعرف القائم؟ أم هذا عرف فاسد لا اعتبار له في الشرع وإن سكت الزوج عنه؟ وكيف يكون فاسدا والشرع لم يحدد قيمة المهر أو نفقة المتعة؟ والشرع لا يمنع من أن يملك الزوج زوجته بيته كله أو نصفه؟ والشرع لا يمنع أن تعهد الزوج بالالتزام بالنفقة على المرأة حالة الطلاق؟ كل هذه أمور ممكن مناقشتها حين إبرام عقد الزواج وإذا كان عرف البلد الغالب الملزم بالقانون قد حددها ثم يسكت الزوج عن مناقشتها والاتفاق عليها فيجوز الزوجة أخذ هذه الحقوق كما هو في العرف الكندي؟

And when they go and register the civil marriage is that not another acceptance from their side to let the civil judge rule over them and between them and their spouses in case of disputes including divorce?

أليس هذا توكيل للقاضي غير المسلم بالتحكيم بينهما والتطبيق عليهما عند النزاع؟

Even in case of those who try to escape civil registered marriage and say we will only marry religious marriage, the law still will consider it a common law marriage and after a specific period of time living together, he/she will have the rights of spouse.

Avoiding all these regulations and not discussing them before marriage contract and not having a prenuptial agreement, it's an acceptance of the Canadian laws of marriage in case of divorce?

Please I would appreciate your opinion on these issues.

Jazakumullah khayran,

Muhammad Abuelezz

Imam of Rose City Islamic Center

Muslim Association of Canada

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi

Ajma'in

Dear Br Shaikh Abuelezz

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

You said it all, dear Brother, and no need for any addition, and this is also the opinion of the Fiqh Council of North America. A couple of small peripheral points: 1) In any community, there augh to be legal binding reference that can enforce its decision, it is here the Canadian law and courts to which one abide simply by being in the country, and 2) even a non-registered Islamic marriage is registerable by either party as it is called marriage, it is not like living together without marriage (common law marriage) which requires a period of proven stability to avail same privileges as marriage.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Best Regards

Dr. Monzer Kahf

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FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2017

From: Mrs. Bary

Sent: Sunday, September 24, 2017

Subject: pre-nuptial Agreement

Question:

Comments on a pre-nuptial agreement

My answer:

Dear Mrs. Bary,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh,

I pray to Allah that you are fine with your husband our dear Brother and the new baby and her older brother.

I am sorry I was on a travel and arrived home just this morning to find your email. Here are notes out of a quick look at this new contract:

There is a considerable improvement in the contract. Still I noticed a few small points you better change:

Article VII: In the event of divorce: there must be exception of any rights arising from social security system and laws

Same: in the case of death: pension of social security and any entitlement resulting from death such as life and disability insurance can go according to what is mentioned. But any other retirement plan that is voluntarily created and funded and/or shared by employer should distributed according to Shari'ah to spouse, children and parents of the deceased. (this is a Shari'ah requirement)

P 7 clause VIII second para: there must be clear mention that the husband shall be also responsible for the living expenses and education of the son of the wife from previous marriage until he become independent earner of own living. This is very important for you.

P 7 clause IX: this need to add that the husband recognizes that he is under debt of the Mahr (a marital obligatory gift by husband to wife) and you should specify the amount as.....US Dollars at the value of Dollar on Oct. __ 20__ (the date of original marriage ceremony and contract) or its equivalent according to the official price index issued by the statistics of the USA. That this amount becomes due at the time of divorce or death of either party and that at death of wife, this amount shall be distributed to her then children, spouse and surviving parents according to tenets of Islamic law.

P 7 clause XI: there must be an addition that: any property, personal or real obtained by either party and recorded by them in both their names shall be considered owned

equally by them (half/half) as mentioned in clause XIII regardless of who pays or who pays more for it.

P 7 clause XII must be amended to say that: wife is not responsible for the husband children from previous/other marriage or relationship but husband is responsible for the wife's son from previous marriage as mentioned earlier.

P 8 B: there must be mention here that the daughter born on is a child of both husband and wife and she was born after the religious marriage performed overseas and her father is responsible for her (this is very necessary because your daughter is born before this contract and before the official marriage contract that you will make)

Also the addition about girl until 11 and boys until 7 exist in many Arab law some laws also take it that boy and girl remain with mother, as majority parent until the child's majority. This is a matter that you both should agree on anyway with it, my preference in until majority of the child whether girl or boy.

P 8 clause XIII line 6: after the word "such property" there must be addition. The surviving party shall transfer one half of such property to the estate of the deceased spouse to be distributed according to the Islamic law. This is a Shari'ah requirement

P 9 clause 15.2: mentioning a specific amount is incorrect because any such amount may not be sufficient because of inflation. There must be a mention of % such as 40% of the husband's estimated net take-home income if there are no children with her and 60% if there are children living with her.

P 9 15.3 (b): the dowry is due whether the dissolution of marriage is asked for by husband or wife. You should add here if it is filed by wife same amount become due upon court decision to dissolve the marriage

P 10 clause 16.5: this should be amended to be: wife has rights to alimony, support and separate maintenance and the like needs at reasonable amount adequate to maintain normal living at decent reasonable standard.

Best Regards

Professor Dr. Monzer Kahf

Islamic Finance & Economics

From: Majd

Sent: Monday, April 03, 2017

Subject: زواج فتاة مسلمة سنية من رجل شيعي

بندنية الرسالة المرحلة:

من: أخت

لسال حجككم رجاء ابحاج كل جوبلكم فبتوكم

ان اسرني عراقيه نتمسك بفتح عيني، بلاني زهليل شي عيب خص وصل ما اذان عجب عليهم زيارة المرقد والضرحة وما فوقها عن زيارة المسجد الفوي الذي في قبر لسول علي الصلاة والسلام وبلولك وعمر حاولت الاجله لكن قللة حجتي اظهرت مذبه ييمق فضعف

لغني كل حال لتهى ال حوار مرت الايام وهذا الشايفتاحن يبل ييري للزواج مني، من الهدهي وبدون نقني رلو غيره لفيضت. لكن معفت وجهش كل هانيل ورفضت سرات حللة اجهدت لبحلق وادب وشرف وفعه وطي بفس وحب خير وش هامة. غبت هان ي سريه قال لغم لكن ان اشاري لاجل فس الامب ابحت شام واخلاق يير اهين يت جدلت حاولت بقتي لاس او م قال ال لغني م فبه هو مرال شيعه الذي يؤمن بلق ان كامل لكن عوده حب بطلغ لالهيت الفو موقال

إذا كان هذا لخطب على الفاتح مع هذه النوايا، لعل الله ينزلها لحق لأصواب ولأبأس عيذ من الزواج. أما إذا كان حراً فحسب الأئمة والأخذ من بؤوبهم بل وبهم (بفتوى أي من لصحة الأخبار، حمل للسنن المطهرة من قبله لنافس الخيري في هـ. وشهيدك أ التجددي خيرا في طي سله لمبرر أبدا..
مع أس مى للفقير وأعزال حجة
أ. د. في ذرق حف

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2016

From: Hani

Sent: Thursday, September 29, 2016

Subject: Custody in Islam

Assalamu Alaykum Dr. Kahf,

I pray that you are in the best of health and spirit, I have a question regarding the custody of minor children in Islam after divorce. In your Fatawa, you have stated that custody for minors is given to the mother when she is divorced until the children reach a certain age (difference of opinion in the Mathahib on the specific age) or the mother marries another man.

My question is on what exactly is the definition of custody in Islam? My understanding is that Custody in Islam is akin to the primary caregiver status; i.e. the parent whom the child resides with. It does not mean that one parent takes over full control of any and all decision in regards to the way a child is raised. So while the child is minor, the mother is best suited to be his/her primary care-giver and the father is obligated to provide financial child support. Islam does not give the mother the right to deny the father access to his child or to spend time with him so long as it is reasonable and mutually agreed upon.

This is correct with some more details that if no agreement then the judge may impose what is reasonable. Also the question of religion is already solved in Shari'ah because even care giving cannot be given to a non-Muslim mother. Main decision may also remain in the hand of the father (in divorce) not the mother even though she is the care giver unless there is an issue of sanity or in-ability to take rational decision by the father.

However in Canada, specifically Ontario Family Law, the law clearly separates custody from access and from primary care-giver status; each of which is dealt with separately.

In family law, custody is the right to make important decisions about how to care for and raise a child, for example:

- the child's school and educational programs,
- the child's religion, **only Islam is acceptable**
- where the child will live,
- other activities for the child, such as sports, tutoring, and music lessons,
- the child's legal name, and **definitely father's name**
- health care decisions for the child.

Of course when done by mutual agreement, it does not matter who dominates. But in conflict the father's say goes unless proven irrational (safih)

Custody is not about which parent the child lives with or how much time a child spends with each parent. For example, even if only one parent has custody, the child might spend equal time living with each parent. Or the child might live mainly with one parent, but both parents have custody and share the decision-making.

Reference <http://www.cleo.on.ca/en/publications/custodyaccess/what-custody>

Joint custody means that both parents must agree on major decisions that affect their child. One parent cannot decide these things without the agreement of the other. If they disagree, they must find a way to resolve it.

Courts do not like to order joint custody if parents are unable to make these decisions together. Joint custody works best when parents share similar ideas about how to raise their child. It takes a lot of co-operation.

Sometimes parents with joint custody divide up the decision-making. For example, one parent may make medical decisions, while the other makes educational decisions.

Reference <http://www.cleo.on.ca/en/publications/custodyaccess/what-are-different-types-custody>

As such, does the mother in Islam have the exclusive right to make all important decisions about how to care for and raise a child without the involvement of the father; in other words is custody in Islam synonymous with the legal definition of custody. Or is custody in Islam more consistent with primary-residence and care-giver status but the father has to be consulted on important issues regarding his child's upbringing? This is the Islamic way and add to it that: It is the father's word that goes in case of conflict unless he is proven Safih.

Another question is in regards to access. does the father in Islam have the right to overnight visitation (e.g. weekends) with his child in a separate home from the mother if the mother has moved back into her parents' home which is a travelling distance from the father and as such he can only see his child on the weekends? Yes, but it is a court decision (or accepted arbitrator's) according to circumstances.

Jazaka Allah Khair,

Hani

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Hani

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Your questions are difficult because they are very specific. Only a judge in a Shari'ah court can answer them. Please see my attempted answers below the questions:

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Assalam Alaykum Dr. Monzer,

I wish I am not bothering you with my questions. Just I would like to get further clarification from you regarding again the 50/50 share law in Canada/US.

You stated, Jazakumu Allah Khayran, in the previous fatwa that if there was no pre-nuptial agreement regarding the property distribution, the wife will have the right by the common law of the country to the half. The question here is that do we consider the common law/Canadian law to be like the valid `Urf? Or the husband can say this `Urf is invalid and that he didn't need to do any arrangements to avoid?

هلبي على قول ورن لو وضعي اللغني دي عرف اصل احام مع مولابه أي عد من نوع ال عرف انفس دالم خالف شرع عت لمليك أحد مال الأخر بغير وجه حق! الزوجين

The opinion of the majority of scholars **مور** is that it is not obligatory upon the wife to serve her husband and the marriage contract is only for **الامتتاع**. Can the wife claim the right for compensation for her service at the house especially if she was a full-time house wife?

Isn't it unfair for the husband that the Muslim wife takes the best of the Islamic law and the Canadian law? She takes the dowry in advance and deferred one, the Nafaqah and takes half of his property?

وله بيعتواكم فإني واسة بتبوسع لكم أو لأحلى عمل ماء حول هذا الموضوع عي لجن اعلي له لم نزي دال حث والإ ال ع
Jazakumu Allah Khayran

Abuelezz

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

My Dear Br. Abuelezz

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

It is the law, much higher and stronger and more binding than the Urf. The law of the country says that any property is owned by both unless you have a valid agreement otherwise (to be valid, it must be a pre-nuptial or post-nuptial with their respective conditions). Then you go ahead and Put the property in both name or even in one name without taking this required arrangement. The only meaning of this is that you are giving your wife a gift and since this is not determined (how much is this gift) we consider the property owned 50/50 like any other joint property in Shari'ah where there is no evidence of any other shares.

Please note that property law, in this regard, is different from succession laws that stand in direct contradiction with Shari'ah. Property law does not stand in direct conflict because gifts between spouses are very common and only denied by either party at time of conflict. In a sense that at time of conflict they revise themselves (e.g., I didn't mean that or I didn't know that) (not knowing the law is not an excuse!). When they were happy together the husband did it this way without thinking of a potential conflict and now he wants to retreat... it is late to retreat!

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Abuelezz

Sent: Wednesday, August 17, 2016

Assalam Alaykum Dr. Monzer,

This imamfrom Masjid. It was honor having you Wallah. Please could you provide us with an answer to this question below from a sister regarding her financial rights if she gets divorce from her husband?

Assalam Alaykum,

I am a 45 y old physician and has been married to a 58 y old physician for 20 years. I stayed home for 14 years (May 1996 to June 2010) to take care of my kids and my home. I have 3 boys :19 y/ 16y/9y.

My husband convinced me to work again (from prospect of feeling I am a good doctor and will help sick patients who are in need as well as poor people). I started my residency training in family medicine in June 2010 and finished in July 2013. During this time my salary went to a joint account with my husband who was in charge of everything.

I had so much trouble in my life with my husband who becomes physically and verbally abusive since I started my training in 2010!

I started to work in September 2013 in a busy practice and after my husband refusal to let me stay home and be a house wife again! I had a separate account since then.

I changed my job to another to have more time with my family. However my husband got worse and worse because of me separating my account.. He has not been spending any money on me since then and I completely took care of myself financially and physically and psychogenic. He would not buy me medicine if I am sick or need to! And would ask me to do it in my own!

He refused my trials to have a joint account again or to stay home. He insisted in making me spending money on daily house needs (food.. Travel.. etc.) and I was also doing all my duties from house cleaning to cooking .. etc.

He forced me to sign papers to give him full ownership of a beach condo he bought (still paying mortgage) and also forced me to sign a home equity (equal to what he paid so far) for the house we lives in (he is still paying the mortgage).

He has not been spending any money in the daily needs at all and since Ramadan of 2015. Has been back and force to the house till February 2016 as he left the house completely and moved to an apartment.. I have been living by myself completely since then.. He would take my 9 y old son whenever he wants and leave him with me whenever he wants.. Refused any arranged dates or plans for them with me! He moved all his cash money to Egypt. My family furnished his apartment for our marriage in Egypt however he told me I have no apartment and no place in Egypt and I have to stay with my family whenever I want to go visit Egypt!

He refused my trials to sit together and talk and end everything peacefully for the sake of the kids.

He told me to go divorce myself if I want and threats me sometimes by becoming a non-Muslim if I do that and sometimes by spending any money I have in lawyers .. etc.

We both bought our house with mortgage. The house loan and the house is under both our names. He paid 50% of the mortgage / and got home equity loan for 50% (same amount he paid in mortgage so far)

He has an apartment at the beach under his name only and still pays its mortgage. He moved all the money he earned as well as the home equity loan he got to Egypt.

He prevented me from going to our marriage apartment in Egypt (which was furnished completely by my family) and told me I have no rights as this is his apartment!

He has 7-8 more luxury apartments in Egypt between Cairo, Alexandria, north beach, Mansoura , Cairo.

He has good money in his retirement account and will be able to withdraw it all starting in March 2017 and after he turns 59 y.

We had joint account from June 2010 to July 2013 and all my work money went in this account so I did not take anything.

From Sept 2013 till now, I was taking financial responsibility of all my needs Daily living including food and travel expense as needed. I paid the entire end of year tax for 2013 (only after working for 4 months) 6500 dollars, 2014/6000 dollars, contribution to 2 months house mortgage.

I have been responsible for all daily needs since Ramadan 2015 and till now.

He is still paying utilities and house mortgage.

But canceled the house insurance and appliances insurance and asked me to pay for it!

Threats me of not paying for utilities as well!

He is asking me to leave the house and go rent an apartment as I have no rights!

I WOULD LIKE TO KNOW AND CONFIRM AS A MUSLIM WOMAN WHO WAS ABANDONED AND COMPLETELY REJECTED BY HER HUSBAND:

1. My financial rights (matrimonial house, spousal support, children support).
2. Seeking divorce through the American Court is Halal or Haram (ok or not) especially with my husband refuses to divorce me and leaving me all this time completely and by myself?
3. Spousal Support. After 20 years of marriage and patience to keep the kids together as a family as long as possible.
4. Children's custody and support especially the 9 y old.
5. I have concerns about possible plans to take the 9 y old and go back to Egypt next year and as soon as he gets his retirement money.

Your opinion is completely appreciated and will help me a lot for my future decisions as I don't want to do anything haram or wrong for the sake of Allah !!

Jazaka Allah Kheir.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. very respected Imam

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Let us first see the fundamental Shari'ah principles that relate to this case, then see how they apply:

1. Properties of husband and wife are independent from each other.
2. Any property recorded in both names is assumed to be owned on the basis of 50/50 unless there is an agreement between the spouses otherwise.
3. As the marriage is done in Egypt, the house furniture there is owned by whoever paid for them (if proven that your family paid for them).
4. Unfortunately spousal physical abuse is difficult to prove unless there are physical marks or confession. Then it can be financially compensated by a court decision and in more serious abuse by imprisonment.
5. Husband is responsible for household expenses and for wife's expenses (although in Egypt courts may assign some of these responsibilities to the working or rich wife, which is in my opinion incorrect).
6. Any gifts between spouses in either direction is permissible and valid. This means spending any amount on the house without specifically asking for such spending in a formal way is not compensable as it is considered voluntary, unless there is evidence of neglecting such spending by the husband after alerting him to take charge and expenses are necessary such as food.
7. The delayed part of the Mahr is always due to the wife even after death of husband.
8. Any privileges given to wife by Canadian and Provincial laws is permissible as long as the spouses live in Canada and these laws do not directly violate Shari'ah. This implies that community property laws that give the wife ownership of half the properties in both names or in one name but acquired during marriage period take the interpretation of spousal gifts regardless of who paid more than the other and are considered 50/50 unless there is a clear court-accepted pre or post nuptial agreement. This may also apply to any property that you signed that it is his only. Of course this requires court order.
9. Divorce done under Canadian laws is recognized in Shari'ah especially when one spouse refuses any amicable dissolution of the marriage.
10. Children custody (for boys above 7) is flexible in Shari'ah, I do not know what do courts in Egypt adopt but if divorce is done by a Canadian court whatever rights it gives to either spouse are OK because of this flexibility and difference between schools of Fiqh.

Accordingly,

- a. If amicable divorce is not reached, seeking a court order from a Canadian judiciary system is permissible in Shari'ah.
- b. All properties in Canada that are in both names or in his name alone (even with the papers you signed) may be claimed as 50/50 and if a court order in Canada gives you this right, it is permissible in Shari'ah to take it.
- c. Yes, unfortunately in case of divorce or disturbed marriage he can prevent you from entering the marital apartment he owns or rents in Egypt unless an Egyptian court gives you a right to it. You can take back the furniture also by court order after evidence (or customarily known) that your family paid for it.
- d. Egyptian courts will not give you any rights to any other properties he owns in Egypt (the luxury apartments) but a Canadian court order (made final judicially)

most likely will give you right to one half of these properties if you prove that he obtained them during marriage period in which you acted as full time house wife, such decision is acceptable in Shari'ah as long as they are paid for from income acquired in Canada during marriage can be implementable in Egypt.

- e. Unfortunately judicial process in Canada and in Egypt is long and costly and requires a lot of payment to lawyers.
- f. Canadian courts may give you right to spousal and child alimony since the day he left the house, but since you are working and earning this may not be substantial. What the court gives is permissible in Shari'ah.
- g. You should not worry about your separate bank account and you still have right to 50% of the joint account if it is still open or by a court order to 50% of amounts he withdrew without your knowledge after starting the dispute. This is permissible in Shari'ah.
- h. Always, a negotiated solution with help of friends and family is better even if you lose some of what is rightfully yours and it may turn to be less costly financially to both of you especially that it seems that you are financial more tender than him.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: rila

Sent: Wednesday, May 25, 2016

Subject: Iddah of bread- winning mother

Dear Dr. Monzer, Assalamu Alaykum

Thank you very much for your prompt reply and the service you are doing for the Ummah.

There is another simple question.

There is at the moment a massive flooding in Sri Lanka and most, especially Muslims, who were living in low lying areas of Colombo are very badly affected with submerged homes, belongings, and vehicles. I have some Bank Interest money with me and can I give it to Muslim flood victim to repair their homes or repair vehicles or for any other use asking them not to use the interest money for eating purposes? Or to give it to Non-Muslim victims?

Regarding the Iddah of abandoned 2 ladies, she/they happened to be the bread winner of the family- one working in a Garment factory / the other working overseas as Nutritionist how can they observe Iddah after seeking divorce from Kazi Court Judge?

Thanking you ,

Yours sincerely,

Rila

My Answer:

Dear Sr. Rila

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Of course you may give interest money to poor people affected by the flood even if they use it for food as long as they are poor.

For the Iddah and bread winning.

It is the right of a married woman to have all her expenses covered by her husband, regardless of whether she earns any income or not and regardless of her wealth. Failure of the husband to provide for her is sufficient reason to seek divorce and be granted it by court. This is under Shari'ah very clear and non-disputed at all. Of course if she did not use this right she cannot ask for long past periods' expense. At the same time she can still ask for this right any time. Once she gets divorce she should observe the Iddah and can marry after that.

Best Regards,

Wassalam

Prof. Dr. Monzer Kahf

From: rila

Sent: Tuesday, May 24, 2016

Subject: Khul' and Iddah

1. After the child birth my sister has been living with us away from her husband for about four to five years. Her husband after waiting for several years married another one. Is my sister still under wedlock or automatically got divorced as she have been living away from her husband for several years? My sister is still under treatment which costs thousands taka (currency of Bangladesh) per month.

What breaks marriage is either divorce given by the man, Khul' asked for by the woman and given by the judge or forced divorce given by the judge of request of either spouse. Accordingly marriage remains in until one of these actions is done.

2. A married lady has been abandoned for 15 years by her husband without any form of contact. Is it necessary for her to observe IDDAH to marry another one, if she desires so?

Yes, because Iddah comes after divorce. If a woman is abandoned by her husband she has a full right immediately after a few months (not waiting for 15 years) to ask the court to either force her husband to come back and spend on her and her children if any or give her divorce. If the husband does not respond to the court the judge gives her a divorce which should be followed by Iddah and then she can remarry. Why did she wait for that long? She should do the same now as a marriage does not break on its own except by death of either spouse.

3. A husband has been reported missing for almost 10 years and no trace of his existing anymore. Is it necessary for the wife to observe IDDAH?

Same as above; why waiting for 10 years?

4. In any divorce, it is to decide on the pregnancy and right of inheritance that IDDAH (I vaguely understand) is prescribed. If those two are ruled out what is the position of IDDAH?

Iddah is a necessary period of psychological separation between one marriage and another. It comes after divorce of death. You can't neglect it if the woman neglected her right to seek forced divorced Khul' from court.

Thanks and Salams

Rila

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Rila

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please see my answers below the questions:

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Sarah

Sent: Tuesday, May 24, 2016

Subject: Marriage contract

Assalam Alaykum Mr. Kahf,

I hope this message finds you in peace and that you and your family are well. I found a sample of your marriage contract on your website from a book I found in my local masjid. I am really happy with it and would like to use it as the base for my marriage contract. Are you currently drafting contracts?

Kindest Regards,

Sr. Sarah

My Answer:

Dear Sr. Sarah

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Thank you for your kind email.

I am not in the business of drafting contracts.

I am sending you a word copy and will be glad to review (only from Shari'ah point of view, not from legal point of view in your state) any changes you may decide to make in it. (A draft marriage certificate is at the end).

Best Regards,

Wassalam

Prof. Dr. Monzer Kahf

From: Amjed

Sent: Saturday, March 12, 2016

Question: Question on Divorce

Assalamu Alaykum,

I have another question about divorce.

This is the scenario, a wife asked her husband a question and to verify he is truthful, asked him to say she is divorced if he was not truthful with the answer. If the husband

answered based on his understanding of the question but later (couple of hours) kept on thinking of the question and provide a better answer. Did divorce take place?

The husband in this case did not at all intend to divorce, but may have tangled himself with the literal text. I understand that there are different options on whether divorce is literal or intentional.

Jazaka Allah Khair,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Amjed,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The way you mentioned it, this is considering an oath only. But please you, your wife and all Muslim must not use this term or issue for any reason except when it is really really intended and in a court only not outside it. it is completely wrong and the Prophet, pbuh, said that Divorce, marriage and liberating a slave go on whether you take for real or for joke. Please do not ever repeat such an oath of Talaq. For now you seem to need to fast three days for breaking an oath.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Tayyaba

Sent: Saturday, February 27, 2016

Location: USA

Question:

Assalamu Alaykum

Thanks for your continuous help and guidance

There is one development in our issue or case

On Feb 13, I saw text messages on my husband phone and I got so hurt that spontaneously I tried to swallow a whole bottle of Oxycodone- high potency drug - half of tablets swallowed. On that time my husband called 911 and meanwhile trying to prevent me on swelling more.

I was screaming and asking him to divorce me or her.

On that moment he himself asks me that if I throw up then he will give divorce to his second wife and he said the following: "I divorce the second wife."

I asked him to utter three times then he said two more time the following "I divorce the second wife" "I divorce the second wife."

Then I THREW THE EXISTING pills from my mouth- he told me at that moment that he is following Sunnah and believes over one Talaq at a time.

I came to know that he was kind of tricking me I started eating more pills and asked him to say which he did two times: "I give my her (her name) 2nd divorce which will be effective time after first Iddah, I.e., 3 month.

Finally, he also said the following two times: "I divorce my second wife thrice" " I divorce my second wife thrice."

So please tell me what his standing on this issue - he says that he believes in Qur'an and Sunnah- and it should be considered one Talaq

Generally, he says that he follows Qur'an and Sunnah- but we follow in general the Hanafi Fiqh.

Allah may give you the Ajr for all of your help and please pray for me - I have again started IVF treatment, please keep me in your prayers for more children.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Tayyaba

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I deeply regret what you did and please be a lot stronger and bigger. And you should be a lot bigger than all that happened and you deserve to be bigger.

According to the Hanafi and other three schools of Fiqh what your husband did was a full and final divorce. He is required to pay the late part of the Mahr and expenses of the second wife who is now divorced the kind of forever divorce. This is also the Ijma' of all the companions since the time of Umar, the Second Khalifah.

Ibn Taymiyyah considered three times pronounced at same time as one time.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Maseer

Sent: Sunday, February 14, 2016

Question: Adoption, breast nursing and remarriage

Dear Dr. Kahf:

Thank you so much for your kind and prompt reply. Thank you also for pointing me toward Verse 58:2. Kindly allow my follow-up questions:

1. I am quite confused about the issue of adopting a child and allowing the wife to breast feed the child to make him her child as well. This is, as I understand, due to the passing of certain chemicals from mother to child. In this case, the child would have two mothers, his biological mother and his breast feeding mother. (This was the case of the Prophet, PBUH, and his two respected mothers Amena and Halima, correct?) Isn't surrogacy just an extension or extrapolation of motherhood through breast feeding, i.e., the issue is with the passing of those chemicals? As she becomes the child's mother through breast feeding, what relation would I have to the child? Wouldn't I remain a foreign man to him or her (especially if the child was a girl)? Would that child carry my name or inherit me? If not, then although I would certainly welcome the adopted child to my family, I would still need my own child.

2. On the issue of temporary/nominal marriage to the younger sister: assuming egg donation was Halal, would this kind of marriage be acceptable in this very exceptional case?

I would welcome consulting the respected scholars that you mention (if any is alive) on the specifics of this case. However, I would kindly request carefully removing my name and email address before any sharing of my emails.

Kind Regards.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br./Sr. Maseer

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

There is a big difference between a nursing parent and a surrogate mother. The latter give birth to the child literally. And nursing parents are in Shari'ah equal, if your wife nurses a child you are also the nursing father of the child. It goes by marriage. How do we know these and where we take them is from God in the Qur'an and in the revelation given to His Prophet? These matters are (the Qur'an 4:123 mentioned sisters by nursing) and the Prophet explained it. These matters cannot be derived by human thinking they require a revelation, they are Tawqifi like the number of prayers. In them marriage determines the relation by nursing so that the husband of the nursing mother is a nursing father and his children are nursing sibling

I strongly recommend that you do not take at all the surrogacy approach, it is Haram as declared by the F A which studied the issue in a full session with physicians and social experts and Shari'ah scholars. Of course it is you who decides and you have full right to ask anyone. Unfortunately, Zarka died in 1999 and Abu Zahra in 1074.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Sharif

Sent: Sunday, February 14, 2016

Location: USA

Question: Borrowing eggs from wife's sister

Dear Dr. Kahf:

Please allow me to consult you on my specific situation as I am very tired of internalizing it on my own. I do not have anyone to advise me on it.

The situation, concisely, is as follows:

1. I have been married before but have not been blessed with children. My ex-wife suffered a condition that made her chances of having children less than 10%. Half a dozen failed IVF attempts, due to poor egg quality, caused A LOT of strain on the marriage and we ended up deciding to go our separate ways.

2. I have gotten to know another lady for the purpose of marriage and, even though I have met her and her family only once, we have gotten really close through email communication over an extended period of time. Because I had been married before, her family required that we undergo medical tests, basically to rule out the possibility that I was responsible for not having children in my previous marriage.

3. The results of the medical tests came back OK for me alhamdulillah but, Subhan Allah, her results showed the exact same condition as my previous wife! Her chances to have children are less than 5%. Doctors (in the West) have advised that her chances basically lie in egg donation.

4. Of course, this news is devastating. She is still unable to break this news to her family.

5. She has two younger sisters, also unmarried since, as you are aware, chances of finding good matches in non-Muslim countries are extremely diminished.

6. I am contemplating the thought of us suggesting that one of her younger sisters donate eggs to her. Of course, that sister would need to be married to me (temporarily/nominally) throughout the process of egg donation. The resulting embryos (InShaAllah) would then be frozen until such time that I am legally married to the older sister. We would use those embryos only IF her natural eggs fail to do the job.

7. Through my online research, I am finding that parts of this plan may not be Halal, specifically, the temporary nature of the nominal marriage to the younger sister, and what would be considered egg transfer from one sister to another.

8. What makes me still contemplate this plan is the following:

1. It will be extremely unwise for me to go through virtually the same experience as in my previous marriage and expect a different outcome.

2. Both she and I will be emotionally hurt very badly if we called it off at this stage.

3. This will most certainly be the last opportunity for her to become a wife and a mother.

4. This might also be the last chance for me to become a father because I am extremely exhausted of looking for the right match.

5. Given their ages, the younger sisters are having great difficulty finding the right matches also!

6. When I think of the underlying reasons for the prohibition of those two issues, I find that they do not really apply to us: the younger sister would be virtually untouched/unharmful by the temporary/nominal marriage and egg donation process; and any resulting offspring would be recognized as the legitimate descendent of the biological mother/younger sister, so there would be no confusion of lineage.

As you might be able to infer, I am extremely stressed out with this situation and I would really appreciate your kind advice on the viability of the aforementioned plan.

Kind Regards.

Sherif

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Sharif

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I went through your email twice. And I understand your deep dilemma. You did not mention your age and the age of this woman, the new prospected wife. And you hinted that the ages of the younger sisters are kind of on the high side. God has His Own Wisdom and arrangement of the Worlds. Neither one of us can do anything about it.

I sincerely request you to think of a third alternative and give up surrogacy which makes two mothers for a child (the Qur'an 58:2 emphasizes that mothers are those who give birth) and definitely mothers are also those from whose eggs children come. Two mothers of a child are not accepted and not natural and create a multiplicity of complications. This is why it is definitely not permissible in our religion. This is the opinion of the Fiqh Academy and great scholars like the late Zarka and late Abu Zahra. I should say it is almost unanimous because I am not aware of other opinion from respected names.

The third option that I suggest is: get married to this woman. Search for a child (very young baby almost just born) for Islamic adoption (adoption while keeping full accessible official records of the reality). Have your wife nurse this child (I know of several cases of women unable to have children who were able to breast feed their adopted children). There are also medical enhancements for this breast feeding. This child will be yours as nursed child and by that you overcome the issue of adoption. You still make more condensed attempts for having a child even with 5% chance. Adoption with breast nursing is a good alternative. PLEASE RESIGN TO THE WILL OF GOD, HE KNOWS BEST.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Sharif

Sent: Sunday, February 14, 2016

Dear Dr. Kahf:

I pray that you are doing well. I have a question on the subject of marriage, IVF, and surrogacy. Would it be appropriate for me to ask you on these matters?

Thanks and Kind Regards,

My Answer:

I know a little about these subjects and I am aware of the decision of the OIC Fiqh Academy on them as I was present in the discussion and decisions several years back.

I can tell you in brief the following: IVF is permissible between husband and wife, no stranger eggs or sperms. Surrogacy is not permissible even from one wife to another wife of same husband. If you have more details I may be able to answer some of the questions

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mayssun

Sent: Monday, February 08, 2016

Location: Jeddah

Question: Divorced second wife to save first wife's life

I have a female friend in Jeddah, who is married to a man as his second wife. This is her second marriage also. She has a son from her ex-husband. Her present husband did not tell his first wife about his second marriage, as he has three kids from his first wife. Two weeks ago he told his first wife that he had been married to a second woman for about two years. When the first wife heard this she started quarrelling and screaming that she will commit suicide if he didn't divorce his second wife this instant. She said she would jump out of the window if he didn't divorce the second wife.

He got very confused, afraid of her jumping out of the window and die [she is the mother of his 3 sons also]. So he said, "I divorce her" three times quickly, but didn't mention her name, and not intending to give her Talaq, just to save his first wife.

Has the second wife really been divorced or not?

Have all the 3 divorces occurred?

Can she go back to her husband without marrying him again?

If divorce is irrevocable, what should she do now?

It's already been more than 2 weeks now. Her husband comes home, but she doesn't treat him as husband until she is clear whether she is Halal to him or not. So please tell me as soon as possible. I would appreciate an early answer.

My Answer:

Praise be to Allah, the Lord of the World; and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

This man's act, i.e. divorcing his second wife to save the life of his first wife, is in compliance with Shari'ah ruling if he strongly believes that she will kill herself in case of refusing divorce of the second wife. Divorce in such a case as stated is not under compulsion and is valid. Scholars stated that threatening to kill someone does not come under the ruling of compulsion in Shari'ah unless such threatening aims at killing one's father, mother, son or daughter.

According to the majority of Muslim scholars, using the form ""divorced thrice"" constitutes a final divorce, i.e. three divorces at one time.

Therefore, the fellow wife of your female friend is divorced irrevocably from her present husband. So, she becomes Haram for him until she marries another man with sincere intention for marriage. After that, if her latter husband divorces her and she observes her 'Iddah (waiting period) she can return to her first husband but with all conditions of a true marriage: her consent, her guardian's presence, two witnesses and the Mahr (bridal money).

Allah knows best.

From: Sherif

Sent: Tuesday, February 09, 2016

Question: Use of IVF in Marriage

Dear Dr. Kahf:

I pray that you are doing well, I have a question on the subject of marriage, IVF, and surrogacy. Would it be appropriate for me to ask you on these matters?

Thanks and Kind Regards,

Sherif

My Answer

I know a little about these subjects and I am aware of the decision of the OIC Fiqh Academy on them as I was present in the discussion and decisions several years back. I can tell you in brief the following: IVF is permissible between husband and wife, no stranger eggs or sperms. Surrogacy is not permissible even from one wife to another wife of same husband. If you have more details I may be able to answer some of the questions

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Tayyaba

Sent: Sunday, January 17, 2016

Location: USA

Question:

Assalamu Alaykum

Back in 2004 we had your advice regarding second marriage and you ask my husband not to marry second wife and try all treatment options

As we were married since 1997 and we're trying for INVITRO for COUPLE OF TIMES - AND Alhamdu Lillah we are blessed with a daughter Maryam in 2007 and she is now 9-year-old -doing Hifz - in the whole process so I got pregnant 5 times but got miscarriages and one premature baby - I still could try more IVF

During all those time my husband never showed any intention or desire to have more kids - he told me that our daughter is enough for us and its Allah wish to give daughter sons, both or non. So I stopped pursuing more kids

Now last month I came to know via his text that he had second marriage to 27 years' young girl back home in Pakistan (20 years younger than him).

Wa Allah I am very practical - I was working as developmental professional in the World Bank for a decade - My almost 20 year of married life has proven that I was not any issues with my any in laws family which is very common in our culture - I am not jealous woman but I am very inquisitive and possessive toward my husband. My husband is witnessed that for our initial ten years I pushed my fertility plan off so that I pay my husband debts - I sacrificed every bit of my life in term of money time and love

He asked me to leave the world Bank/ UN job - I never spare a minute to obey him- but now I cannot take this at this time of life - when I thought that we have solved our financial issue and we will enjoy our daughter and life - when he is now financially stable

he thought to have second wife for sons - he said even if I would have one son he would go for more kids

He said that he told the other girl that he will be in USA for major time and often visit her in Pakistan

After discovery of his text messages - when I confronted him he told me that he made wrong judgement about my reaction - I asked him to divorce me - he beg and promised me that he will divorce her and he want to find in the methodology or procedure how he can - later on the change and said he wanted sharia he can find any reason to divorce- as I have no nerve to share him - I know Allah ask me to do sabre Wa Allah if I could have done it I would do it but it will make my life misery - I am so disturbed that my kitchen got fire and I was mentally absent - I crossed red lights every day

Allah has created every human being different now it will be me and my daughter who suffer - I even allowed some time to see I can adjust - but really I cannot - I am psychology so naive - I attempted for suicide - and I am not sure how I could prevent that in future - he was k I ND of person who never utter romantic word even our wedding was his own choice and love marriage - but in text with her he is so intimate I could not believe he is very the same person

Sir I want to live for myself and my daughter - is Islam is only for man whatever they can do is justified - on one hand he said that he wanted to save this family and wanted to give divorce to other wife -

My question is there any room that to prevent bigger or large loss over lessor loss - as the other lady is only 27 year old - 20 year younger than my husband and she is living in other country and most of the she will be alone as my husband cannot leave USA - will the rights of young girl full fill by that - on one hand he says things will be same in term of time and money and on other hand he says he will spend 6 month in Pakistan- but practically he will be responsible for 3 families (my house, second wife and his parents who live in different city in Pakistan) plus if I will separate or diverse it will affect the education of my daughter who is doing Hifz and away from public school in USA

He literally had tons of loans- full of credit cards and business debt but he is living in ideological world- he is hard working but a miss managed person and status conscious person - he bought two house on interest and still bought the Porsche car to show off - and he had justification that forms of capital is changed

Over Internet I read that Divorce is exclusive right for man to give without any reason and consent of wife- is it true if yes is there any back up Fiqh to support it or it's OK in Islam whether I and my daughter suffer?

Waiting for reply please

Tayyaba

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Tayyaba

Wa Alaykum Assalamu wa Rahmatullah wa Barakatuh.

Thank you for choosing to write to me again, I still remember your early correspondence and I hope I can be of any little help to you this time too.

I understand your difficult situation and I think it deserve better attention and treatment. Your husband should have been wiser but unfortunately he did what some people fall into in their forty's and fifty's; a second marriage or a second woman.

Let's face reality. The first and most important thing is I request you to be courageous, gentle to yourself, and wiser than him. Give yourself more time to deal with your upset emotions and think of your daughter and yourself independently of your husband. Divorce may or may not be a solution, so please do not make a quick or reactionary decision for now.

Your health and well-being is of utmost importance; therefore, I advise that you should seek professional marriage counseling. I know people who benefitted from such counseling. I knew about three Muslim professional ladies who may be able to help in that area, one in Washington DC area, the other two in NJ, I'll try to get their numbers and email for you if you want. The counselor will help you recognize your emotions, sort them out, set priorities and explore all possible alternatives and solutions so that you'll be able to think clearly to reach the right decision.

Seek help from Almighty Allah and increase your prayers and Duaa to Him, ask Him with confidence and repetition and insistence. Think of this problem as a short term crisis (and you have long time to live for yourself and your young daughter) that you, with help of Allah and help from professional counseling, will pass it successfully InShaAllah. Make your Duaa for you AND for your husband to guide you both to the right way. Think of the many bounties and good things Allah gave you and be thankful and appreciative, you may put these bounties in writing in a personal notebook in front of you and on top of them your lovely daughter and your health.

Think of this crisis as a challenge from Allah to give you opportunity to work harder on your personal growth and ever improvement. Make positive changes in your daily life, do nice and good things for yourself (I literally mean it because we tend to overlook this and the Prophet, pbuh, suggest that even when we think of Sadaqah we should start with ourselves and give it a Sadaqah), your daughter and for your husband. You may read books that help your personal growth, set new and higher goals for yourself (I mean higher than you are doing now) in areas of Ibadah, social contribution, care of your daughter, household improvement and kindness to people around you, first of them is your husband. Who knows, he by time may realize how precious and important you are to him and may end up divorcing the second wife without your demand or pressure.

Sister, your daughter needs you as a fully responsible mom who does not cross red lights or thinks of suicide. Your life is worth a lot more than sacrificing for a mistake done by your husband. Do not burden your mind with it and stop from thinking of his issues as you mentioned in your letter (e.g., of him spending on 3 families or the other girl is 20 years younger, etc. his actions and wrong doing).

Instead, think of how YOU can bring about positive changes to your own thinking and behavior, read books on the subject, attend lectures, get counseling, and be the teacher to him for romantic relations and right doing.

Islam is just for women and for men equally but some people do mistakes and try to justify them using their incorrect concepts about religion. Divorce (called Khul' when asked by the wife) is free and on demand for both men and women because it is ultimately against basic human rights to force a person to live with another when she/he does not want and cannot bear it. there is no difference between men and women in this right although unfortunately many Muslim men do not understand that and do not know that it is one of the fundamental human rights of women and men alike.

From what I understand from your email I can see that it was a childish action that he married a second woman much younger than him and far away in another country especially after God gave him the great gift of a daughter and good wife. I can also see that it may even much better not only for him and your family but may be also for that young girl in Pakistan that he should divorce her and let her find her own life with a man suitable for her age and living circumstance. Yes, it is not Haram to divorce her and may be the better decision for him. But I like you to have much higher personality that makes such a decision come from him rather than your pressure.

May Allah always be with you with His help, mercy and support.

And please write me anytime you like.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2015

From: Mas'ud

Sent: Friday, December 04, 2015

Question: Interfaith Marriage enquiry

Dear Professor Kahf,

Assalam Alaykum wa Rahmatullah wa Barakatuh.

Someone has requested for my advice on the options available to parents of a Muslim woman who has married a Christian man notwithstanding the parent's objection.

I am aware that the four schools of thought are unanimous on the prohibition based on texts of Quran and hadith. Also, I believe where such marriage is conducted, it must be dissolved in an Islamic country/society. However, I am unclear about the options available to the parent from an Islamic point of view where the daughter acts in violation of this injunction particularly in a multicultural society like Nigeria.

Your guidance would be highly appreciated.

Jazaakumullah.

Mas'ud

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mas'ud

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

This is an interesting point. Here is what I know as the Shari'ah rule: this is not permissible and it is treated as continuous fornication, even it is subject to the penalty of fornication.

Parents have literally nothing to do. They have no power at all and of course no responsibility too.

My advice: parents or at least one of them should not boycott this girl in the hope that her husband may accept Islam. If they lost hope completely just have the patience and stay away from her and her (BY LAW NOT BY Shari'ah) husband.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2013

From: Esam, OnIslam.net

Sent: Wednesday, October 23, 2013

Question: Wife giving charity from her own income

Salam Mawlana,

We have received this question from Dalia, could you kindly reply to it?

Assalam Alaykum! If a wife has her own income, is it allowed for her to give charity without her husband's concern?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salamu 'ala Sayyidina Muhammad, wa 'ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Dalia

Assalam Alaykum wa Rahmatu Allah wa Barakatuh

If the wife has her own income/wealth she can do anything she likes with her properties (income and wealth), no need for permission from her husband, no need to inform him and no need for him to know what she does with her own property. Isn't she an independent sane mature adult? For husbands, they should not even ask or feel interference. But if she informs or consults that is out of her good relation with him and

he should appreciate it. same applies to him too, he can do whatever he likes with his properties as long as he is fulfilling his responsibility of spending on the family including his wife.

According to Shari'ah husband and wife are completely independent from each other in financial matters except for two points: 1) he is required to spend on her and his children, and 2) she is permissible to give normal charity within normal range from his properties and both will be rewarded InShaAllah.

Wa Allah A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2012

From: Soraya

Sent: Thursday, November 01, 2012

Location: United States

Question: Documents of legal divorce not completed yet

Assalamualaikum

Dear Dr. Kahf,

I have a question that I would like to clarify with you about marriage. I am a divorcee and have been divorced for almost 5 years. I was divorced in ----- with a ----- man.

Alhamdulillah I have met a new person, who is also a divorcee since 2010, and have moved to California to InShaAllah get married soon. The thing is we recently went to the local county to apply for a marriage license and was told that the dissolution of his marriage is still a work in progress. He has been divorced and has lafaz the talak to his ex-wife in 2010. Currently, his ex-wife has returned to ----- while the paperwork for the dissolution of his marriage has been filed here in -----.

As it is, we both are very much keen to start our life together as husband and wife and since my brother is also here with me, we would like to have the nikah ceremony as soon as possible, even without the marriage license.

My question is do you know any imam that would be able to overlook the nikah ceremony while his paperwork is being finalized? In this situation, would it be possible to have the nikah done while it is being sorted out in the system?

Thank you for your time.

Wassalam.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Soraya

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I do not know of any Imam in California who accepts to perform marriage without license. If you are in Orange County please check with Dr. ----- in ----- County Islamic Center.

I know that in Shari'ah it is permissible for a man to marry more than one wife but also I know being American and Californian that the laws here do not permit it. I also know that it is wrong on Shari'ah basis (not only on legal ground) to make marriage without formal license because the license is required to preserve the rights of the parties in front of all others. Recording marriage with the official authority is a very important procedure which is accepted and recognized in Shari'ah.

Alternatively, I may suggest that you go to Malaysia and perform there a marriage contract recorded with the appropriate authority instead of doing a legal violation in America.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Munirul

Sent: Sunday, October 28, 2012

Location: United States

Question: Divorce in hand of the wife and other conditions

Assalamualaikum Brother in Islam,

I am expecting some of your valuable time to get answers of some questions regarding marriage contract. I will be really grateful if I get your response.

1. Bride's father wants to include a contract that his daughter can divorce? So should that groom marry that girl?
2. If bride's father gives a condition as marriage contract that groom cannot marry anymore while his daughter alive. Does Islam allow this type of marriage contract? Because Islam has permitted a man to marry four times, so should that groom marry that girl? Does have any Ayat in Quran and Hadith regarding this?

Ma'yassalam,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Munirul

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The condition of right to divorce be in the hand of the wife is permissible in Shari'ah. Its only implication is that she can divorce him without resorting to family court.

The condition of not marrying another woman has no implication as it violates the permissibility in the Qur'an. This condition is invalid. But it wrong, in my opinion, for any Muslim in America to marry a second wife because the law prevents that and the implication of such prevention is that husband cannot fulfill the condition of equal treatment to both wives at the same time. Some people may put a condition that if he marries a second wife then she has the right to divorce him. This condition is permissible because all it means is that under such circumstances she can divorce him.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mahasin

Sent: Tuesday, July 10, 2012

Location: United States

Question: case of three times divorce

Dear Dr. Kahf:

I hope that you and yours in good health Wa Alhamdu Allah.

I need your advice, My ex-husband now is 77, a while ago asked me, if we can get together, and live under one roof again(remarried). But I am not so sure if this is halal. To make the long story short; As far as I remember he divorced me 2 times, in this 2 times, we got together again before ending the time frame to be back again, we never lived separately. After this 2nd time, he once said to someone who was trying to get us together again, that this is my 3rd time divorcing me. When he asked me to get back to him, and I told him you said that it was the 3rd divorce between us, he said, I said that so nobody; bother me that was like 10 years ago. We got divorced by a Judge in Canada. 3/4 years ago he kept saying he does not remember we are divorced 3 times.

We were arguing about our home, he wants to sell it because , he wants to get rid of the mortgage, thinking it is Riba, I told him we have few more 2 - 3 years to keep the house, till the girl get married , who was engaged at the time, and finishing her degree.

So he said if you do not agree to sell, you are divorced, so I bought him out, and kept the house sold after which my daughter got married, and finished education, now she has finished her PHD ma sha'a Allah and mom with a twins, boy and girl 1 1/2 years old.

Now, he will get lower back surgery this week, he lives alone, it will be hard on him, he cannot afford paying for help. So I am thinking to offer him to come to my place, to look after him for few days, is this haram?? Of course we will sleep in separate room in my condo.

Is it halal to remarried and live as brother and sister? We both want that relationship.

I appreciate your advice.

Thank you, and have a great day.

MAHASIN

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Mahasen

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Congratulation for your daughter's achievements, this should make you proud.

If the divorce for the house selling dispute is the third time you and he then cannot remarry again. And before remarrying him you have to marry, normally another man, and if he divorces you, you can marry your former husband. If this house selling divorce is the second one and he is sure that there was no third time, you can remarry again with a new marriage contract and a new Mahr.

As for helping him after the operation and even later on or a permanent basis, it is of course permissible and rather advisable and rewardable by Allah with His Will. You can do that at any time provided you appear in his presence with full Hijab as you appear in the street.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2011

Sent: Monday, November 21, 2011

Question: my husband is not able to have children

Greetings Dr. Kahf,

I have a question regarding child bearing. My husband and I would like to have children, but my husband is not able to have children. We are considering getting a sperm donor to have a baby. Is this halal? Further, I'm afraid my husband's family will treat the child poorly because it is not a 'blood' relative. Again, is it halal? I have not found anything prohibiting this in the Quran. What about adoption? Is adoption halal? Will my husband's family treat an adopted child differently?

Please let me know what I should do.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Having external sperms in a marriage is Haram, it is close to adultery though it is not adultery exactly. The lineage is a lineage of sperms and eggs within a marriage contract not only a marriage contract. The Qur'an mentions clearly that children must be

attributed to their own parents, an external sperm make the father is one who gave the sperm. Mixing lineage is forbidden. The Prophet, pbuh, and the implicit Qur'an ruling on Iddah, indicates that by prohibiting marrying a pregnant woman until she gives birth and prohibiting "nourishing the fetus of another man with your water."

Adoption, as known in the West, is also Haram. But adoption with preserving the identity of the child and his own lineage while raising her/his in a good family, like their own child is rather encourage. This is a matter of taking care of an orphan. The prophet, Pbuh, said that the care taker of an orphan is [close] with me in heaven like this and he put his two fingers together.

It is fair that family response be negative to external sperm because it is one of the worse Haram, it is also fair that it is negative to Western adoption. They must be very accommodative and receptive to Islamic adoption as mentioned above.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Az

Sent: Monday, May 23, 2011

Question: Uttering the "divorce word" to wife

Dear Sir

Assalamu Alaykum.

I am in need of your help to save my marriage.

I recently had a discussion with my Husband regarding some topics in Islam when we came about the following conversation

Me: Are you Muhrim with my Sister?

Husband: I don't think so. However I cannot marry your sister unless I divorce you.

At this point, I was hysterical that my husband mentioned the sentence "I divorce you".

My husband, trying to calm me down, said

Husband: I did not say that "I divorce you". I did not mean "I divorce you". I only meant it as an example for our topic of discussion. If now you won't understand what I meant.

(Looking at me, his wife, while saying this)

Husband: It is only valid if I specifically tell you with anger and spite that "I D you". If I said "I D you" in anger or intention then it is valid. We are not in anger but are simply having a relaxed conversation. (Note: 2 times of indirect sentence to the divorce sentence)

At this rate I became more hysterical and was so upset that I became inconsolable; seeing that my husband had mentioned the sentence many times although without intent even after seeing that I was upset just to prove his point. I insisted that I learn that a divorce is valid as long as the sentence/meaning was said by a husband to his wife. And to add, my husband kept repeating it a couple of times to make me understand a point.

My question is, am I divorced? Is the sentence (full or not full like the "D" letter he used) said by the husband a valid sentence seen by Islam as a divorce? I appreciate if you

could help me clear this misunderstanding as I have tried to seek help in understanding my predicament via many sources but none that can help me gain the right answer. I am afraid that we might be living in Haram should we really be divorced and don't know it. Thank you.

Regards,

Az

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Az

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If what you said is what happened, you are not divorced, not even a single time. All these have "if" and that is not divorce. Divorce is when the husband says it to you or about you in a style that is clear as a divorce. Any sentence that says if or says he said "I divorce you" is not a divorce. This is a narration. Although we, Muslims, do not like to make this narration with the pronoun I. but when it is said it is not divorce because it is narration.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Um Zakaria

Sent: Wednesday, April 06, 2011

Question: financing the two households in plu-marriage

Salam Ustazna,

Assalamu Alaykum. Jazakum Allah Khayran for this important subject. I'm a second wife and I feel that my husband doesn't finance the two homes equally. I know this may be arranged according to each family member but sometimes I share the household finance from my personal money. My question is: Is it lawful if he spends more money in my home? And what if I pay visa from my money to travel with him, Is it just? Jazakum Allahu Khayran.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Um Zakaria

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

This question is not really in my area, it fits more Islamic family laws specialist. If I indulge into it I would say that justice or fairness in distribution of expenses and time between wives is an approximate matter not really accounting equality. Accordingly, acceptance, understanding and tolerating small variations by the wives become essential ingredients of it. Payment for visa and small other things does not break justice

if spending is generally fair on housing, clothing, food general entertainment and the like.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Amjed

Sent: Friday, January 14, 2011

Location: United States

Question: Should we register our civil marriage in Jordan?

Asalamulikum wa Rahmatu Allahi wa Barakatuh,

I am in the process of marrying a person that was born in the US but raised in Jordan. My question is, is there a way and if so, should we register our marriage in Jordan once we complete it in the US. I understand that there is no civil marriage in Jordan, only based on sound Islamic Shari'ah. In this case, I'm thinking, we can go directly to Jordan for issues or questions la samah Allah.

My second question is, is your marriage contract very similar or the same as in Jordan? If so, I'm thinking if I were to share the contract with the father of the women I plan to marry, it won't be something foreign to him and that InShaAllah he'll think it's a good idea. He does not really know how to read the long document. I'm not sure if you have an Arabic version.

JazakAllah Khair

Amjed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Congratulation.

My contract is designed to Muslim community in America and takes into account existing laws in America. The law in Jordan is according to Shari'ah but it takes much more regressive views, which prevailed centuries ago. I took views from classical Fiqh that are progressive. For instance; Custody of minors I took a Maliki view that it remains with mother until marriage or adulthood. In Jordan they take until 7 or 9 years. I argue that in some of our classical Fiqh there are things that are tilted to the male.

If you make your marriage in Jordan, make it their way. But if you live in America and make the marriage in America I recommend using my contract.

Best Regards,

Wassalam

Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2010

From: Ibrahim

Sent: Sunday, December 26, 2010

Location: Nigeria

Question: distribution of assets at divorce

Bismillah Rahmaani Raheem wa Salatu wa Salaamu ala Rasulihil Kareem

Asalamu Alaykum wa Rahmatullah wa Barakatuh Brother

I pray that you and your family are all well InShaAllah.

Can you please assist me with the following query?

If a couple have been married for about 7-8 years and are considering a divorce with one dependent child who is a girl and 7 years of age. How the asset should be distributed according to the Hanafi Fiqh.

Would the wife get any share of the house if the husband had purchased it prior to marriage and took a mortgage? The wife has also been going to work and earning an income for several years and also has contributed towards the cost of living.

(3)After the divorce, what else is the husband responsible for? In Shari'ah who has the right to the child?

Your response will be appreciated. If you need more info I will provide it.

Jazakallah

Wassalam

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Ibrahim

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I will not answer you according to Hanafi School but rather as an American Muslim student of Fiqh and how it applies in our community. My answer is based on the couple being living in America regardless of whether they got married in America or abroad.

1. Regarding distribution of asset: if you do not have a pre-nuptial agreement that determine the asset of each and specifically mention that you both agree on keeping your assets separate from each other, the rules of assets distribution as decreed in the State you live in apply, this on the basis of giving the differences as gifts from one to the other during marriage. This is indicated by the lack of pre-nuptial contract. If there is a pre-nuptial it applies unless clauses that violates Shari'ah if any.
2. Upon divorce: you are required to pay her the deferred part of the Mahr if the marriage contract defers a part. Sometimes it may be all deferred depending on the contract. In addition living expenses including housing if it applies for three month
3. After divorce you are required to pay for alimony (expenses of the child and her

mother being care taker). The amount will be either by agreement, arbitration or State court decision.

4. Custody of the mother on the girl continues until the girl's marriage, the mother's marriage, or the mother's giving up her custody to the husband. If a court determined that the mother remains a care-taking guardian even after mother's marriage because of better fitness for the child, it is also upheld in Shari'ah.

5. Finally we always advise couples to sign a pre-nuptial before they get married, and if not even sign a post nuptial. Suggested forms from Shari'ah point of view are on my website.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Wael

Sent: Wednesday, December 01, 2010

Question: Adoption and its consequences

Dearest Dr. Monzer,

As-salamu Alaykum wa Rahmatu Allah wa Barakatuh

Hopefully you are good and enjoying the blessings of Allah, and so are your family.

I have read a recent report about "Muslim orphans caught between Islamic, Western law". The report shows that Muslim families are reluctant to adopt orphaned, displaced, neglected Muslim children owing to their belief that adoption is totally prohibited in Islam. There are some reasons that affect Muslims' decision in this regard: 1) the issue of naming, 2) mixing and privacy, and 3) inheritance and other financial concerns. Below is the link for the report:

Some Muslims see "open adoption, which keeps contact between the adoptee and his biological family" as a solution to end sufferings of Muslims orphans in the USA. But, there still concerns for mixing and privacy issue and the problem of inheritance as Western governments classify adoptees the same as blood relatives.

Then, what do you think, dearest Dr., of this issue? How Muslims could strike a balance between Islamic values and protecting orphans in the USA and other Western countries? I'd like to have your opinion on this important issue as I am writing a research on this for OnIslam and I need to present your eminence point of view in it.

Jazaka Allah Khayran

Wa salamu `Alaykum wa Rahmatu Allah wa Barakatuh

Yours,

Wael

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Wael,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I don't see this an excuse to commit the sin of interest especially that there is sufficient time of more than a year for a student to adjust her/his plan and prepare for the 2012 hike.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Ghadir

Sent: Friday, November 06, 2010

Location: United States

Question: : Iddah for a widow

Assaalaamu Alaykum,

I'm a Palestinian student, I will try to be brief, and I need to know what the Iddah exactly means. Does it really mean that a widow has to stay at her home and not leave it for FOUR MONTHS? Or does it mean simply the period of time a widow has to wait before she remarries? My dad passed away a few weeks ago, and my mom is 65 years old with a poor physical and emotional health and the house-embeddedness she's been asked to observe has already started to take its toll on her.

Please let me know if there is a more humane religious verdict of the iddah rules that can absolve my mom from this confinement.

Jazaka Allahu Khayran

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Ghadir

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Iddah means a number of days. It does not mean a house arrest. During this number of days the lady should not behave as a married woman or as available for marriage. This means, avoiding make up and avoiding non-necessary outing and of course marriage is not valid if contracted during this number of days (3 full clean period for divorce and four month and ten days for death). Necessary outing is permissible such as going out to maintain her business, manage her property, attending to her job, important visitation (such as visiting parents and children, patients, etc.). Of course she should not attend weddings, receptions and parties or other not necessary gatherings even if they are done in her house.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2009

From: Mahasin

Sent: Thursday, August 06, 2009

Location: Canada

Question: remarriage after divorce

Assalamo Alaykum Dr. Kahf:

I pray to God that you are in Good Health.

I would like to ask you about my situation, I am 62 years old woman, and my Ex. husband 73 plus.

We have been divorced Islamic way for 16 years, and Canadian court divorce 3 years.

As far as I remember he divorced me verbally 2 times, but he was saying 3 times, now I am divorce legally, Canadian divorce for the last 3 years.

Now he would like us to go back together as a husband and wife, I told him I will ask if that is ok by our religion. We have between us 2 adult children, whom love to see us together, for the company. We both have been alone, and live separate life. We have never had any hard feelings between us all this years we have been divorced, and we all 4 of us in touch.

Now I am not sure if it was 2 or 3 times divorce from his side, I am sure from my side, his memory not very good. What is your advice please and if we can go back together, is that mean we have to get married all over again, (in mosque).

Thank you so much in advance for your reply.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Mahasin

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If you both believe that there are only two past times of Talaq, then you can come back together with a new Contract and Mahr. New contract and Mahr are necessary because this is been done long time after the Iddah has elapsed.

But if there is any third time Talaq by him, then you cannot come back together.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Assalamu Alikom Dr. Kahf:

1970 was the first time he said to me (INTY TALEK) it was after few months of our marriage, I felt so home sick

And I asked him to divorce me to go home. Of course after fitting and screaming he said ok you are (TALEK), but his brother interfere to make up between us, no one of us left home and we stayed together, the 2nd time, we were always having a big argument regarding selling our home, once we had very big argument and fitting about selling the house, I told him while we were fighting, if you want sell the house divorce me, so he said you are (TALEK). He wants to sell the house, because he does not want to carry mortgage any more, believing it is not halal to do so. At the time it was important for me to keep the house, to raise our two children, it was 2-3 more years for the kids to finish college.

I bought him out, and paid him his share in the house equity, and I carried the mortgage on my name. In the meantime, some Imam told us as long as the kids still home you still can live together under one roof, not one room roof, as a brother and sister, so we did for 7 years, until the daughter got married and the son moved out, I sold the house and I bought mortgage free apartment. That is the 2 times I know, I do not know the 3rd time he claims he divorced me. Thank you so much.

P.S. IN ORDER TO GO BACK TO HIM, I WANT TO MAKE SURE 1000% SURE IT IS HALAL.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Mahasin

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

We are sure then about two times "inti taliq."

1) Ask him about the third time, what was it? He may have said it behind your back and without your knowledge, it counts.

2) We also need to study the Canadian court divorce, when it happened and how? Was it only a recording of one of these two divorces with no re-iteration of another divorce? Or was it a third time? Can you explain as much details as you know including what did he said to the judge, and what were your replies?

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Assalamo alikom Dr. Kahf:

I checked with my ex-husband, he said "I have never divorced you

Without your knowledge." And my knowledge is 2 times. He never left home even for holiday during our marriage.

My Answer:

Please check with your ex-husband about the third time that he thinks he said it and its exact words and also about the legal divorce what did he tell the lawyer, etc. and give me please details because this is what determines whether there is a third time or not.

Monzer Kahf

Assalamo Alikom Dr. Kahf:

Thank you so much for your email.

The lawyer handled the divorce documents, I have never met a judge, both of us agreed for divorce.

Is this count as third divorce then? Or this confirming the 2nd time divorce.

I am very confused. Do you think we just forget all about it? To be in the save side.

Thank you.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Mahasin

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The Canadian court divorce is definitely counted as one divorce if not more than one depending on the repetition it may have involved. It then depends on the other 2 or 3 (according to him) times. If each one of them is a plain divorce such as saying you are divorce (رأت طالق) but a conditional such as "if you do so... you are divorced then we have already three times that make the divorce complete finale. This final divorce (بينونة كبرى) means you cannot come back to marriage unless, by a natural process, you got married to some other man and after wedding (with at least one intercourse) and then by natural process you have differences with the second husband and he divorced you. I mean by natural process avoidance of arranging it. Arranging such a marriage is not permissible and does not make Halal.

Now if the previous verbal divorces are conditional or were in any different way other that you are divorced, tell me the exact words and I will see accordingly.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Raffick

Sent: Wednesday, July 22, 2009

Location: Mauritius

Question: can marriage expenses be financed for profit?

Dear Br. Monzer

Assalamoualaikum wa Rahmatullah wa Barakatuh

Alhamdulillah my health is improving and Insha Allah we will meet in Malaysia. I feel responsible to go and study Islamic Finance as Al Barakah is growing and becoming more demanding.

As announced earlier and approved at our last AGM, we have decided to take deposits from our members and non-members. Alhamdulillah according to the Cooperative Act 2005 we can take deposits from non-members also. We feel that it will boost up Al Barakah especially with the Hajj Savings Account.

During this time I have been preparing a regulation for deposits - a Hajj Savings Account and Fixed term deposits to be submitted to the Ministry of cooperatives for approval. . At the moment there is a high demand for our schemes and we are in short of funds for financing.

In that context, I am humbly sending you a draft of the regulations and would highly like to have your comments, suggestions, advice and approval.

May Allah reward you for sharing your knowledge and expertise with Al Barakah and in turn we can better serve the Ummah in Mauritius.

Jazaka Allah for assisting us.

Best Regards

Wasalaam

Br. Raffick

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Raffick

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I pray to Allah that you will recover soon and maybe I can see you in Malaysia in October.

Financing Marriage is simple and easy. Hall rent if separate from food serving/provision can be financed on the same Murabahah principle but then it is called Ijarah. On his request you contract for cash the hall company and rent him the same on credit at mark up. Food provision and serving also same. , if same provider you can make all in one contract.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mahasin

Sent: Tuesday, January 27, 2009

Location: USA

Question: Wedding expenses

Assalamo Alikom Dr. Kahf:

I hope that you are and yours in good health.

I would like to ask you: is it ok or not, to make the long story short, my daughter's best girlfriend, asked my daughter to have her wedding in her home back yard, the friend knows that we are Muslim.

Is ok for the friend to have liquor or not, once she has it in our home? Please advise.

Thank you

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Mahasin,

It is forbidden in Shari'ah for a Muslim to allow drinking alcohol on her/his property that is under his control (the exception is when you rent a property to a person for non-alcoholic use such as a residence and without your knowledge she/he uses alcohol, but renting to a liquor store is not permissible). According f your daughter gives the courtesy of using her home to her friend and she suspect that alcohol may be brought in or served, she MUST MAKE IT A CONDITION THAT NO ALCOHOL CAN BE SERVED ON HER HOUSE OR ITS BACKYARD.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2008

From: Reema

Sent: Thursday, December 18, 2008

Question: Mahr and divorce maintenance

Salaam Alaykum Br. Monzer,

Once again I need your advice.

The first question is that if a husband did not pay Mahr at the time of marriage but pays years later much more in the form of a house - is it legitimate?

Secondly, the "maintenance" that the Quran says for a divorced woman is what? The couple is going through a divorce in the state of Virginia and she is asking for 50% of whatever assets he has. Is this Islamically correct? The husband is not very nice and does not want to give anything but still is it right for her to fight for the 50%. After the state divorce do they have to sign any papers in Islam to be really divorced or should it be the other way around? I had heard a lecture stating that the woman is the responsibility of the Mahram after being widowed or divorced.

I always appreciate your advice. Jazaka Allah Khair.

Reema

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Reema

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

It is nice to hear from you again.

Please take note of the following:

1. The principle is that anything owned or earned during or before marriage by either spouse is owned by the same. Shari'ah stands for separation of ownership of married couples as marriage is not a contract on property partnership.
2. Whenever a property is recorded in both names or in one name but the state law considers it as owned by both and there is no agreement between the couple (pre-nuptial or post-nuptial) to the contrary, we see it, in Shari'ah, as owned half/half on the basis that one has given the other a gift of any difference in contribution to own that property/business, etc.
3. During marriage and during the period of Iddah (3 month in divorce and 4 in death) all personal expenses of the wife is the responsibility of the husband, so is all family expenses. However, if wife spends from her own resources anything on the above without making it clearly as a debt to her husband, this voluntary spending is not refundable and can't be claimed at any time later.
4. In case of divorce, she has the right to all her property (of course!) plus expenses of 3 month plus the unpaid part of the Mahr (called also Sadaqah) plus any court-determined damage if divorce is because of verbal, physical or mental abuse/harm.
5. If they have minor children, she has the first preference to take care of them (second preference is her mother's). In this case he is required, until majority of the youngest, to provide her with living expenses to the level of his financial ability (measured in both wealth and income) so that they live same level as he lives.
6. At divorce, wife already owns one half of all properties referred to in point No. 2 above and all her own properties as in point 1. In addition she has the rights mentioned in points 4 and 5.

If the above does not answer your question, here are the answers plain:

In the case you mentioned, it seems there is no agreement between them, if so, she has the right to her own property (one half of everything) plus expenses for 3 month plus, in case of minors under her care, residence (not from her own property) and personal and family expenses.

For the other questions:

- 1)- A divorce given by an American court is considered a divorce in Shari'ah, it is still reversible within the Iddah (of course if it is first of second only), Unless, It was done for other objectives (like taxes, etc.), I.e., not really meant as divorce provided the word divorce or **الطلاق** is not pronounced or signed by the husband.
- 2)- The house (or half house in case it is in both names) that is given to her later is hers as a gift unless it was, the time when given, explicitly meant and understood as payment of the Mahr. Hence, the Mahr remains as a debt on him at time of divorce, unless the house was understood as its payment.
- 3)- A woman (divorced, widow or not married at all) who is in financial need is the responsibility of her closest able person, in sequence: children, father, brothers, mother and sisters) depending on their ability.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Reema

Sent: Friday, December 19, 2008

Dear Br. Monzer,

As salaam Alaykum. Jazaka Allah Khair for your prompt response. Does it matter that the divorce is initiated by the wife? Basically it is a Khul'?

Also the Mahr issue was separate. It was related to another person. Is the Mahr alright if given years later in the form of a house and stated and given with the Niyyah of it being the Mahr - although the original amount agreed at the time of the Nikkah was a small amount in cash? Does the husband have to pay any form of penalty for paying it late?

I forgot to wish you and your family Eid Mubarak and kul aam wa antum bikhair. Please keep us in your prayers for forgiveness.

Jazaka Allah Khair and salaam Alaykum until the next time InShaAllah when I need advice!

Sr. Reema

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear sr. Reema,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1) If it is Khul' in the full sense, everything become negotiable. That is: they may negotiate on a financial settlement, keeping the property principles as stated earlier, the maximum of it is that she return to him the full Mahr and major gifts (such as jewelry, real estates and the like). In this case, it seems unfair that she should take anything more than the property she owns because in Khul' the idea is that she is required to compensate him for asking for divorce for no reason on his part.

If she asks for divorce because of abuse and a court recognizes the abuse, she is entitled to damage for the abuse that is court-determined. Therefore, settling on anything up to what a court may decide is permissible and of course can't be claimed unfair on her part.

2) There is no penalty or interest on paying the Mahr later than the day of the marriage contract. The normal thing that usually happens is that such a delay, in full or in part, is consensual. It is permissible to pay it in cash or in form of any other property of value that equal the amount of Mahr or more or even less if accepted as a full payment. The rule is that unpaid amount of Mahr is only due at divorce or death of either, it is permissible to pay it before that by will of husband. If the marriage contract sets a definite date for payment and there happens a damage to the wife cause by delaying it after the due date, she is (in fact exactly like any other creditor) is entitled to compensation of the damage (that may include the inflation) but not to any interest as any increment beyond the actual damage is considered Riba (interest). Riba is prohibited clearly and very strongly in the Qur'an, Sorry for the details, you seem to be interested in knowing detailed reasoning.

Wa Allahu A'lam,
Wa Alhamdu Lillahi Rabb al Alamin,
Wassalam
Prof. Dr. Monzer Kahf

From: Amjed
Sent: Tuesday, December 09, 2008
Location: United States

Question: Is a written Marriage contract necessary?

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh,

I have one question regarding the marriage contract documents you have online.

Are the (1) Islamic Marriage Contract, (2) Islamic Marriage Certificate, and (3) Pre-Nuptial Agreement all necessary? To my understanding, to get married, all you need is (2), (3) and then the couple has to register them with city hall.

Also, I have a couple of questions for you:

(1) Can you explain the legal rules of getting to know a prospective spouse? To my understanding, a man can get to know details about a woman through a mother for example and if the information he gains is enough for this man to be interested in marrying this specific person, he may look at her even without her knowing. If after this, he is fully interested in her, he can formally propose a "khitba," which will give him allowance to talk face to face and to restrict others from proposing to this specific person. If she accepts, then the formal Marriage contract can be completed.

(2) I was born and raised in, I struggle speaking and understanding Arabic, I don't know how to write Arabic, but Alhamduala, and I can read and memorize the Quran. My question is, do you think it's a better idea to marry someone from the US or from Palestine, the place my parents were born and raised. I noted some justifications to marry from Palestine below. Marrying someone from Palestine might help maintain my families recognition that there is evil going on against Muslims there which will remind\motivate us to become better Muslims, my family will hold its culture, which is mostly Islamic, to continue in my family. This culture is better developed than the Muslim American culture, both sides of the family become comfortable with each other because of the same culture; I could help my wife's family and other needy families in Palestine, maintaining ties with relatives...etc.

(3) Is custody of children given to fathers only and not before #7? My concern is about signing a contract without really knowing the wife, her family or how the situation would be in the future. I trust myself (Alhamdulillah) to be fair, but it's hard to believe others will be fair to me and Children if Allah (SWT) provides them.

(4) Regarding where you describe Khul' I don't think it's detailed enough to explain whether or not Khul' is valid only after the Husband agrees. Does this say the husband's consent is optional and if so I can change it? I would like to ensure the marriage is in control.

(5) Regarding where you note that it's the right of the wife to have an education and to seek a job, can I change this? Our family might have different priorities so I would like to make this optional.

(6) Is having a Wali optional in this document and if so, can I remove the (optional) note if I side with the opinion that a Wali is mandatory?

(7) If Allah provides me with a naseeb in Palestine or another country outside of the US and I complete the marriage contract there, it is recommended to fill in the Post Nuptial agreement?

(8) Can you explain how the Khul' can be imposed? Does this mean that the arbitrator can impose Khul' if the husband does not agree to the wife's offer to be separated or is the wife allowed to just leave a check (includes Mahr and deferred Mahr) on the table and leave?

(9) Regarding allowing the wife to seek an education and job, although her education is a high priority for me, I might not have the money and if I do at the time, as the head of the family and after consultation with her, I might make the decision that it is best that she not go a semester for example. A purpose of such a decision might be to ensure there is buffer money in our savings in order to stay far away from Riba and cheating. Also, regarding a job, I would be ok if the purpose would be to learn skills she can benefit herself, family and community with, but not to be employed for the sake of only benefiting herself. What is the purpose of myself I she is independent of me though her own job? Also, I feel that if I include this, that it will be like a debt that will keep me uncomfortable until fulfilled which might not be healthy to the marriage.

Best Regards

My Answer:

Dear Br. Amjed,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

You are right. One need to use either the marriage contract or a prenuptial one, either of them should be accompanied by the proposed marriage certificate.

Being from Arab parents you should work a little harder to improve your Arabic reading so you can read not only the Qur'an but other books in all areas.

(1) For the first points, please take what you read and hear of Fiqh in a socio-cultural context. Practically it is not appropriate in our Muslim societies and communities to sneak a close look at a girl! Here is what is usually normal and socially acceptable in the Muslim community in America today and still very consistent with the Islamic faith and values: 1) check on a girl indirectly through family and friends; 2) make an initial approach to the family; 3) with their (her parents and herself) consent start a dialogue through visits and/or phone and email to discuss all future vision, outlook, plans, likes and dislikes, and everything you may like to discuss to search for true compatibility and acceptability of each other. 4) This may take a few month, after them make a marriage contract; 5) the wedding may be after a few more month so that during this period you sit together alone and have much closer understanding of each other, deeper discussion of matters of concern and real intimacy while you delay sex until after the wedding. Most of these steps or may be all of them are also almost standards among religious families in the Muslim countries including Palestine and Jordan.

(2)The preference for the second point, I cannot make any suggestion but I can bring to your attention and also to your parents' the point that there are now many boys and

girls in the age of marriage who are raised in very appropriate manner and are religious and committed to the national issues in the Muslim lands including the liberation of Palestine and other parts that are occupied in the Muslim lands, to the cause of Islam in America and to the building of a strong Muslim community in America. There also many boys and girls with similar upraising and commitment back there in our homes in Palestine, Jordan and other Muslim countries. The matter should be focused on selection good criteria.

- (3) Care providing and body custody is always the mother's as long as she is available. There are differences between different schools of Fiqh as to whether this goes to the father and when and there is no evidence from the Sunnah that support either view. We have evidence from Abu Bakr (r) that he ordained it to remain with the mother until a child get married, no difference between boys and girls, whatever differences between different schools are culturally based not really on basic texts. Financial custody may be with either parent by agreement and in case of no agreement it is to father then paternal grandfather because both are required to spend on the child and his mother or any other bodily custodian and care provider. Care provision is the right of the child not adults; therefore it goes definitely one way: mother first, then her mother, then paternal grandmother, then mother's sister, etc. Lastly, if you are afraid of marriage do not ever get married. That fear is in fact not justified provided you do three things: 1) be good yourself religiously, morally and socially; 2) make good search and selection; and 3) be always a compromiser with your wife as the Prophet, Pbuh, advised " if you don't like a thing on her part, there are other things that you may like"
- (4) Khul' can be imposed without husband consent; this is what the Hadith indicates and reverted to by Many Shari'ah scholars today although it was not liked by most classical Fiqh. If the husband consent is necessary how can a woman be liberated from a husband she feels she cannot live with? Even if he is not abusive, would you accept that Islam gives the man such a possibility and keeps the woman tied to a hateful marriage? This is what is adopted now by many Shari'ah based family laws in many Muslim countries including most Arab countries.
- (5) It is optional to her; can a husband force his wife not to seek education and career if she likes it? This is the matter; you cannot go into a marriage being a master rather than an equal!
- (6) You can if you prefer it and the family of wife accepts it. The Hanafi School that is most dominant among Muslims is of this opinion and it has very strong evidence from the Qur'an.
- (7) Yes, I recommend it to any Muslim family that lives in the USA or any country that does not have Muslim family law; otherwise in case of any dispute you will regret it!
- (8) Khul' is imposed on the husband by the court in Muslim countries. There are two kinds of circumstances where a husband is forced to separate: 1) in case or proven abuse, the court imposes on the husband to divorce with no loss of any privileges of the wife and may be even with additional financial compensation depending on the kind of abuse. 2) The second case is Khul' when the wife cannot live with the husband anymore and she is willing to give back the Mahr in its two parts, major gifts related

to the Mahr and expenses of the Iddah period. The court then imposes the Khul' (Khul' is not a divorce, it is rather the opposite of divorce that is equivalent to the right of husband to divorce at will and he carries the financial outcome of his action, this is why in Khul' there is financial payment on the part of the wife. But the point is that this payment cannot be left to the will of husband to accept or not but to court to see it adequate or not). Finally the consensual arbitrator acts in place of court, this is acceptable both in Shari'ah and in American legal system.

(9) Marriage is not enslavement and does not mix the properties of the couple either. Education expenses of wife are not a part of obligatory requirement of a husband. If a husband voluntarily pays for her education that is fine and well but a husband does not have to do that. But he has no right to keep her at home and prevents her from education if she can manage that. Remember that housework is not a part of marriage contract either. The head of household is the husband but that is in a sense of being a functional head not a master or owner. The basic three requirements where the final word is his are: sex on demand (even here the Prophet that one must not come to his wife in a way like animal do, he should make advances of words and kisses!), who comes in the house and where she goes (without infringement on her personal development and her family relations). Of course this and all other family matters should always be undertaken with tenderness and cooperation (be al Ma'ruf). I think that you need to realize that marriage is love and cooperation and mutual support for personal fulfillment and uplift and you should be comfortable when you wife has a better career and higher performance, that always adds to your personal credentials.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Amjed

Question: : Marriage Contract

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh,

I have one question regarding the marriage contract documents you have online. Are the "(1) Islamic Marriage Contract,"

<http://monzer.kahf.com/marriage/MARRIAGE_CONTRACT_FEB_2008.pdf> "(2) Islamic Marriage Certificate" and "(3) Pre-Nuptial Agreement" all necessary? To my understanding, to get married, all you need in (2), (3) and then the couple has to register them with city hall.

My Answer:

Dear Br. Amjed,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

You are right. One need to use either the marriage contract or a prenuptial one, either of them should be accompanied by the proposed marriage certificate.

Best Regards,

Wassalam

Monzer Kahf

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh,

In preparation for the next step in my life that InShaAllah Allah will provide, I have read the following documents and books. I think it's also a good idea to edit and put my notes on the "Pre-Nuptial Agreement."

(1) Pre-Nuptial Agreement" and the "Islamic Marriage Certificate."

(2) Muslim Marriage Guide- Ruqaiyah Waris Maqsood

(3) Blissful Marriage- Drs. Ekram and Reda Beshir

(4) Before the Wedding- Munira Lekovrr Ezzeldine

Can you provide me with editable version of the "Pre-Nuptial Agreement" and the "Islamic Marriage Certificate" and do you recommend any other books or further preparation on my part?

JazakAllah Khair

My Answer:

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

It is a good step, May Allah give you full Tawfiq and guidance in good selection of your future wife and. If you can read Arabic I suggest two or three more the first two are Women in Islam or something like that by Muhammad Rafat Uthman (Prof in al Azhar) and Rawdat al Muhibbin by Ibn al Qayyim (of the ninth century of Hijra), the third is Woman in Shari'ah and law by Mustafa al Siba'i.

For the prenuptial, do you have any comments, what is on my web is the final edition of 07, I appreciate any input if you can do that and will be glad to look at it again.

Best Regards,

Wassalam

Monzer Kahf

JazakAllah Khair for your prompt response. Although I am able to read the Quran, it's hard for me to understand and read Arabic. However, in the "Fiqh of Love" audio set by Yaser Birjas, he frequently mentions Ibn Al Qayyim. I have a couple of questions regarding the pre-nuptial agreement.

(1) Is custody of children given to fathers only and not before the age of 7? My concern is about signing a contract without really knowing the wife, her family or how the situation would be in the future. I trust myself (Alhamdulillah) to be fair, but it's hard to believe others will be fair to me and Children if Allah (SWT) provides them.

Care providing and body custody is always the mother's as long as she is available. There are differences between different schools of Fiqh as to whether this goes to the father and when and there is no evidence from the Sunnah that support either view. We have evidence from Abu Bakr (r) that he ordained it to remain with the mother until a child get married, no difference between boys and girls. Whatever differences between different schools they are culturally based not really based on texts. Financial custody may be with either parent by agreement and in case of no agreement it is to father then paternal grandfather because both are required to spend on the child and his mother or

any other bodily custodian and care provider. Care provision is the right of the child not of adults. Therefore it goes definitely one way: mother first, then her mother, then paternal grandmother, then mother's sister, etc.

Lastly, if you are afraid of marriage do not ever get married. That fear is in fact not justified provided you do three things: 1) be good yourself religiously, morally and socially; 2) make good search and selection; and 3) be always a compromiser with your wife as the Prophet, P.b.u.h, advised " if you don't like a thing on her part, there are other things that you may like"

(2) Regarding where you describe Khul, I don't think it's detailed enough to explain weather or not Khul is valid only after the Husband agrees. Does this say the husbands consent is optional and if so I can change it? I would like to ensure the marriage is in control.

Khul' can be imposed without husband consent; this is what the Hadith indicates and reverted to by Many Shari'ah scholars today although it was not liked by most classical Fiqh. If the husband consent is necessary how can a woman be liberated from a husband she feels she cannot live with? Even if he is not abusive, would you accept that Islam gives the man such a possibility and keeps the woman tied to a hateful marriage? This is what is adopted now by many Shari'ah based family laws in many Muslim countries including most Arab countries.

(3) Regarding where you note that it's the right of the wife to have an education and to seek a job, can I change this? Our family might have different priorities so I would like to make this optional.

It is optional to her; can a husband force his wife not to seek education and career if she likes it? This is the matter; you cannot go into a marriage being a master rather than an equal!

(4) Is having a Wali optional in this document and if so, can I remove the (optional) note if I side with the opinion that a Wali is mandatory? You can if you prefer it and the family of wife accepts it. The Hanafi School that is most dominant among Muslims is of this opinion and it has very strong evidence from the Qur'an.

(5) If Allah provides me a with a naseeb in Palestine or another country outside of the US and I complete the marriage contract there, it is recommended to fill in the Post Nuptial agreement?

Yes, I recommend it to any Muslim family that lives in the USA or any country that does not have Muslim family law, otherwise in case of any dispute you will regret it!

No. 6 that you referred to in the other email: the issue of arbitration, it is mentioned in the contract itself, this is the second step in problem solving (the first is only between them alone) and the third is a court and in America an Islamic binding contractual arbitration as mentioned in the contract.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please see answers below:

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Bismillah al Rahman al Rahim

Asalamulikum wa Rahmatu Allahi wa Barakatuh,

InShaAllah you are doing well. I am still seeking a righteous wife and family. I hope it's appropriate to ask, but I would appreciate your assistance, even advice, with this next step I am working towards. Below are some details about myself. Basically, what I think is best for me and my family is someone similar to me, 18-20 with a Palestinian origin and ideally from Al-Khalil.

Bismillah Al-Rahman Al-Rahim

Amjed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. Khul' is imposed on the husband by the court in Muslim countries. There are two kinds of circumstances where a husband is forced to separate: 1) in case or proven abuse, the court imposes on the husband to divorce with no loss of any privileges of the wife and may be even with additional financial compensation depending on the kind of abuse. 2) The second case is Khul' when the wife cannot live with the husband anymore and she is willing to give back the Mahr in its two parts, major gifts related to the Mahr and expenses of the Iddah period. The court then imposes the Khul' (Khul' is not a divorce, it is rather the opposite of divorce that is equivalent to the right of husband to divorce at will and he carries the financial outcome of his action, this is why in Khul' there is financial payment on the part of the wife. But the point is that this payment cannot be left to the will of husband to accept or not but to court to see it adequate or not). Finally the consensual arbitrator acts in place of court, this is acceptable both in Shari'ah and in American legal system.

2. Marriage is not enslavement and does not mix the properties of the couple either. Education expenses of wife is not a part of obligatory requirement of a husband. If a husband voluntarily pays for her education that is fine and well but a husband does not have to do that. But he has no right to keep her at home and prevents her from education if she can manage that. Remember that housework is not a part of marriage contract either. The head of household is the husband but that is in a sense of being a functional head not a master or owner. The basic three requirements where the final word is his are: sex on demand (even here the Prophet that one must not come to his wife in a way like animal do, he should make advances of words and kisses!), who comes in the house and where she goes (without infringement on her personal development

and her family relations). Of course this and all other family matters should always be undertaken with tenderness and cooperation (be al Ma'ruf). I think that you need to realize that marriage is love and cooperation and mutual support for personal fulfillment and uplift and you should be comfortable when you wife has a better career and higher performance, that always adds to your personal credentials.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

JazakAllah Khair for making yourself available to me. Please add all of our correspondences to the "Fatawa" tab in your website. InShaAllah Allah will provide me with a righteous wife and I will then ask you more questions then.

Walaykum Assalamu wa Rahmatu Allahi wa Barakatuh,
JazakAllah Khair for your email. Just a couple of questions.

(1) Can you explain the legal rules of getting to know a prospective spouse? To my understanding, a man can get to know details about a women through a mother for example and if the information he gains is enough for this man to be interested in marrying this specific person, he may look at her even without her knowing. If after this, he is fully interested in her, he can formally propose a "khitba," which will give him allowance to talk face to face and to restrict others from proposing to this specific person. If she accepts, then the formal Marriage contract can be completed.

(2) I was born and raised in Chicago, I struggle speaking and understanding Arabi, I don't know how to write Arabi, but Alhamduala, I can read and memorize the Quran. My question is, do you think it's a better idea to marry someone from the US or from Palestine, the place my parents were born and raised. I noted some justifications to marry from Palestine below.

Marrying someone from Phalistine might help...

...maintain my families recognition that there is evil going on against Muslims there which will remind\motivate us to become better Muslims

...my family continue its culture, which is mostly Islamic, to continue in my family. This culture is better developed than the Muslim American culture

...both sides of the family become comfortable with each other because of the same culture

...I help my wife's family and other needy families in Phalistine

...me maintain ties with relatives

(3) Can you send me an editable copy of the Marriage contract?

My Answer:

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Thank you for the trust. I am very pleased to note your commitment to the Islamic and Palestinian causes and to family. This is the way we need all our youth to be, Masha Allah. I am now in Qatar for the full school year till end of June. I have two suggestion:

- 1) As an Arab/Muslim/American it is better to enlarge your search to all Muslims in America, I mean to include Indo/Pak and all Arabs. There is a lot of integration between all these now especially at the level of second generation. A lot of successful marriages between them. And,
- 2) Enlarge your search to basically 3 areas: Chicago, Southern Cal and Toronto. The Muslim community in these 3 areas is large and has all shades.

Best Regards,

Wassalam

Monzer Kahf

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

(1) JazakAllah Khair for this.

(2) Can you explain how the Khul' can be imposed? Does this mean that the arbitrator can impose Khul' if the husband does not agree to the wife's offer to be separated or is the wife allowed to just leave a check (includes Mahr and deferred Mahr) on the table and leave?

(3) Regarding allowing the wife to seek an education and job, although her education is a high priority for me, I might not have the money and if I do at the time, as the head of the family and after consultation with her, I might make the decision that it is best that she not go a semester for example. A purpose of such a decision might be to ensure there is buffer money in our savings in order to stay far away from Riba and cheating. Also, regarding a job, I would be ok if the purpose would be to learn skills she can benefit herself, family and community with, but not to be employed for the sake of only benefiting herself. What is the purpose of myself I she is independent of me though her own job? Also, I feel that if I include this, that it will be like a debt that will keep me uncomfortable until fulfilled which might not be healthy to the marriage.

(4) JazakAllah Khair

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

At the beginning I was confused whether you are from Arab or Indian origin. Being from Arab parents I should be a little harder on you to improve your Arabic reading so you can read not only the Qur'an but other books in all areas.

1. For the first points, please take what you read and hear of Fiqh in a socio-cultural context. Practically it is not appropriate in our Muslim societies and communities to sneak a close look at a girl! Here is what is usually normal and socially acceptable in the

Muslim community in America today and still very consistent with the Islamic faith and values: 1) check on a girl indirectly through family and friends; 2) make an initial approach to the family; 3) with their (her parents and herself) consent start a dialogue through visits and/or phone and email to discuss all future vision, outlook, plans, likes and dislikes, and everything you may like to discuss to search for true compatibility and acceptability of each other. 4) This may take a few month, after them make a marriage contract; 5) the wedding may be after a few more month so that during this period you sit together alone and have much closer understanding of each other, deeper discussion of matters of concern and real intimacy while you delay sex until after the wedding. Most of these steps or may be all of them are also almost standards among religious families in the Muslim countries including Falastin and Jordan.

2. The preference for the second point, I cannot make any suggestion but I can bring to your attention and also to your parents' the point that there are now many boys and girls in the age of marriage who are raised in very appropriate manner and are religious and committed to the national issues in the Muslim lands including the liberation of Falastin and other parts that are occupied in the Muslim lands, to the cause of Islam in America and to the building of a strong Muslim community in America. There also many boys and girls with similar upraising and commitment back there in our homes in Falastin, Jordan and other Muslim countries. The matter should be focused on selection with good criteria.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh,

In preparation for the next step in my life that InShaAllah Allah will provide, I have read the following documents and books. I think it's also a good idea to edit and put my notes on the "Pre-Nuptial Agreement."

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(4) Before the Wedding- Munira Lekovrr Ezzeldine

Can you provide me with editable version of the "Pre-Nuptial Agreement" and the "Islamic Marriage Certificate" and do you recommend any other books or further preparation on my part?

JazakAllah Khair

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please see answers below:

Wa Allahu A'lam
Wa Alhamdu Lillahi Rabb al Alamin
Wassalam
Prof. Dr. Monzer Kahf

Bismillah al Rahman al Rahim
Asalamulikum wa Rahmatu Allahi wa Barakatuh,
InShaAllah you are doing well. I am still seeking a righteous wife and family. I hope it's appropriate to ask, but I would appreciate your assistance, even advice, with this next step I am working towards. Below are some details about myself. Basically, what I think is best for me and my family is someone similar to me, 18-20 with a Phalistine origin and ideally from Al-Khalil.

Bismillah Al-Rahman Al-Rahim
Amjed

My Answer:

Dear Br. Amjed
Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh
It is a good step, May Allah give you full Tawfiq and guidance in good selection of your future wife and. If you can read Arabic I suggest two or three more the first two are Women in Islam or something like that by Muhammad Ra Fat Uthman (Prof in al Azhar) and Rawdat al Muhibbin by Ibn al Qayyem (of the ninth century of Hijra), the third is Woman in Shari'ah and law by Mustafa al Siba'i.
For the prenuptial, do you have any comments, what is on my web is the final edition of 07, I appreciate any input if you can do that and will be glad to look at it again.

Best Regards,
Wassalam
Monzer Kahf

Bismillah al Rahman al Rahim
Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in
JazakAllah Khair for making yourself available to me. Please add all of our correspondences to the "Fatawa" tab in your website. InShaAllah Allah will provide me with a righteous wife and I will then ask you more questions then.

My Answer:

Dear Br. Amjed,
Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh
You are right. One need to use either the marriage contract or a prenuptial one, either of them should be accompanied by the proposed marriage certificate.
Best Regards,
Wassalam
Monzer Kahf

From: Samy, Islam on line

Sent: Monday, September 29, 2008

Question: Performing Hajj before paying delayed Dowry to Divorced Wife

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh,

Dear scholars I was married to a woman some years back. We are now divorced. Her dowry is still outstanding. I tried to contact her to settle the matter. But she doesn't want to talk to me. Now I do not know where she is nor do I know anyone to ask about her. I decided to go to Hajj this year but I have this debt. I am in a difficult situation. There is no way I can find her to settle the above matter. What shall do please I NEED your scholarly help. Please quote Qur'anic or a hadith your answer where possible.

Jazakum Allahu Khairan for your constant help. Yours, Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Ismail

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If the matter is as described, you are not short in doing what is needed from you. Go for Hajj without any worry and when you find her give her due debt. There is nothing in Shari'ah that puts a limit on your going to Hajj of taking any other action in your life.

Wa Allahu A'lam

Wa Al Hamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Marriage to a banker

From: Abid

Sent: Thursday, October 09, 2008

Question: Marriage to a banker

Dear Dr. Kahf,

May Allah SWT reward you for your efforts? My question is regarding marrying an individual who works for a bank here in America (he is in a management position, and may or may not sign/witness/write contracts involving Riba). If an offer of marriage comes from such a person, should it be turned down because of this person's dealing with Riba? Does the same apply to everyone in the financial field such as accountants, brokers etc.?

Jazakumu Allahu Khairan

Abid

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Abid

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If a worker in a bank does not write, approve, be a witness or does any part of these three functions, I cannot claim that his job or income are Haram by any means. It is not Haram.

But in matters of marriage I don't only look to the crude meaning of Haram and Halal. . . Jobs, within the permissible limits, are not rated the same. Some are better than others. In matters of marriage I like my daughter to be married to a man who has not only a permissible job but rather a rewarded and glorious job such as helping people understand their religion or improve their living on all level. I wouldn't like her to be married to a man who works in a conventional bank!

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Abdullah

Sent: Friday, September 12, 2008

Question: A second marriage in a country that does not allow two marriages

Bismillah Rahman Rahim

Assalamu Alaykum Wa Rahmatullah Wa Barakatuh.

I have no intention to give divorce to my present wife anyhow, InShaAllah. She lives in our native country. We have children. I love her and love my children. She does not want to leave her country anyhow because she wants to live near to her parents. So I need to marry further in this western country where I wish to live and found a Muslim lady for that purpose. This will be my second marriage, InShaAllah. But the law of this western country tells that I am not able to marry further legally in this country because I still have one marriage.

Moreover the lady I found, she is not interested in any unregistered marriage. So to register my second marriage in this western country if I collect an official divorce document from my native country regarding my present marriage - (1) should it affect my marriage; (2) after collecting this divorce document or before, if I fill any immigration paper where I indicate myself as a divorce person should it affect my marriage.

Please note that, the lady I found to marry 2nd time in that western country she knows everything about my 1st wife, children and my intention. Nothing was hidden from her Alhamdulillah.

Please also note that, I will not say any divorce verbally nor I will write anything in that divorce document. This is only an official divorce document need to marry further in that western country and register that marriage. Furthermore I have no any intention to give divorce to my 1st wife. Please provide me the way, how I am able to preserve my first marriage and married 2nd time in this western country to protect my chastity.

Jazaka Allahu Khairan, Abdullah

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Abdullah

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The best way is to travel to a Muslim country and have this lady travel too and meet there and perform a normal marriage. Most Muslim countries do not require consent of first wife for a second marriage and do not ask you if you are already married.

Second best is to have the consent of the first wife to this second marriage and make one divorce get the papers that you are divorced then revoke this divorce. This leaves you one more chance of revocable divorce.

I think the divorce that you will get as you described it, shall be considered a divorce from Shari'ah because there are no plays with divorce. Anything counts. The only way not to count a divorce is when you take forged papers that you are divorced. I don't advise you to forge any document. This is wrong morally and legally.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Shiraz

Sent: Wednesday, June 04, 2008

Question: distribution of property at divorce

Assaalaamu Alaykum

Dear Sheikh:

I hope all is well with you. We are on schedule for the training Alhamdulillah. I have a question: I had mentioned to you about my sister and her divorce. The issue is as follows:

Both she and her husband decided to buy a home. They went to the bank and both placed their salaries for the loan. It was agreed then that they would both share the cost of the mortgage payments. She had placed \$20,000 into the home and he placed about \$100,000 as a down payment. The mortgage payments were \$3000.00 plus insurance etc.

Now she instead of giving him \$1500.00 she told him she would instead of giving him her money to pay the debt and then he having to give her money for food etc. she would just use the money she was giving to buy food and pay bills etc. for six years.

Now we come to the area of settlement. The home is in both names. We valued the home for 750,000 and the opinion is that she gets half of this. There is a mortgage balance of 188,000.00 on the home. What are the steps here? The Imam is saying that the 188,000 must be taken out from the value of the home and the balance that is left she is entitled to half of that. Then they said half of the 188,000 needs to be taken out from the half of the 750,000. She gets the balance. I need to know what is the correct position and what are her other rights in this matter. InShaAllah

Allah Knows Best

Wassalam Alaykum

Shiraz

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Shiraz

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The Shari'ah position as I understand it at this point as you explained is: the house is owned half/half and the debt is owed half/half. Si if the house is worth 750000 and there is a debt of 188000 each one of them owns $750000/2 - 188000/2 = 281000$.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Shiraz

AssalamuAlaykum

Dear Sheikh Jazaka Allah

I failed to mention one issue. He is intent of buying her out of the property. He says he will pay her as follows

$750,000 / 2$ less $188,000/2 = 281,000$

He gives her that amount and he keeps the house and pays the mortgage

Is this correct?

Wassalam Alaykum, Shiraz

My Answer:

Yes, this is correct.

Best Regards,

Wassalam

Monzer Kahf

Subject: wife abuse

From: Ihsan

Sent: Sunday, January 06, 2008

Question: Abusing a wife

Dear Dr. Kahf,

I really liked your marriage contract and have a few sensitive questions to ask you. I have a sister, who has been physically abused by her husband. In fact he has spent two nights in jail because he punched my sister in her face. Both of my parents are Muslim, but they do not want to force my sister to divorce her husband. I would like to know in this situation, Islamically, what are the precautions and actions that must take place?

Thank you

My Answer:

Bismillah al Rahman al Rahim

Al Hamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Ihsan

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The point is that we all need education and information about our rights and duties. Your brother in law needs that kind of help that can be given by a local Imam or family council to improve his treatment to his wife. It is Haram to hit on the face and it is Haram to hit generally (of course there are some exceptions that are of the kind that some people don't behave without physical adjustment, but these are extremely rare). I suggest that they both should seek counseling together so that each one of them would know his (her) limits and how to treat the other.

Wa Allahu A'lam

Wa Al Hamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Linda

Sent: Sunday, January 06, 2008

Question: Legal Marriage and Islamic Marriage

As Salam Alaykum Wa Rahmatu Allahi Wa Barakatuh:

Dear Dr. Monzer Kahf:

I am a new Shahada who recently married a good Muslim man without a marriage contract. We live in the state of Minnesota and we were hoping that you could send us the Islamic marriage contract. We would also like your opinion on the subject of civil unions, as we disagree. I want a legal marriage and my husband does not. We greatly appreciate your assistance.

Sincerely, Linda

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rabb al Alamin, wa al Salatu wa al Salam ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Linda

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I believe in legal marriage and I know that the Shari'ah recognizes a marriage done before persons embrace Islam or recorded in a non-Islamic court. According to Shari'ah, marriage in its essence is a contract between two persons, a man and a woman (very often the woman is represented by her father or close male kin in this contract, but this representation does not change the fact that the contract is between her and the man she is marrying). I don't like non-marriage names to be used for this contract. In fact some schools of Fiqh insist that the word marriage in Arabic or its explicit synonym (Zawaj or Nikah) must be used in the contract and in the Arabic language even when the parties do not know Arabic. Other schools accept a word that means marriage in other languages. I mean by that that Marriage is such a sacred contract that requires us to be very specific and very clear about it; civil union to me is not marriage because it is used, in these days in several States, to mean some other thing close to but not exactly marriage.

A word copy is enclosed

Wa Allahu A'lam
Wa Alhamdu Lillahi Rabb al Alamin
Wassalam
Prof. Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2007

Subject: Marriage question

From: Mana
Sent: Saturday, July 28, 2007

Question

Dear Dr. Kahf,
My fiancé and I would like to have a Muslim marriage, before an American one. I have spent a lot of time on the internet to find out how we can go about doing that. But believe it or not, there is no such information. Unfortunately neither one of us belongs to a mosque. I live in NJ. Could you please give me some advice as to what I need to do and/or where to look? Thank you for your time in advance.

My Answer:

Bismillah al Rahman al Rahim
Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. MANA

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh
My advice is to make them both at the same time and with one procedure. That is you take a marriage license from the county clerk, read on my website, www.kahf.net, the form of pre-nuptial agreement, ask me after reading for a word copy and sign it and notarize it, then go to any nearby mosque (you don't have to be a member in it to have marriage officiated by its Imam) and get your marriage officiated. The Imam will then give you a copy and send the original to the county clerk. This way the rights of both of you will be reserved. The Islamic marriage is no more than what I described.

Wa Allahu A'alam
Wa Alhamdu Lillahi Rab al Alamin
Wassalam
Prof. Dr. Monzer Kahf

Subject: Wife's Work and Sharing in the House Expenditures

From: Faiza through Islam on line
Sent: Tuesday, June 12, 2007

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Can you please answer my question that is: I have studied up to postgraduate degree. my husband asking me to share in half the bill payment, the mortgage the food spending ...etc - I mean all spending my husband asking me to pay in half - I have 2 children with him or if I don't to pay - he is threatening to stop me from work. What is the shariah advise on this matter. Jazakum Allahu Khairan for your constant help

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Faiza

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I want you first to distinguish between a Shari'ah legal advice (because the Shari'ah is simply a law) and the social advice to preserve a marriage and safeguard it.

Legally (from Shari'ah point of view) you have the full right to save all your income and he is required to spend on you, the household and the children including the very personal things of your in the literal meaning of the word (I hope you understand me with using an explicit word!). You are not responsible, according to Shari'ah, to spend any single penny on the household, the family, children and the mortgage. (In mortgage there may be a technical matter you need to know: Properties of husband and wife are independent from each other according to Shari'ah so if the house is on both names you are technically required to pay for your share of the mortgage from now on, what is past is considered a gift between husband and wife unless specified, by who of you makes the payment, otherwise BEFORE PAYING IT. on the other hand, he is required to provide you and your children with residence, not necessarily purchased, that is suitable to his income and wealth and the size and living standard of the family).

Additionally, since it is apparent that from the beginning of your marriage he consented to your study and later work, he has no right to present you from doing so now.

From social and family relation between you and your husband I advise you to seek Muslim family counseling and do what preserves and saves your marriage even if that may involve some sacrifice on your part. You may also have your husband contact me so I can explain to him that he has no right to force you to quit your job and has no right on your income too.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2006

Subject: marriage in Private

From: MIMI

Sent: Wednesday, December 20, 2006

Question

Assalamo Alikom:

My best regards for you and yours at those blessing days, close to Hajj season and Eid El adha.

Would you kindly let me know if there is a such islamic marriage , called "" ORFY MARRIAGE"" meaning when a man marry himself to a woman , and woman marry herself to a man just between themselves. Should be any witness or paper written., and for what reason they can marry this way? and what is the obligation in this marriage, if it did not work out can both men and woman be divorced just by leaving? Can be changed to the traditional way of marriage.

Your help very much appreciated. and may Allah (SWT). Bless you for the work you do.

Mimi

My Answer

Dear Sr. Mimi

Assalamu Alaikum wa Rahmatullahi wa Barakatuh

The Urfi Marriage is a marriage contract, complete from the point of view of its form. It is often made in writing and sometimes verbal but it is witnessed by two friends of the spouses. It is done, especially in Egypt to escape either family disapproval or having to open a house because the couple are not yet financially ready for it as in case of university students. If this marriage is submitted to court in Egypt or in any other Muslim country with its written document and witnesses, it will definitely recognize it (there may be a small penalty for failing to obtain a marriage license and avoiding the military service for the boy that is usually required to be done before marriage). This kind of marriage allow the couple to have all relations that marriage allows including sex but because of their circumstances they only do it when they have a chance! Because they don't live together under one roof. It is usually done with a promise to declare it later and announce to every body and make a great reception and record it in court! On the other hand it is very dangerous, especially when it is done without writing because the boy can get away with having sex with her, and she may become pregnant and then escape the responsibility or denies that there was a marriage at all and that he just had sex with her on her insistence but not marriage. She is usually the weak party in it and in many cases in Egypt the boy escaped his responsibility and even impure the reputation of the girl especially after impregnating her! Form the legality she is often fooled because the contract itself is legal and according to Shari'ah but the involvement of the family, the official recording and the wedding party all that gives her real protection that she looses when she accept to make a Urfi marriage. We always discourage it and alert the girl of possible consequences although it looks as fulfilling all the requirement of a contract.

Best Regards,

Wassalam,

Monzer Kahf

From: Sr. MIMIM

Question

Assalamo Alikom Dr. Kahf: thank you so much for your reply.

My understanding from what you said, that the orfy marriage is Halal. is it? I have problem beleiving that? my understanding too is the boy can run a way from this marriage easy, what a bout the woman , can she run from this marriage easy too, meaning can she be divorced from this marriage just by running a way. ? How she can get divorce? What about the wife or the husband right in mirath? is their rights as in traditional marriage? Orfy marriage sound like boy / girl friend relation ship here in north America. correct me if I am wrong? I only see different that the ward marry me not said in boy /girl friend relationship. but every one know. thank you for your help.

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Mimi

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I am sorry that you may have misunderstood me. I did not say it is Halal. I said when it is done with consent and two witnesses it becomes like any other marriage valid and effective. I also said that it gives room, because of no registration with the government and no involvement of families, to be denied by the boy in most of times, it does not provide sufficient protection especially to the woman. This does not mean that any of the man or woman can walk out of it, it is of course Haram to walk out of it without divorce or Khul'. When it is done with no witnesses it becomes exactly like boy/girl friendship as known in America and that is Haram even with the word marriage. But still even when it is done this way, it is Haram for either of them to walk out of it without divorce or Khul'.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

From: Mimi

Question

Assalamo Alikom: Thank You so much for your email, I really really appreciated.

Again you have siad ""I DID NOT SAY IT IS HALAL"" I SAID ----- BUT IT IS LIKE ANY OTHER MARRAIGE"" I AM CONFUSED. ANY OTHER MARRIAGE IS HALAL , RIGHT"" ?

THANK YOU, W SALAMO ALIKOM

Mimi

My Answer

Dear Sr. Mimi

Assalamu Alaikum wa Rahmatullahi wa Barakatuh

I mean when it is done it produces all its legal and Shari'ah effects, in this sense it is Halal, and it requires formal divorce process to put an end to it. But since it is done without public announcement and without involvement of families it may expose its parties to abuse by each other, from this point of view it must be discouraged.

I did not say Halal because the word usually means it is good to do it. Divorce for instance is permissible (i.e., Halal) but it is very much discouraged.

Best Regards,
Wassalam,
Monzer Kahf

Subject: Financial Matters between Divorced Couples with no Marriage agreement

From: Sr. Samar through Islam online

Sent: Monday, October 02, 2006

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,
I have been married to my ex-husband for 22 years. During that time we had four children. Also throughout the whole time I helped establish his business. I took care of the house and the children so he could concentrate on his work. I worked with him in the office for 13 years as the office manager, and he did not allow me to keep a salary for myself because he felt that we are doing everything together. Three weeks ago he divorced me (for the second time) and he told me that I am only allowed to have my dowry. Please note that when we first got married, we were married by an Imam then we recorded the marriage in the American court. The court marriage was not prenuptial. It was a regular American marriage. Here in the US the court customarily splits all assets acquired during the marriage in half, so even if he is allowed to keep my salary, I would have to split it with him at the time of divorce. According to the American law, I am entitled to 50 percent of all assets, plus I get a monthly payment which constitutes one half of his monthly income until I die, he dies, or I re-marry. The law also gives me custody of the children who are under 18 years of age, and requires him to pay 16 percent of his income for each child under 18. The court gives this special consideration for marriages that last 15 years or more, which applies to my case. Please advise me as to what is permissible for me to do Islamically. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Samar

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

This is exactly the reason why I Always advise that Muslims in America MUST make detailed marriage contract, be it pre nuptial or post nuptial and for this reason I have constructed such a form agreement and posted it on my website for Muslims to look at and if they accept it to adopt.

Now that you did not make any special conditions in your marriage, the following general principles apply:

1) Any property that is recorded in both names together, be it a residence, other real estates, cars, personal properties, businesses and practices, etc. is considered as owned on the basis of 50/50 by the wife and the husband regardless of who paid for it or who paid more than the other for it. You have the right to take one half of all such properties regardless of under what name you take it.

2) Properties about which there is a clear and undoubtful indication as to who owns them such as men/ women jewelries are considered owned by the one to whom they belong even if they were purchased by the other, it is Haram for the other party to claim any part of these properties. In both (1) and (2) we consider that the one who paid more than the other had given the difference as a gift and the gift is received by the other and it therefore becomes irretrievable by the giver.

3) Properties that are in one name with a clear indication that they were meant, since acquiring them, to be owned by the named party are owned by the named party alone regardless of how the law treats them, it is Haram for the other party to take any part of such properties.

4) Properties that are in one name but the law considers them as joint/common to both should also be treated as owned by both on the basis of 50/50 since ignorance of the law is not a valid argument.

5) If you asked in the past for salaries for your work as office manager and were not given that and you did not realistically give it up, you are still entitled to the due salaries for all that period of work, and if he does not accept to give it as such and you are able through compromises or through court to take it under any other name, it is permissible to take that much only.

6) You are NOT entitled to a life time alimony because our marriage is not like the Catholic's, it is not a life time marriage. Ours is a contractual relationship and since you did not make a contract that gives you such a right (it is permissible to make such a condition in a Shari'ah-based marriage contract) you are only entitled to the minimum that the Shari'ah provides for, that is three month sustenance only, it can be considered as three month $\frac{1}{2}$ his income.

7) You are entitled to the custody of your children who are under age. If the law defines this age as 18, so let it be because the Shari'ah is flexible on this age. It may go to 7, 9, 11, 13, 18 or even until marriage of the boy or girl. According to Shari'ah you are entitled to custody allowance that makes you live of the same level as their father's living. This allowance covers you and the children and it includes residence and other living expenses, it does not include savings. In other words, (6) and (7) means: $\frac{1}{2}$ his income for three month (the period of 'Iddah) + housing (regardless of what you own since you are not required to provide a housing for the minor children) for the children and for you as a care-taker/custodian + living expenses for the children and for you for as long as they are under your custody (this does not include any savings for you or for them).

8) If you get married you loose the custody of the children (you must know that clearly as you cannot put the children in the house of the new husband of yours!), at

that time the custody of the children along with its financial entitlement go to your mother if she qualifies and accepts this responsibility and if not then to their father's mother.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: distributing property at divorce between Couples in the US

From: Ayman through Islam online

Sent: Thursday, August 03, 2006

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

In the US laws, the divorced woman can ask for half of all her husband's assets. Under Islamic laws, is the money that she gets haram or halal? Thanks. Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Ayman

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

This is what happens when people do not make proper arrangements! Muslims in the USA MUST SIGN PRE-NUPTIAL AGREEMENT WHEN THEY GET MARRIED AND POST NUPTIAL WHEN THEY COME TO AMERICA ALREADY MARRIED. THEY MUST MAKE ALL THINGS CLEAR AND ALL THEIR RELATIONS IN ACCORDANCE WITH THE SHARI'AH. In this case, if the couples have already recorded properties in both names, it means they have given each other gifts so that each one owns one half of the property regardless of who paid for it or who paid more than the other. Then at divorce, these properties must be distributed half/half. TAKING HER HALF AT DIVORCE IN THIS CASE IS CERTAINLY HALAL because she takes what gifts she got in the past! Properties that are not recorded in both names while you live in a state that gives the other party one half right to these properties (community states) are also HALAL TO BE TAKEN BY THE DIVORCED WIFE because you did not take precaution in creating proper documents that ensure it otherwise. This means that your intention was to give it as half/half! In other cases the law does not allow one half to a divorced wife! This is from the point of view of the legality of the Shari'ah (what is known as Qada'an قضاء). From a pure religious or Taqwa point of view, it is sinful for a wife to take a property that she knows, for sure, that her husband or former husband never intended to give to her as a gift at the time when it was obtained although it was recorded in both names. YET THERE IS A NEED FOR FRESH THINKING ABOUT THE RIGHTS OF A FULL TIME HOUSEWIFE WHEN DIVORCED, would she deserve certain compensation for the home services she made

that prevented her from pursuing a career or from earning income and wealth of her own.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Wife's share of house

From: Mounim

Sent: Wednesday, April 26, 2006

Question

Dear Dr Monzer Kahf,

Thanks a lot for your effort to clarify economic matters for Muslims.

I am planning to buy a house. I am married with 2 kids of 3 and 5. I have a question regarding whether it is ok to give my wife a share in our future house (say 50% or 25%) and if doing so won't be against the inheritance law of Islam. If there is no problem, what would be the most Islamic compliant share for my wife? many thanks in advance

Mounim

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Mounim,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I will need to segregate the subject in three parts to discuss it in a clear way: gift between spouses; Inheritance between spouses and Islamic treatment of properties under laws that consider marriage a kind of partnership.

1- Gifts are expression of love and care, more so between spouses. Our Shari'ah, being the Shari'ah of the Fitra (human nature) puts no limits on gifts between spouses. The Qur'an [4:4] allows a woman at marriage time to give up to her husband any part and all her Mahr (although it is common that for a young woman this may be the most valuable property she owns at such an age) and comments on such a gift "then take it an enjoy it with good cheer and joy." The same applies to a husband giving his wife (at the time of marriage or at any other time) a treasure (a Qintar = about a thousand pound of silver or may be gold) [The Qur'an 4:20]. There is an important principle that separate gifts from inheritance: freedom of disposition or authority of owners on their properties. While a live an owner has full authority on her/his property and he/he can do whatever may please her/him and no one can limit this absolute authority (of course, there are limits for persons who don't have full aptitude to transact such as minors or insane persons, or persons of their death bed or persons under debts if such disposition may hurt creditors, but such exception only confirm the principle of complete freedom. Obviously this freedom does not extend beyond life because after death the property goes back to its Original Owner, God, Who disposes of it as he told us in the Qur'an.

Finally, although such gifts are permissible and unlimited, one must observe the moral principle. Examples of immoral action: leaving children rich is better than leaving them poor, giving a wife all one's properties while leaving nothing to children especially if they are from another marriage, giving one wife more than other wives for persons who are married to more than one wife, etc.

2- Upon death the Inheritance system is mandatory and one cannot change any thing in it [The Qur'an 4:13-14]. This is why a Wassiyah can't be given to an heir. God allows us to assign a maximum of one third, as a charity from Him on us to increase our rewards, that can be disposed of a our will through a Wassiyah (Last Will). The share of wife in inheritance (one eighth or one forth) is always one half the share of a husband (one forth or one half). This is because a husband alone is responsible for the expenses of his children and his wife and a mother/wife is not responsible. But anyway these share are literally given in the Qur'an [4:12] in clear and definite terms that can afford no other meaning.

3- Living under laws of partnership marriage: Marriage in Islam is not a partnership but an exchange contract. When a Muslim family lives under different legal system it must deal with the Islamic legalities as well as the civil legalities. This is why we always recommend creating a marriage contract or a pre-nuptial or post-nuptial contract for all Muslims who live in America even those who came from overseas. Not creating such a contract and recording a property in both names, as we usually do in America, means we accept to give a gift between spouse of one half of the property that is recorded in both names regardless of who actually pays what in obtaining it. Hence, the Shari'ah position on properties that are in both names in America and under similar legal systems is that they are owned as half/half between the two spouses unless there is a clear and binding agreement that is implementable in America otherwise.

For your specific case, you can give any percentage to your wife and put it in her name, especially if the children are also hers (because that rarely affect inheritance since they will also inherit her at the same percentage as they inherit you). If you live in America I recommend that you make a post-nuptial agreement (see my website www.kahf.net for ideas on it) and if the property is recorded in both names without a clear and binding applicable agreement otherwise, such a property is considered, in Shari'ah, as owned on half/half between both of you.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: marriage question

From: SAMIA

Sent: Friday, February 24, 2006

Question

Assalamo Alikom Dr. Kahf:

I am engaged to be married to new muslim American, unfortunately, has been diagnosed with stomach cancer. We have never discussed any financial matters. I assume that he must be able to support a wife. I do not know how to come around asking about his finance. I will be moving to US live with him after marriage, with this news I do not know what to do. I would like to know my ISLAMIC DUTIES AND MORRAL, am I obligated to marry him, I feel so guilty leaving him suffering alone, on the other hand I am working here in Canada making enough to support myself, I am not sure that I will be able to work and take care of him OVER THERE. And for how long????

I AM AFFRAID THAT EVERY ONE THINK OF ME THAT I MARRIED SICK MAN HOPING HE WILL DIE SOON AND TAKE HIS MONEY. HONEST TO GOD I HAVE NO IDEA ABOUT HIS FINANCE AT ALL NO IDEA. I DO NOT KNOW WHAT TO DO? I WANT BE ABLE TO SLEEP AGAIN AND DO WHAT GOOD REWARD ME FOR AND GOD HAVE FOR MY FUTURE WITH THIS MAN, IS IT MY MISSION IN LIFE TO TAKE CARE OF HIM.

PLEASE HELP ME WHAT ISLAM SAY. MAY GOD BLESS YOU AND YOURS,

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Samia,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I understand from the word engagement what it really means that there is a promise of marriage but no marriage contract has been concluded between you yet. As a matter of legalities, of course from Shari'ah point of view, engagement can be broken with or without a reason. The question is about the morality of the issue.

If you think that this is the man with whom you can live the rest of your life, in America, where there may not be any family support, you may go ahead with the marriage, stomach cancer can be cured and every thing is left to God in this regard. Additionally, at marriage you need to know his finance and he also needs to know yours. It is true that he is the one responsible for family expenses and you need to know his ability to shoulder this charge. YOU HAVE FULL MORAL AND LEGAL RIGHT TO ASK AND TO KNOW IN DETAILS AND IF YOU ARE NOT SATISFIED TO BREAK UP.

Look at the marriage contract at my website www.kahf.net and have him read it and sign it both of you, I can send you a word copy of it so you can fill in and print. Consult a wise older person in your family and do not give up you rights and at this junction of your life your Islamic duty to yourself and your future. There are many cases of success of such marriage and also there are many cases of drastic failure. If I can be of any further help, please do not hesitate to write me again.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2005

Subject: Asking Husband to Pay Half of What He Owns

From: through Islam on Line

Sent: Tuesday, October 04, 2005

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh

My uncle is married to a Muslim woman and they live in France. They have 3 boys and they have been having problems with their marriage for over 12 years. The wife accuses my uncle that he abuses her (verbal) and she does not want to stay with him. After all trials from both families to make the marriage work failed she announced that she has hired a French lawyer and is filing for divorce where the law has asked my uncle to pay half of what he owns to her plus other additional charges. We all were shocked and we have been trying to ask her and her family to go back to the shari3ah in resolving this matter and they refuse. What would you recommend for my uncle to do? wabaraka llaho bikom.

Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. ,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I recommend that your uncle abide by the law. You may be surprised but the fact that your uncle married or lives in a country that does not have Shari'ah as a family law without having pre-nuptial agreement or post nuptial agreement that gives in details the rights of each spouse, in accordance with the Shari'ah, in all cases of living together, divorce and death, this fact means that he accepts whatever the law of the land has to impose and he willingly, by virtue of this fact, accepts to give her that much. Of course what she gets, if it was not really willingly on the part of her husband and if it is more than what the Shari'ah provides for, is Haram for her and the Prophet, pbuh, says that any flesh that grows on Haram the Fire of Hell deserves it more than any thing else. Additionally, most likely, all real estates, banks accounts and other properties are recorded in both names of your uncle and his wife, because this is the usual practice of all spouses, especially when they are still on good terms with each other. RECORDING PROPERTIES BY BOTH NAMES MEANS THAT WHOEVER PAYS MORE FOR THEM GIVES THE OTHER A GIFT THAT IS EQUAL TO THE DIFFERENCE. this is the Shari'ah interpretation of putting properties in the names of both spouses. Some people wrongly think that putting properties in both names is a legal requirement in the West, this is incorrect. The complete Islamic family laws can be implemented through a pre-nuptial

agreement and to my knowledge THERE ARE ALWAYS MEANS TO APPLY THE ISLAMIC LAW THROUGH SUCH AN AGREEMENT. of course one needs to consult a lawyer in each country or state to handle the agreement with proper wording.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Divorce in Islam

From: Baraa

Sent: Wednesday, August 03, 2005 9:29 PM

Question

Fwd: NAMLnet INQUIRY: divorce in Islam

Inquiry from visitor to our website. Please respond directly.

From: sahar

Hi,

Could u please tell what is the judgement in this situation:

I am a moslem woman, also my husband, my husband asked me for money to go for a vacation and i refused to give him until he write me a paper (you are divorced) so he wrote me on a piece of paper that i am divorced

) and he wrote it once and gave it to me, and i gave him the moeny and he went for a vacation, can u tell me what to do after the first divorce. Thank you very much

Suhar from Canada

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. ,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

This is a straight forward case that is dealt with in the Qur'an in a clear text (2: 229). The verse gives two chances for revising divorce. It means that since this is a divorce in writing (writing is one of the clear and obvious means of communicating a divorce), it is counted as the first time divorce. It is binding to both and you are no more a husband and wife (with a reservation that will come later) and you should not treat each other as husband and wife from the moment the paper is written. The deferred part of Mahr is due for payment and the wife should be given, among other things depending on existence of minors and other considerations, the cost of living expenses, including housing, for three months. Although it is on your request, it is a Talaq (divorce) not Khul' (divorce on wife request for no reason of ill treatment that is effected by the judge against surrendering the Mahr)

However, since this is the first time, it can be withdrawn by the husband within the period of the Iddah (# three month unless there is pregnancy then until giving birth) (Verse 2: 230). Withdrawal of first or second time divorce can be effected by either

verbal or actual expression (a statement of withdrawing the divorce and returning his wife to the marriage bond; or an act of husband and wife such as sex or any act that is related to it including kissing and tender touching). This reversing of the divorce does not require a concession on the part of the wife. If it is not done during the Iddah, the divorce becomes final but not perpetual. This means that they can remarry by virtue of the new full-fledge marriage contract that requires mutual agreement, Mahr and witnesses. Clearly, after a third time divorce, re-marriage can't be done unless if she normally get married and then divorce to another man Verse 2: 230.

Finally, there is a strong opinion, The strong Salafi and the Shi'ah IthnaAshariyyah, that if any divorce is done during the monthly period or during a clean period in which they had sex (in other words a divorce should only be done during a clean period and not preceded by sex), such a divorce is void and treated as non-existing, other schools consider it effective although it is a great sin on the part of the husband to make a divorce in these two cases (because it actually extends the period of Iddah).

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Marriage Contract

From: Noor

Sent: Wednesday, July 13, 2005

Question

Assalamu Alaikum Dr.Kahf:

I am very pleased with the contract. I just have some questions about Annex I and II; I was informed to list real estate in this area, what else? Would we need to list our earnings for 2004, and other investments? I would need to know the specifics so that I can pass this information to my finance. Thank you for your invaluable assistance.

Wa Alaikum Assalam Sr. Noor Brown

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Noor,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Yes, make annexes I and II as complete as possible, list in it: real estates, cars and other personal properties, jewelries and other valuables, businesses and investments, IRA, 401k and the like, income and its sources (business, employment, etc.), put in balances to the best of one's knowledge and closest to the date of the pre-nuptial.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Resolving a Financial Marital Problem

From: Hatim through Islam on Line

Sent: Thursday, June 09, 2005

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh, Thank you very much for this nice page me and my wife are from different nationalities working in Saudi Arabia .our problem is financial, I pay for housing, education of our kids, food, dressing, and all other expenses. Also I assist my family because my father is not working. My wife pay 300 S.R for the home mate, and pay for her mobile phone, her family is not in need of her assistance. My wife argues that Islam says so, although I participate in home work to some extent and tolerate her absence from home during her work. Also I travel her to and from her work, but she refuse to pay for this saying that this is part of my duty. Please send us Islam view on this. Thank you very much.

Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Hatim,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

If there was a verbal, written or customary condition on the use of her salary when she works, whatever condition you have should be abided by and implemented by both of you.

If there is no such an agreement, the principle is that her salary is hers and you have no right to any part of it. spending on the household, children education, family transportation and helping your family are all yours. her auxiliary personal expenses, such as a mobile phone if it has not become customary in the area where you live and transportation to and from work (but not to include her cloth, medicine and other normal personal expenses because these are part of the household expenses) are hers to pay for from her own income. The salary of a helper at home is also your responsibility because serving the family (cleaning, cooking, etc.) is not a part of the marriage contract in the Islamic Law. This is, unfortunately very much mis-understood and contradicted in most Muslim families.

If your income is not sufficient to cover the expenses mentioned above, at a normal level that suits your living status, she is then required to help in as much as needed to cover the gap. the rest of her income is completely hers, she can save it (you don't need to save from your income!), give it to her family, spend it at will on the household and children or give it to charity. The Shari'ah (and your manhood) must prevent you from even thinking of interfering in her management of her income, savings and wealth.

On the other hand, the Islamic good manners (not as an obligation but as treating each other bi al Husna) urge her to give more to her children and family and to help making life, financially, easier for her husband as much as she can. Any thing she volunteers in

this regard is rewarded by Allah and you should be thankful and grateful for it in both deed and verbalization, this of course includes the salary of the house mate!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Wife having sexual relation with another man without penetration

From: A Questioner through Islam on Line

Sent: Wednesday, June 01, 2005

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,
I am a Muslim ahlamdollilah. I am a married girl. I got married 6 months back.but somehow I got led by Satan. As my husband went out of country for his job I got involved with some non-mahram. I made friends with some guy. During my husbands absence I called him over dinner and somehow I indulge in masturbation with him. He rubbed my vagina with his finger till I was at the peak of pleasure. He rubbed my whole body with his hand. He masturbated me five times. I was whole naked in front of him. He took a look at my private part. We both were naked and on top of each other. But we never had intercourse. He only rubbed my private part (vagina) till my full climax of pleasure. And I got indulge in this act for the next couple of days. Now I really feel ashamed as this is cheating with my husband. My husband doesn't know about all this and now I truly repent towards Allah and seek for his forgiveness but I want to know is my nikah still valid. Please answer in accordance with Quran and Sunnah. Me really disturbed. My conscious is really killing me. May Allah guide us all.

Jazakum Allahu Khairan for your constant help

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. ,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Keep your secret to your self, repent from the inner of your heart, don't ever do it again, make good deed in prayers and charity and ask Allah for forgiveness, your Nikah is still formally valid.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: husband marrying a second wife

From: Tayyaba

Sent: Friday, January 07, 2005

Question

Respected Brother, Assalamo-ailkum,

Sorry for bothering you once again. I need some help again. I need some ""Wazeefa or Sorrah"". I recently figure out that children were not the issue with my husband. During our in-trial 5 year of marriage as my husband was having financial problem and I paid them off - he never told me that he wants children- otherwise I would try IVF at the age of 28-29, whereby I could have greater chance of success.

Actually, last week I come to know that my husband is planning (rather in process) to marry another woman (whom he started as brother and sister relationship[]). The lady is Hafiz Quran and in Pakistan. She was married, and at that time despite her marriage she use to call my husband and now she is divorced and having child from that marriage. As per her own statement, she has several proposal (even from the unmarried man, her own cousins) but she wants to marry my husband.

Now my husband says that he never want to marry that lady, as he claims that he loves me. But that lady calls him daily, despite the fact that my husband never picks the call. Mohtaram Sir, I was professional but I left my career as my husband said that it is Harram to be in contact with men. But now he himself and that lady is in relation for last three years.

Please give me some Surrah to recite that Allah may ease my issues. Please please also keep me in your prayer (for sabbr and Khair) . Wassalam

Tayyaba

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sister Tayyaba

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

As I understand from your letter , you think your husband is planning to get married to another lady. This is certainly unfortunate but please remember that if Allah wills it may happen no matter what we all do, "la hawla wala quwata illa billah". What I would suggest for now is that you should not do anything which may cause you a deeper hurt or damage because you are more important to you than any thing else including marriage.

I think you may focus more on your options for YOUR FUTURE and think beyond reactionary emotions and actions that are usually thought of by "a first wife" when her husband marries a second wife; e.g.. Get into serious fight, screaming, crying or saying humiliating bad words etc... that would make the husband more detached and determined. You have no control over your husband or others, but Allah Gave you the power over yourself, to change your attitude, and to handle the difficult situation with wisdom, courage, patience, correct and good communication skills that would ease the stress and improve relationship in many ways.

The first thing (before having an elaborate and serious discussion with your husband) is to realize that you have two options that you need to think about carefully and quietly and to evaluate their pros and cons very carefully before taking any action:

Either get a divorce,

Or be wise, patient, and get prepared, within your self, to be ready for the challenging situation spiritually, psychologically and then physically.

To be able to take the correct decision on these two options start first with improving your relation with Allah and seeking His help. Do things that increase your IMAN , remember that everything is by the will of Allah and from Him, He is THE MOST EXPERT, THE WISE, everything happens for reasons, either to test us, to awaken us so we may become better Muslims and better persons, or for certain other reasons that we don't know. Read the Qur'an and listen to its tapes and its meaning, pray more Nafil, do Istighfar (tawbah), ask Allah's forgiveness and guidance and help, as our beloved prophet Muhammad, peace be upon him, used to do many times, make sincere and persistent Duaa' several times a day, make more self-check (muhasabat an-nafs), make sure that everything you say or do is in compliance with Allah's teaching. According to the Sunnah of prophet Muhammad, peace and prayers be upon him, a person can pray two rakaa' nafil (salat al-haaja) and make dua'a' at the end seeking Allah's support and help for this difficult situation. There is no specific prescription,(wazeefa) that I know but there are many Duaa' that can help in a difficult situation besides reciting Qur'an with sincerity and humbleness; such as Surah #2 Al-Baqara or at least ayah al-kursi (al-baqara 255), get from the local mosque a copy the the Duaa' translated by Dr. Jamal Badawi, it is very beautiful and read it repeatedly.

You may seek help from a professional Muslim family counselor, or consult a wise trustworthy pious Muslim sister who has Taqwa and knowledge, and experience with similar cases.

My idea is that if you change your attitude, learn more communication skills; i.e. change your way of talking to your husband, your routine way of dealing with him , choose less offensive or less aggressive words, do less talking and more of good deeds to him, to yourself, and to others, always ask Allah's help, focus more on improving your spiritual and psychological health rather than what your husband does or is doing, he then may, on his own, not marry after all.

Then start a healthy and calm discussion with him and persuade him to abstain from such an idea (that in the final analysis will not be good for him and for you and for your relations. Or even if he gets married he will appreciate you more and come back to you after a while of a short experience, provided you stay patient, affectionate and a kind wife but firm in regard to your rights as a wife.

Should he get married to the other lady, whatever you decide whether to stay married or not, you may state your rights and conditions in writing clearly and have him sign with witnesses.

You may express your feelings and your rights firmly but politely. In short be a strong faithful woman and never loose hope and put your complete trust in Almighty Allah.

By the way, you may like to consider going back to work, it is incorrect that men and women should not be in offices working together, it is rather permissible as long as you dress and behave Islamically.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Islamic marriage contracts

From: Heeb

Sent: Sunday, January 02, 2005

Question

Salem Aleykoun

Can this marriage contract, template, be adapted in the United Kingdom, say, if it was presented to a solicitor specializing in Islamic law?

Please provide some information on this point and thank you inchaAllah.

My Answer

Dear Br. / Sister

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

My answer is I don't know. You should present it to a lawyer in the UK and see what advice you get. I know that the Islamic aspects of it are valid for UK as well as for USA or Canada.

Best Regards, Wassalam,

Sincerely,

Monzer Kahf

Subject: Second wife

From: Irfan

Sent: Sunday, December 26, 2004

Question

assalamoalaikum wa rehmatuallah

i am husband of, we got married in june 1997, we are issueless we tried IVF. but could not succeed in two attempts, doctors view we can attempt six times. we love each other and have a good life ALHAMDULLILAH , my wife is sweet heart of whole of my family and above all of me . she is a nice and very pleasant human being with AHSAN AKHALAQ

i am 38 and she is 39 now.

as we don't have kids, now i think i can go ahead and do second NIKAH , , to my wife its unbearable and so to me , but at times i think let me avail othe roption and have kids who can pray for me once i am died, my wife is scared that it would not be possible for me to do ADAL between the two and she will become MUALLIQA while looking at her at one hand i cant decide, as she says she will leave me i f i do NIKAH what is SHARIAH WAY for me little about myself, i am HAFIZ Alhamdullilah, and understand KORAN

Alhumdullilah, love to recite. i am civil engineer and do construction and my wife works for the world bank as consultant in community development and she has asked questions from you about surrogota mother.

Jazakallah Kheir

irfan

My Answer

Dear Br. Irfan

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

If I were in your place, I will keep trying, using the other 4 chances you still have, and if I fail I will give up the whole idea of children, do not take a second wife and accept what God has given me, be content to your wife and your life, and remember that Verse that Means it is He who makes whom He wants sterile and gives whom He wants children. You have a good life and wife, do not destroy them for the fantasy of having children. I know a family friend who have no children, but they decided to raise other Muslim children, so they opened an Islamic school that has now about 2000 Muslim kids, the wife, who is like your wife specialized in the area of family and children, takes care of the ideas creation and implementation and the husband takes care of the financial and external relations of the school.

Please get out of the obsession of children, without quitting approaching your future attempts in a scientific manner.

Please write me again if I can be of any help and support, by the way, you are in Wash. area and I know a very dear family there, who by the way do not have children, Br. Mateen and his wife. If you happen to come across them give them my warm Salam.

Best Regards, Wassalam,

Sincerely,

Monzer Kahf

From: Irfan

Sent: Tuesday, December 28, 2004 4:22 AM

Question

ssalamoalaikum

Jazakallah kheir for your answer, the question of having the kids or not might be a fantasy but why islam has given the permission for second, third and fourth wife. how u view it. my understanding is that everywhere we have more ratios of women than men, they are more divorced and widowed than men , to bring them into the fold of society and give them a life too, islam has openend this option , WALLAHO A'ILAM, my aunt was divorced at the age 21, another became widow at the age 33, anothers husmand became psychic, so three of'em still alive and had thier whole life without thier companions. is it islamic way of life or my thinking is so crude. i do understand the practical implications of the second wife, and to me the problem is not the kids but the HIKMAT of the idea

Yes, I know brother MATEEN and will deliver your regards to him

the idea of school, yes I have started one back home in Peshawar, Pakistan. here now if u heard of ISLAMIC CETER OF NORTHERN VIRGINIA under construction for the last

fifteen years, i took the responsibility of its completion in mid October and by the grace of ALLAH SWT moving fast on it, though its a gigantic task , and i also did taraveeh and recited the KORAN , we have also started Juma too, but i gave you theses information to update you about wash area

remeber us in your prayers

irfan

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Irfan,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

There is no doubt that a second marriage (and third and a fourth) is permissible in Shari'ah. But the issue of advisability is different. You asked me about advisability in your case and I gave you my opinion.

Plu-marriage is permissible in our Shari'ah as an exception not as a rule. Please look at the verse that mentions it, it gives examples of such exceptions. The rule that is mono-marriage is the normal practice in our religion. One argument for this is the fact that it is not mentioned in this Verse because the verse deals with exceptions only and when you do so you do not mention the normal rule and because it is extremely difficult to make justice as the other verse mentions. And also because plu marriage cannot be a rule because (in complete contrast to what you thought) the number of men and women in all societies is about the same, there are no more women than men! Look at the statistics. Besides women (at old age) over-live men in all societies which means that any excess in the number of women (like 50.3% to 49.7%) is in fact in the upper age strata of the statistical scale.

If the issue of children is not an issue for you then why do you need a second wife! And destroy the love you have for it?

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2004

Subject: We did not get Children? – Urgent

From: Tayyaba

Sent: Friday, December 24, 2004

Question

Assalamp-ailkum

Thanks a lot for your response and detailed answer. I may request some further discussion on the subject. First of All it is not sperm or egg -- it is another form i.e. Embryos (like child) - and in my opinion the saragotta mother just the women who breast feed nurse the kid - but here like blood nutrients and womb protection - and the relation could be the same as with the ""Breast Feed mothers"" nursing mothers. There will be no ambiguity of parent hood as both the eggs and sperm are from same parent.. My other question is that, OK if this is prohibited Is there any relaxation based on case to case basis - I am really really getting mental disturbance _ some time so much that I feel that my nervous break down may occur.

Definitely I am trying my best to retry it again and again Inshahallah. Please keep me in your prayers. Once again thanks for your time - Allah will reward you. Wassalam

Tayyaba

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sister Tayyaba

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

No matter how much I claim that I can understand your situation, I realize that it is a lot more than I can know about it. I know that motherhood is something beyond my imagination and feeling as a man. I certainly sympathize with you a lot. But please Notice, the Qur'an says about mothers: "Their mothers that gave them birth" who gives the birth? tThe surrogate of the egg giver? How about inheritance relations who inherits the child or from whom will it inherit, the surrogate of the egg giver? It is not like breast feeding, it is none month growth! Besides, the essential question is who is the mother, the egg giver or the nine month feeder and carrier inside her body? A fetus is always considered as part of the body of mother; in this case, is it a part of the surrogate or the egg giver?

You know adoption is prohibited in Shari'ah by the text of the Qur'an. In contrast, taking a baby, raising her/him and treating her/him like own child is very much encouraged. The difference is the legality that affect Islamic cover when she/he grows (of course unless breast feeding is arranged), marriage (whom can he/she be married to) and inheritance (of course, the Wasiyyah is always available to the extent of one third).

I suggest that you should get a support group, there are many families that have no children, by choice or not) and keep trying and make Duaa, I know a mother in Indianapolis who lost all her three children after she became Muslimah and her ex husband refused to allow her to see them, but in a few years, she gained them all back. the same woman did not give birth from a her new husband after trying desperately for more than fifteen years, and when she got a baby that was not wanted by her mother and put it on her breast God gave her the milk and the girl became her breast daughter. This lady is still alive in Indianapolis.

Please make all humanly possible effort but surrender the matter to God with your Duaa and He will not let you down!

M payers are with you, and please keep trust in God's work
Wa Allahu A'lam
Wa Alhamdu li Allah Rabb al 'Alamin
Wassalam
Sincerely,
Dr. Monzer Kahf

Subject: Polygamy

From: Taahirah

Sent: Monday, October 25, 2004

Question

Al Salamu Alaykum brother,

I am a 26 year old Muslimah and have been married for now 4 years. Last year I found out my husband was intended to a woman who he had been cheating on me on and off through out our whole relationship(says the sister). We decided to have a meeting with his family and mine to resolve this issue.

Before we were married we had several sessions of pre marriage councl. The issue of polygamy came up and we decided it would not be a factor in our relationship because neither him nor I thought it would be good for our characters.

After our meeting, my husband told me he would not marry the sister. This was last June.

We were living in NJ. After all this happened I thought it would be better for our relationship to have space to heal. We agreeded to move to Georgia. I moved in Sep.

During Ramadan (Nov) of last year I found out that he'd married this sister in Aug.

He says he lies to protect me and not hurt me. Is that lawful?

He knew I could not deal with it but we tried. He kept asking me to be patient. And I always would tell myself Allaah (swt) is with me Allaah (swt) has stated in the Quraan "Do men think that they will be left alone on saying, "we believe," and that they will not be tested?"

He never left the sister. In Feb I told my husband that I wanted a divorce. He asked me to move back to NJ and told me he was divorcing the sister.

March I moved back to NJ.

3 weeks later he spent the night out with her and said that he was still divorcing her but he just made a mistake.

Today he is still with her on and off.

My husband does not spend the proper nights with this sister. It will be 2 weeks or 3 weeks passing and he will spend one night with her.

For example two weeks ago he told me he was still divorcing her but it takes time.(he has been telling me this sence March) He did spend the night with her on Fri. And when he does spend the night with the sister he calls me and says he is on his way home, he never comes home, and never calls. I call and get no answer. I'm worried each and every time. I just don't understand why he has to lie and tell me he is divorcing her and it takes time. Is it lawful for him to behave this way?

Now when he does spend the night with her I get so angry because he lies to me and we argue and go through changes that are terrible. I have a bad temper. I feel like my character is changing because of this situation.

Here it is 7 month later and I'm almost 6 months pregnant. I have tried to be patient. I don't want Allah to punish me for divorcing my husband. I don't know what to do. Please advise me.

InshaAllah I expressed myself with no harmful intentions.

Al Salamu Alaykum

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Taherah,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

It is unfortunate that you had to face all these troubles. Although I am not a family councilor (and I suggest that you consult one, in NJ you may find a Muslim one, check with Dr. Shaikh Muhammad Katanani, the Imam of Paterson Islamic center) I like to give you a few hints that may help you especially with the Shari'ah rulings on this issue:

1. I do not say that marrying more than one woman is forbidden but as the Prophet, pbuh, mentioned that divorce is a most hated, in front of Allah, act a Muslim may ever do, yet it is not forbidden, I argue that at this time in America, marrying more than one wife for a Muslim in Amerce is a most troublesome act/ situation Muslims may be indulged with. There are too many complications, repercussions and some times tragedies that may result from it.

2. Yes, it is permissible for a caring husband to lie about his other marriage when he feels that telling the other wife the truth may upset and hurt her. This could be the reason why your husband lied to you on this matter. Unfortunately such lies do not last long and whence they are exposed they cause more anger and deeper wounds. I am sorry for this situation to have happened to you.

3. It is very unhealthy and even, Islamically, wrong for a wife of a polygamist to ask for the divorce of the other wife. This may cause more problems for her than some time having a divorce herself.

4. Take it from me as a man, I suggest that your best course of action is to have more self contentment and tolerance. Why not accepting the reality that your husband have two wives and live with it? I wouldn't give this advice to a man who want to become polygamist. But here we are after the facts, take it in a better spirit and leave all action to God on this issue, let him even divide his nights equally without fearing that he causes anger to you, and let the other woman have her full right too! You can survive with this reality; I know some women for whom this was extremely hard at the beginning but once they decided to accept it as a reality and left the matter to Allah to decree what course of action will happen they felt better rather than bitter and they survived with the presence of another woman in the life of their husbands. I do not suggest that this will be an ideal situation that you dreamt of but it may be a second best having lost the first best, especially with the baby who going to come and who

needs both of you, eve with half time with the other wife, try to take life easy and take the other wife as a friend!

5. I think a divorce is the last straw you should think of. The coming baby needs you to be married to her/his father and take what Allah has given you and pass the test. By the way the Original Arabic of the Verse you quoted says Nass (humans) not men (Rijal) and it applies equally to men and women.

Once more please do not hesitate to write me any time but also consult a Muslim family practitioner who may give you better advice and support.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: marriage small skirmishes

From: Khalil

Sent: Wednesday, October 06, 2004

Question

As salaamu alaikum,

I am writing to ask you a question. My mother is married in polygamy. She is the second wife. She has had a dispute with her husband nothing major. She lives in chicago and he lives in new jersey. He is primarily with his first wife becasue he earns his living in new jersey. in any event while she was up here they had a simple dispute regarding regulard husband and wife stuff. He in turn said to her that he will not tolerate a disobedient wife and he is not going to speak to her for 30 days. I would like to know if that is permissible to not speak to your wife for thirty days, and if not what is the islamic text that i can refer to help her.

Ma Salaam

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br./Sr.,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

please allow me to give you first a few details:

You know that wife/husband skirmishes are normal. And there are many tools each of them may use to punish/take revenge from the other. most of such tools are permissible including turning one's back to the other in bed, talk boycotting for up to one month, temporary refusal of sex (for her it means abstention from cooperation/acceptance but if he makes it forcefully it is only a bad manner not raping) and non abusive expression of anger... In a famous case the Prophet, pbuh, boycott all his wives for one month (that happened to be 29 days) during which he slept in the mosque. A wife may also do a similar thing by leaving the house and staying with any member of her family. I am sure you will find many Fuqaha who would say that these

tools are only available for him not for her. But a close look at the Muslim society/family, in the past and in the present indicates that they are in fact available to, and actually exercised by, her too.

Any humiliating hitting, verbal, physical or psychological abuse are not permissible and may be good reasons for divorce with full financial cost on him. The only hitting that is permissible (only by him) is one that is closer to joking that real such as using his palm for light spanking with a word of "don't do that again to me." Humiliating hitting is one on the face, leaves a trace or bruise or is painful.

Lastly, the matter of obedience (wife to husband) is only limited to sex, it does not include other matters. Unfortunately, people often confuse obedience with ""good co-living"" [to use the exact translation of Husn al Ma'sher]. Good treatment is an obligation on both to each other, it is mutual and required from both. Obedience that is mentioned in the Qur'an relates only to sex as the context indicates.

This means that although what your step father did may be literally permissible, it may not be an ingredient of Husn al Ma'sher, depending on why he did it... Besides, your mother has an equal right, unless she voluntarily relinquished it, to equal housing and nights, of the other wife, including staying in New Jersey where he works.

Anyway, reconciliation, tolerance and forgiveness remain always the best way out of all family disputes.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

From: Khalil

Sent: Friday, October 08, 2004

Question

Wa Alykum As salaam,

Thank you for your response brother Monzer. So he has the right to not speak to his wife for thirty days I mean not call to check on her to see if she is okay or to make sure that she is financially stable or in good health for thirty days. And if that is permissible where is the text for reference.

Khalil

My Answer

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Khalil,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I never said that during the talk boycott period of 30 days that the husband has the right to stop his financial support. He is required , at all time, to provide financial support, and if she needs any medication, to supply her with it. Remember she has the same right of

talk boycott too. Yes, he may decide not to speak to her for one month. The evidence is the action of the Prophet that I mentioned in my previous email.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Re: Divorce Contracts

From: Khalil

Sent: Tuesday, March 02, 2004

Question

AS SALAAMU ALAYKUM,

I AM INTERESTED IN LOCATING A DIVORCE CONTRACT IF POSSIBLE.

KHALIL

My Answer

Bismi Allahi al Rahmani al Rahim,

Al Hamdu li Allahi Rabbi al 'Alamin, wa al Salatu wa al Salamu 'Ala Sayyidina Muhammad wa 'Ala 'Alihi wa Sahbihi 'Ajma'in,

Dear Br. KHALIL

Assalamu Alaikum wa Rahmatu Allahi wa Barakatuh

There is nothing in the Shari'ah that makes a divorce contract. remember a divorce may not be amicable, in this case there should be a settlement imposed by either mutually agreed on arbitrators or a court. Divorce also may be a unmilitary action from the husband, in this case if the wife is not satisfied with the payments he made in fulfilling his responsibilities the court (or even arbitrators) becomes the the source of settlement. Of course, if there is a Khul' (divorce from the wife for no fault of husband) or a divorce caused by husband's abuse, there must be a decision by a court (or arbitrators).

if a divorce is amicable, the parties will have to give in (with actually no limit) to reach an agreement.

In brief, if there is no marriage agreement or an agreement to accept a decision of arbitrators, there is no sense of a divorce agreement. However, the essentials that can make any amicable divorce agreement relate to children and financial rights, the latter is left to mutuality and the children's matter is mentioned in the marriage agreement that is on my website.

Wa Allahu A'lam,

Wa al Hamdu li Allahi Rabbi al 'Alamin,

Wa Assalam,

Sincerely,

Dr. Monzer Kahf

From: Khalil

Question

Wa Alykum Salaam,

Yes I divorced but if I am correct I pronounced Talaq then after every menstrual cycle I pronounce Talaq until after the third one the divorce is irrevocable. Is that not correct. Could you please give me examples of what has to be arbitrated. And how long after the divorce would I have to maintain her.

Wa Salaam

Khalil

My Answer,

Bismi Allahi al Rahmani al Rahim,

Al Hamdu li Allahi Rabbi al 'Alamin, wa al Salatu wa al Salamu 'Ala Sayyidina Muhammad wa 'Ala 'Alihi wa Sahbihi 'Ajma'in,

Dear Br. Khalil

Assalamu Alaikum wa Rahmatu Allahi wa Barakatuh

Yes, after the third pronouncement of Talaq, done as you mentioned, it has become final. You have to provide her with home and other expenses for three months, if after the third Talaq it should be separate from your own. You are required to pay her the remainder of the Mahr, if there is any. It seems to me that what needs to be arbitrated in this case is whether she has any complaint against you of ill treatment during the marriage, if she was non-Muslim or a new Muslimah any misconceptions you gave her before and at the time of marriage, and any financial claim she may have against you.

Wa Allahu A'lam,

Wa al Hamdu li Allahi Rabbi al 'Alamin,

Wa Assalam,

Sincerely,

Dr. Monzer Kahf

From: Khalil

Sent: Wednesday, March 03, 2004 9:30 AM

Question

WA ALAYKUM AS SALAAM,

Thank you for responding so rapidly Bro. Monzer. Let me explain my situation. There are no kids involved at all. I am presently married and took on another wife. All the problems that has arisen out of this situation are too much for me. I am having problems with my wife I took on as a second wife. I have put her in Iddah and I wanted to know if there is something in writing that I should put together. Also how long do I have to maintain her and to what standards since there are no children involved.

Khalil

My Answer,

Bismi Allahi al Rahmani al Rahim,

Al Hamdu li Allahi Rabbi al 'Alamin, wa al Salatu wa al Salamu 'Ala Sayyidina Muhammad wa 'Ala 'Alihi wa Sahbihi 'Ajma'in,

Dear Br. Khalil

Assalamu Alaikum wa Rahmatu Allahi wa Barakatuh

What do you mean by "put her on Iddah"? Did you divorce her. I can't tell you anything in absentia or without hearing from her. There are many things in divorce that need

arbitration, the arbitrator need to know her and discuss with both of you many details about divorce even when there are no children.

Wa Allahu A'lam,
Wa al Hamdu li Allahi Rabbi al 'Alamin,
Wa Assalam,
Sincerely,
Dr. Monzer Kahf

From: Khalil
Sent: Thursday, March 04, 2004 7:27 AM

Question

Wa Alaykum As Salaam,
Bismillah ir Rahamn ir Raheem
Bro. Monzer,

I was also told that I had to maintain her for 1 year after the divorce is final is that so.

My Answer,

Bismi Allahi al Rahmani al Rahim,
Al Hamdu li Allahi Rabbi al 'Alamin, wa al Salatu wa al Salamu 'Ala Sayyidina Muhammad wa 'Ala 'Alihi wa Sahbihi 'Ajma'in,

Dear Br. Khalil

Assalamu Alaikum wa Rahmatu Allahi wa Barakatuh

This is not correct unless it is a result of an arbitration settlement or mutual agreement or required by law and you did not make a prenuptial agreement.

Wa Allahu A'lam,
Wa al Hamdu li Allahi Rabbi al 'Alamin,
Wa Assalam,
Sincerely,
Dr. Monzer Kahf

Subject: Hijab and Marriage

From: Hafeeza
Sent: Monday, January 19, 2004

Question:

Bismi Allah al Rahman al Rahim
Al Hamdu li Allah Rabb al 'Alamin
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in
Dear brother Monzer Kahf,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh

My daughter is married to Rashid since about two years. She has been wearing Hijab since childhood. Before marriage he knew it. But since probably more than 6 months now he is insisting her to take out Hijab. He says that she and her mother and sisters wear Hijab to show off.

Up till now Allah helped her to resist. Now on 22nd of this month they are going to Pakistan to visit for one and half month. He told her that he will not let her wear Hijab in

Pakistan. After many time arguments and quarrels, she told him that she will not wear Hijab at home in front of his brothers etc in Pakistan but just hold dupatta around without covering head in front of them. And later on, on my concern she told me while crying that she said so to save her marriage. and that at least she can wear dupatta.

(dupatta is a long scarf which could be thin too which most Pakistani girls/women wear without covering their head)

She also had a deal with him that, while in Market places in Pakistan she will keep dupatta on her head also. He agreed for this.

Although this method of keeping dupatta shows part of hair, complete fore-head and part of neck. And some time it can drop backward also because of air etc.

Now she wrote me an email. I am out of Canada nowadays. I am forwarding her email to you too.

Do you think she has any other choice to avoid serious clashes on this topic? Do you think she can compromise on his wishes for the sake of saving matrimonial clashes which can lead to serious consequences?

Can you please advice her what to do which will not qahar /anger of Allah?

Some people are saying, "to save matrimonial life she has to compromise and pray to Allah until when Allah guides him and changes him? They say don't make this issue to break the marriage. Are these people right?

By the way she is already suffering in his company with many issues. Like watching English or Urdu film, movies, going to cinema house, wearing short tops on trousers without any abaya (after marriage he removed her abaya/julbab.). If she will not do this with him he gets very angry and stops talking etc. Neither he goes to listen any lectures in Mosques nor let her do. In this way he is away from knowledge. Alhamdulillah he prays most often five times a day and often reads Qur'an after Salat. But he reads only the Arabic part of Qur'an, which of course he doesn't understand what he read.

I need an immediate reply in the light of Qur'an and Hadith keeping in mind what pleases Allah most and how can we avoid putting her matrimonial life into trial.

Please please pray for my daughter and that Allah change her husband towards Taqwa and bless him guidance and knowledge, Ameen. I beg you for your Du'a.

Wassalam

Sister Hafeeza

Following is my daughter's email written to my husband and me.

dear mom and dad

just wanted to let u know that last night my husband told me that I'm not going to wear scarf on airport in Pakistan since he wants me to become normal like all other girls in Pakistan, and I told him that please u told me before I can wear dupatta and now he says that not on head. well I begged him a lot to please let me wear and he said no and I can't discuss this topic with him and that's his final reply. I cried a lot but he still didn't listen to me. so I am really stuck now. why are husbands so evil? he thinks I'm showing off by wearing Hijab showing that I'm pious etc. I will try to wear scarf in Pakistan airport but if he fights again, I guess I lose. tell me what to do coz I have no one to help me.

well even if I don't wear I know in my heart Allah SWT knows my heart and know why I can't wear it and someday my husband will understand that I am normal and other girls

in his family are NOT. well, I wish he told me before marriage that he finds hijabi girls abnormal. ok I go now. AH. I will ask twins to send mail to my sister on her private address too. maybe she can help me. My husband did say I can wear dupatta on head when going to Market, etc.

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Hafeeza

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

I pray to Allah to help your daughter in this grand test. I think for now she should keep gently advising him and each time she goes out she should start with her Hijab and if he doesn't like it let him remove it himself because she is not going to remove it, even in presence of his brothers and other male family members, except of course his father, she may seek help from some religious person from his family.

Once she comes back to North America, I believe she should make the same attempt again and each time she goes out she puts her Hijab (a Abayah can be compromised provided the pants are not tight and there is a long blouse to cover her bottom) and if he insist on removing it with his own hand, or saying he won't go with her, fine she stays home, and if he insists on removing it with his own hand I think the obeying Allah is more important than a marriage that makes her suffer but she must not rush into breaking her marriage. She must ask first for arbitration by some wise persons around them especially family or from the Imam of the mosque, doesn't he pray Friday? And if not have her come back home until he decides to respect her choice, she is right and she certainly is not putting it for show off. You don't know what Allah had preserved for her. May be coming home to you may wake him up or Allah may have a better husband for her. She must not rush to ask for divorce, unless he insists on it: when it becomes either minimum Hijab (covering all the body including hair with cloth that is not tight to indicate the exact shape of the body) or marriage, I would say obeying Allah is more important than obeying the husband. The order of Hijab is clear in the Qur'an and the prophet said that no person can be obeyed if it means disobeying Allah.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2003

Subject: Legal document of marriage/a thought

From: Najwa

Sent: Wednesday, November 12, 2003

Question:

Assalamu Alaikum,
Ramadan Mubarak!

How would I legalize the documents provided at your site (marriage contract etc)? We have been married for nine years (registered with state of IL and Islamic document was provided). However, I am not sure the contract provided is "correct" and would like another one. I was 18 at the time (without Muslim relatives or any relatives) I am not even sure, if the ceremony was done according to Shari'ah. Alhamdulillah! I have good husband and good marriage. Legally (according to Shari'ah) is this something I should be concerned with it has been on my mind for some time now? Thank you for your time and assistance in this matter! I live in Chicago, if you would like to refer me to someone. Shukran

Wassalam alaykum

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Najwa

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

For a marriage contract to be valid, from Shari'ah point of view all it needs is an offer to marry and acceptance with determination of the Mahr in presence of two witnesses, it is better if a male Muslim relative, who would be a guardian if she was incapacitated (father, parental grandfather, brother, son and then farther relative). I suppose your marriage was done with the four minimum requirements. It does not have to be red nor certified by an Imam, It doesn't even need the presence of an Imam. Witnesses may be Muslims or not.

Now that you are married, if you choose to make a post nuptial agreement it may be better, just in case any thing happens and to reflect the requirement of Islamic law in case anything happens, so that others, including the state law, do not interfere and wreck certain rights or duties. you may take the form I have on the web and show it to a lawyer. I am not a lawyer and I do not provide legal advices, I only explain what is the requirement of the Islamic religion in a way that is legally understood and acceptable. If you want a word copy of the file I can email it to you.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

From: Najwa

Sent: Thursday, November 06, 2003 3:53 PM

To: Monzer Kahf

Subject: RE: Legal document of marriage

Assalamu Alaikum,

Jazakallah Khair! Thank you for that clarification. Yes I would like a word copy of the file. Again thank you so much for your time and assistance in this matter.

My Answer

Dear Sr. Najwa

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Here is a word copy of the post nuptial. Remember it is certainly free of any charge for personal use and when you show it to any lawyer please tell her/him about its source, my website, and that it is copyrighted for any commercial use.

Wassalam

Sincerely,

Monzer Kahf

Question:

Assalamu Alaikum,

Could we fill it out, get it notarized? would that be sufficient, or do we have to go to a lawyer, I haven't called the bar association, but so far they are expensive!! Thank you very much, for you time and efforts, I understand and respect your disclaimer.

Jazakallah Khair !

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Najaw

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

A written contract is only needed in case of dispute. I think the language you have is very solid, It has been seen by more than one lawyer, yet I'm not a specialist. My formal background is economics and my informal is Shari'ah. I can argue for the text itself but I don't give a legal advice. some place in the postnuptial it says that each spouse got legal advice. it is up to you if you decide to just sign and notarize it confessing that you guys got independent legal advices.

BTW, I believe, although many wives and most men do not fully realize nor internalize the mutual responsibilities of the Islamic contract because the study of most of us about Islamic marriage is very limited, that once understood outside the realm of male chauvinism that is apparent in certain areas of our classical Fiqh, the Islamic Shari'ah is better than fair on the issue of genders.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: A Wife Helping her husband in Business

From: Islam on line

Sent: Tuesday, October 14, 2003

Name of Questioner HUMERA

Country Pakistan

Question:

My husband wants me to help him out in his business that I have been doing for past 4years, we live in America and have 2 kids , sometimes it gets very hard for me to handle all this work and then take care of the kids sometimes kids get neglected and I have been telling that to my husband for a long time that I cannot handle all this work cuz the kids r suffering besides we have been arguing a lot on how to run the business and it is effecting my relationship I accept that I am short-tempered but I am trying my best to take care of that problem , on the other hand not only does he wants me to take care of the business he also wants me to handle the expenses, he is not taking enough responsibility , he has some good qualities like he is very respectful to me and my family but he has been taking wrong financial decisions for a long time now he doesn't do anything in time and when things go wrong he wants me to fix them and then talk to people if we owe any money and can't return it in time . I am so worried and I have been telling him to take more responsibility he just says ok and then do the same mistakes over and over again, he never followed up with my case of green card and because of that I suffered in Pakistan so much without him with my 2 little children, I am very worried, if I tell him I can't do it he gets agitated, I don't know what to do is ALLAH TALLAH going to be angry if I make my husband angry because I am not being an obedient wife? if I don't do things right the way he expects he gets very annoyed. I have been running this dry cleaning business for 4 years now. I don't want to create a tense environment in my house .does ALLAH TALLAH WANTS US TO MAKE OUR HUSBANDS HAPPY IN EVERY WAY WE CAN EVEN IF HE WANTS US TO HELP HIM EARN MONEY?MAY ALLAH GIVES U A REWARD FOR ANSWERING MY QUESTION.

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. HUMERA

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

What you are doing in raising the kids and helping in your husband's business is voluntary on your part, both are the husband/father duties not the mother/wife responsibility. None of these things are implied or required in the marriage contract as it is defined and explained in the Shari'ah. Of course mother like to take care of their children and they are better qualified than fathers (or than men in general) in many aspects of raising kids, but that does not change the marriage which is not a service contract. Obedience, in the pure sense, is required only in the obligatory matters that center on the intimate relations between married couples.

On the other hand, helping and pleasing each other and keenness to make the other happy, regardless of rights and obligations, is certainly one of the basic characteristics of a successful marital relationship and each of the husband and wife are expected to do all they can to offer the other the utmost they can of help, mercy and comfort.

I think your case needs marriage counseling more than searching for what is your, or his, duties/responsibility.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: A Divorce Question

From: houda

Sent: Thursday, June 26, 2003

Question:

Dear Dr. Monzer,

Salam Alaykum, I have got your email from Islam online.

I have a question regarding divorce.

I divorced 2 years ago. I got married in the US, both at the city hall and at the mosque.

However, I did not have a marriage contract. At that time, I was a student and my parents informed my ex-husband that I should continue my studies. After a year we bought a house. He was the only one working. The house was on our names, but he was the only one making the payment. We divorced after 6 years. I did not go to the court for the divorce yet I went to the Imam. The Imam informed us that I had no right on the house however I was entitled to \$15,000 because we were married for 6 years. I moved out taking my clothes, my computer, 2 rings and my pearls.

Today, after 2 years, I am learning more and more about my religion. Thanks to Allah.

Now, I would like to know what the Shari'ah says, since I did not have a marriage contract. If you need further information please let me know. Thank you for your time.

Thank you in advance, May Allah grants us His forgiveness amin.

-Houda-

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Houda

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Let me suppose you made the divorce in court and that divorce was initiated by your ex-husband. In this case you are entitled to all the Mahr (both the part that was paid at the time of Marriage and the part that was postponed). Additionally you are entitled to all the gifts you were given at and during marriage (gold and diamond jewelry, etc.). You are also entitled to expenses including residence to three month if you have no children and you were not pregnant at the time of divorce. If there were children or you were pregnant you are then entitled to expenses including residence until the child becomes mature (18 years) provided you do not get married again if you get married the caring about the minor child goes to your mother and she will be entitled to the same. you will have unrestricted and unlimited visitation.

I don't know where the idea of \$15000 did come from or why it was related to the duration of marriage. To my humble knowledge there is nothing in the Shari'ah that relates the end of marriage payment to the duration of marriage.

Regarding the house. if it was put in both your names when it was purchased the net equity in it was then owned by you on the basis of half/half regardless of who paid for the down payment and the monthly payment. Unless there is an agreement, even verbal, to the contrary the fact that it was recorded in both names means that the spouse who is paying more or all is granting the other spouse a gift of half the equity in the house. At the time of divorce you are entitled to one half of the net equity in the house. If there was an agreement between the husband and wife to the contrary, this agreement is what should be honored. This principle also applies to any other property or business.

If the divorce was initiated by you, if there were good reasons for asking for divorce, acceptable to court such as physical abuse, lack of fulfillment of his obligations, etc., the above holds.

If the divorce is not justified by any reason on the part of the husband, i.e., simply you wanted divorce because you don't like him anymore, you have to return to him the already paid part of the Mahr and the major gifts (diamonds, gold, the gift of half of the house and similar permanent items) and you are not entitled to any expenses for three months if there are no children.

If you have any question please do not hesitate to write me but give me more details.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Should My New Husband Provide for My own Daughter

From: Islam on line

Sent: Tuesday, May 20, 2003

Name of Questioner

Question:

Assalamu alaykum, Jazakallah for your valuable service. I am divorced and I have a 7-year old daughter. If I get remarried and my ex-husband (my daughter's father) dies or becomes disabled and incapable of providing, will my new husband be responsible for providing for my daughter (food, housing, education, clothing, health care, transportation, etc.) until she gets married? Jazakallah Khairan.

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr.

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

The principle is that a man is financially responsible for the living expenses of his minor children, and if he is well to do and his adult children are in need for them too in their adulthood. This responsibility is shifted to paternal grandfather, and if not uncle in case of incapability of father or grandfather. You become responsible for your daughter if there are no male close relatives (to the extent they may inherit her should she die) who can support her.

Accordingly, in principle your second husband is not responsible for your daughter from a previous marriage even if her father was dead or incapable to provide for her. BUT before marriage you may make a condition of spending on your daughter on the new husband. There is a great example in the Sunnah about this condition. When the Messenger of God asked Umm Salamah for marriage, she declined giving the excuse that she has minor children that she need to take care of financially and physically but she accepted to marry the Prophet when he told her that he considers her children as part of his household, he literally said " "iyaluki 'Iyali" that means your dependents are my dependents. You can make this condition on the new husband (remember in principle care providing for the girl goes to your mother, if she is Muslim, if get married without this condition. The condition can also be made as post nuptial but certainly the prenuptial condition is much stronger, although both are binding, following the Saying of the Prophet that conditions in marriage are most worthy of fulfillment.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Pronouncing Talaq

From: mimi

Sent: Thursday, April 10, 2003

Question:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Dr. Kahf: Thank you for your advice and your answer. about my "TALAK" all I remember is that after 4-5 years of marriage in one of our argument ended up by him saying "Anti Taliq" that time we use live in London England and I have my son was 3 years old. I am faraway from my family so I did not go away any where same for him , was no any separation and his brother helped us to cool the situation right away and told me once you are back together no separation, it will be no talk. I do not remember any time about the second time at all and I have good mammary, he is the one suffer from bad mammary for other stuff. (he had bad car accident few years ago). so when some friends tried to make up between us he told them that we can not go back together because it is the 3rd time. it was surprise for me, I asked him he said yes. I feel so sorry for him to be alone he is now 67 years old and I am 56 and I feel so shamed to be divorced at this age. most of the people we know do not know we are divorced.

my social life suffered because we can not be together any more and I always give an excuse , he got busy with a mosque men close by. and I always try to find single ladies friends. Do you thing from what I told you that we are divorced 3 times??

I worked very hard to keep my family tighter and I have suffered a big deal to give my kids a good home. and my health was the price , I believe in my family even if we are not happy together family must be together no matter what. About my daughter new last name is "Van Veen" is it ok? About Legal divorce I will get it "IN SHA'H ALLHA" plus I trust him that he will follow the Shari'ah .

Thank You a lot , Wassalam Alaikum,
Sr. Mimi

My Answer:

Dear Sr.

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

If he is very sure about the second Talaq, it is his word that counts because he can pronounce it even without informing you. But if the accident that affected his memory was before what he told the friend it was the third time, it may be his bad memory that gave him the illusion that there was a second one. It may be worthwhile to check on this point and clear it because you may be still husband and wife.

You should take good care of your health because it is the thing that carries you along with the help of Allah, The name your daughter selected is fine I was only asking if she found its meaning. You still will be a lot better to have a third person to live with you in the house.

Wassalam
Sincerely,
Monzer Kahf

Question:

From: mimi

BESM EL-LAH AL RAHMAN EL RAHEEM

ASLMO ALIKOM:

Dear Dr. Kahf:

would you kindly advice me according to the Islamic Shari'ah

Here is my situation after 25 years of marriage, when I refused to agree with my husband to sell our home , because he does not want to carry mortgage any more, he believes it is "HARAM" .

He divorced me by saying (ANTY TALIK) and that happened seven years ago. That is the 3rd time to be divorced by him. We have been in this house over 15 years, and my kids (2) still student at the university and I am working women since I got married. We are not divorced by Canada law, but we have legally separation agreement.

Of-course we asked our Imam if it is ok for him (husband) to still live in same house as a brother to me .said it is ok. after the kids graduated he(ex) asked me to pay his share in the house so I did and he become my tenant. now the kids out of the home , God is our witness we are like a brother and sister. I am out all day working when we are home every one of us in his room. hardly to see each other. I am now the one paying the

mortgage in full , financially I am ok, but I am very sick physically , and I am afraid to be alone , I feel I am save in my home (for 22 years) and I feel some one is home just in case something happened. my daughter is married , may son in Uk faraway. is this ok to live like that . Is it "Halal". to have him as a tenant , to carry mortgage . Please till me.

Jazakallah Khairan.

Mimi

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr mimi

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

What is prohibited is the Khalwah. That is being with him (stranger) in one place together in a way that prevents other eyes and ears from witnessing what you are doing. If that happens, it is then Haram. Now, with both children are out of the home, the likelihood it may happen is big even though each has own rooms whose door can be locked out especially if you use common kitchen and other facilities. Can't you get a third person with you or find a female tenant in his place? Or get your daughter and her husband to live with you? By the way, congratulations for her marriage, I hope she at least lives close by. Did she find out the meaning of the last name of her husband? (just for your information when my wife and I came to America 32 years ago, we tried to keep her family name but we were embarrassed several times because people thought at that time that we were not married but only living together, so my wife changed her family name to mine after about two years of embarrassment! Now people are used to see married couples with different family names.

I'm worried about the Talaq itself. Are you sure that the first two times were exactly the same way like the third one " Anti Taliq" ? Because if they were not the same way there is a chance they were not really Talaq and you guys may have mistreated yourselves because of asking the wrong Mufti! If you are sure the first two times are real Talaq, why don't you make legal Talaq? Separation alone doesn't prevent inheritance in case something, La Samaha Allah, happens to any one of you

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Name Change at Marriage

From: shassan

Sent: Sunday, March 30, 2003

Question:

Salam,

My name is Shassan. My mother gave me your email address because I have a question about the religion. My question is: if a woman is marrying a Muslim man who does

not have a Muslim name, can she change her name to his last name when they marry, or can she hyphenate to combine her original last name with his? I am wondering what the religion says about this.

Thank you for your help with this matter. I hope to hear from you soon
Shassan

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa
Ashabihi Ajma'in

Dear Sr. Shassan

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

The Islamic principle is that marriage does not affect or require any name change for either the bride or the groom. When a Muslim girl marries, certainly it is prohibited to marry a non-Muslim man, she doesn't need to change her name whether the groom has a Muslim or non-Muslim family name. However, it is permissible for any person to change her/his first name or family name at any time. A husband may change his name to his wife's or a wife to her husband's at any time if either so desires. What is necessary is to observe the following three rules:1- A Muslim, male or female, must not take a name that indicates belonging to other religion such Christian or that indicates worshipping of idols or historic persons, even Prophets.2- Best names, as the Prophet Muhammad, pbuh, told us are Abdullah and AbdulRahman, he also liked names with good meaning. You know he named his too grand children himself and chose for them Hassan and Husain. These two words mean good and smaller good. Names that are not Arabic may be good too. You cannot call a name non-Islamic if it is in a foreign language. There are many English names that have either good meanings or they are names of Prophets, All such names are Islamic names even if they are not Arabic.3- the general rule for names is to give indication to one's fathers and forefathers. The Qur'an (33: 5) tells us: call them by the names of their fathers. For instance, my family name links me to any person who carries the same family name. We are now spread from Damascus to the four corners of the world including several cities in each of the Arab world, Europe and the USA. This is a family name that we all carry for the last three centuries at least. You know it is stylish these days for married couples to keep their names (certainly provided both of them are acceptable names). Actually my daughter and four daughters in law all kept their own family names, they range in age between 18 and 35 years. In brief, you can do any thing you like as long as you observe the guidance of the three rules mentioned above.

Wa Alhamdu li Allah Rabbi al 'Alamin

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

From: shassan

Question:

Wow, that was a very detailed response. Thank you for taking the time to do that. My next question, then, is how I find out what the 'meaning' of a last name is. I've tried several times over the internet to find the meaning of 'van Veen'. I do not believe it has a Christian meaning, per se, but I am at a bit of a loss.

If you have any suggestions, I would really appreciate it. Thank you for your time and effort in this matter. Wa Alhamdu li Allah Rabbi al 'Alamin Wa Allahu A'lam Wassalam

Sincerely,
SHassan.

My Answer:

Dear Sr.

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

The words Van Veen don't seem from an Anglo-Saxon or Latin origin, you need to know the language, what is it? And then consult a dictionary of that language, find out the root of the words in their own language. Could such a structure mean servant of a god that used to be worshiped by the people of that language? Many compound names have this kind of structure. . .

Good luck and ever happy and lasting marriage InShaAllah,

Wassalam

Sincerely,

Monzer Kahf

Subject: changing name of woman at marriage

From: Shereen

Sent: Sunday, March 30, 2003

Question

Salam. My name is Shereen. My mother gave me your email address because I have a question about the religion. My question is: if a woman is marrying a muslim man who does not have a muslim name, can she change her name to his last name when they marry, or can she hyphenate to combine her original last name with his?

I am wondering what the religion says about this. Thank you for your help with this matter.

I hope to hear from you soon. Shereen

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Shereen

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

The Islamic principle is that marriage does not affect or require any name change for either the bride or the groom. When a Muslim girl marries, certainly it is prohibited to marry a non-Muslim man, she doesn't need to change her name whether the groom has a Muslim or non-Muslim family name. However, it is permissible for any person to

change her/his first name or family name at any time. A husband may change his name to his wife's or a wife to her husband's at any time if either so desires. What is necessary is to observe the following three rules:

1- A Muslim, male or female, must not take a name that indicates belonging to other religion such Christian or that indicates worshipping of idols or historic persons, even Prophets.

2- Best names, as the Prophet Muhammad, pbuh, told us are Abdullah and AbdulRahman, he also liked names with good meaning. You know he named his two grand children himself and chose for them Hassan and Husain. These two words mean good and smaller good. Names that are not Arabic may be good too. You cannot call a name non-Islamic if it is in a foreign language. There are many English names that have either good meanings or they are names of Prophets, All such names are Islamic names even if they are not Arabic.

3- the general rule for names is to give indication to one's fathers and forefathers. The Qur'an (33: 5) tells us: call them by the names of their fathers. For instance, my family name links me to any person who carries the same family name. We are now spread from Damascus to the four corners of the world including several cities in each of the Arab world, Europe and the USA. This is a family name that we all carry for the last three centuries at least. You know it is stylish these days for married couples to keep their names (certainly provided both of them are acceptable names). Actually my daughter and four daughters in law all kept their own family name, they range in age between 18 and 35 years. In brief, you can do any thing you like as long as you observe the guidance of the three rules mentioned above.

Wa Alhamdu li Allah Rabbi al 'Alamin

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Custody of minors and financial responsibility at divorce

From: From a Live Fatwa Session on Islam on line,

Sent Sunday March 23, 2003

Name of Questioner Nada

Gender: Female

Question:

Divorce in an American court?

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Nada

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

To give you a complete answer, we need more information, in the meanwhile here are a few points you need to remember:

1- According to Shari'ah, in case of divorce, your young children should be under your care, and financially under the guardianship of their father. If you get married the care goes to your mother, with unlimited visitation to you. Also by mutual agreement between you and your husband, he may give you the financial guardianship too.

2- Their father is required to financially support the children and the care giver (you or your mother) in accordance with the father's ability and standard of living. You have the right to refuse this support and take full responsibility of their livelihood needs. If you get married your support ceases and he is required to support the care giver, your mother, instead.

3- A divorce in Shari'ah does not need from the husband more than pronouncing the sentence "I divorce you." It can be pronounced in any place including a secular American court. Therefore a divorce pronounced in an American court is valid in Shari'ah. Upon divorce you are entitled to the delayed part of the Mahr (Sadaq) and to support for three month. Since the Shari'ah does not mix the properties of the husband and wife as a result of marriage, there is no distribution of property upon divorce as is usual in the secular American laws.

If you have any further question you may email me directly.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Marriage statements and Name Change

From: Mimi

Sent: Tuesday, March 18, 2003

Question:

Dear Dr. Kahf: Aslamo Alikom: would you kindly tell me what a man says when get married same what women say in answering him. I know that the Imam says I marring you both on Sunnah Allah W Rasullah. What is Sunnah Allah W Rasullah in details??

My daughter is getting married to A Canadian young man who converted to Islam recently. She is Canadian Born, and She is A professional carrier young Lady. I am against adding her future husband's last name. My reason is her future husband's grandfather (last name) is non Muslim and she should not carry non Muslim last name. I feet strongly it is HARAM?? Would you please help me and let me know if my feelings are right??.

GAZAK ALLAH KIRN.

Mimi

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Mimi

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

A marriage contract in Islam requires four components: Offer from A groom, Acceptance from a Bride, a Mahr which is an agreed upon amount given by the groom to the bride that can be paid at the time of the contract or delayed wholly or partially by mutual agreement, and using the word Marry or marriage. The majority of Shari'ah scholars add a fifth requirement the approval of the closest male relative of the bride (in sequence: father, grandfather, brother, son)

Using the phrase "on Sunnah Allah W Rasullah" is not part of the marriage contract. However, to use a Term like "in accordance with the Book of Allah and the Sunnah of Rasul Allah" is always good. It means that this marriage is done in Accordance with the Qur'an and the tradition of the Prophet, pbuh. Please read and consult the form that is proposed as a "Prenuptial agreement," especially the form of marriage certificate at the end of it, on my website www.kahf.net

Changing family name of the wife to the husband's family name is not part of the Shari'ah or a tradition in All the Muslim countries. According to our religion, a Muslim wife preserves her name, property and independent personality and finance. However, it is not forbidden to change name of either husband or wife if both chose that. The husband may change his family name to his wife's or the wife may change her family name to her husband's, both are permissible in Islam, though there is no reason for any as I just mentioned. If one wants to change one's name (whether given name of family name), one should select a name that has a good meaning, some word that expresses either submission to God like Abdullah or AbdurRahman, or a sense of moral or physical beauty like Hasan, Yaman, Yasir or Nura, Noma, Habibah. Muslim names don't have to be Arabic, they can be in any language like Mercy, Daisy and John.

If a person becomes a Muslim, after being in another religion or without religion, one doesn't need to change one's name unless if the meaning of the non-Muslim name is bad like Dog, or it refers to a religious meaning of the past false religions like Abd al Masih or Christian. Otherwise if the name is neither bad nor religious one may keep the birth name after one becomes Muslim.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Spending, Community Property and Custody Clauses in Post Nuptial Agreement

Sent: Monday, March 10, 2003

To: Dr. Monzer

Question:

As-Salaam-Alaikum

I read the Pre Nuptial Agreement on your website and have a question about these two sections:

"2- However, if by her own will and desire and without pressure from her husband the wife _____ decides to pay for any of the household and personal needs

and expenses, this is considered a voluntary contribution from her, rewarded in the Hereafter, God willing, and appreciated by her husband in this worldly life. In such a case, she has no right, at the time she spends or at any future time to claim, seek and or ask for any material or monetary compensation for such voluntary payments whether from her husband, his agent, his guardian or personal representative, or from his estate.”

“ARTICLE III: INHERITANCE

3. Wife hereby waives and releases any share in the joint and community property and in the personal property of her deceased husband she may otherwise be entitled to by laws of the state in which her husband dies, or where the estate property or any part therefrom may then be located, in favor of the distribution in accordance with the Islamic inheritance system as mentioned in section 1 regardless of whether the Islamic distribution allows her bigger or smaller share.”

What is a wife to do if she had children from a prior marriage and those children are not provided for by their father and then she remarries? In essence working is the only option to provide for them. The new husband does not really accept that he is to provide for them. He is just to provide for her.

She has purchased a home and the husband moves into it after marriage. Does it make him entitled to it if he did not contribute to the house purchase?

If my children need something that I can't afford he loans me the money and I have to pay him back. What are Islamically sound expectations?

I understand that my children can never be his children but what can I honestly expect of him in regards to them?

There are many things I realize now that I did not cover in my Prenuptial Agreement. I want to set up a Post Nuptial agreement. Must it be signed by an Imam?

Qadara

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br./Sr. Qadara

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Please excuse me first because from your name I could not tell whether you are a female or male.

1 - According to the Islamic Law (Shari'ah) the children's father is responsible to provide for them and for their mother if she is devoted to providing them with her care. If she gets married, care provision is shifted to her mother and the children's father is still responsible. For Muslims living in the Western countries this is most likely not available. If the father escaped his responsibilities and the mother gets married, at the Marriage contract she can make a condition that the new husband should provide for her children from a former husband. A case like this happened with no less than the Prophet, pbuh, himself. When He wanted to marry Umm Salamah, she told him among other things that she has children from her martyred husband and he accepted to take them as part of his dependent household. The other option is obviously to spend on them from her

wealth and/or income. Unless he volunteered or it is put as a condition in the prenuptial agreement, the new husband's responsibility is to spend on her only not on her children from previous marriage. If the marriage takes place in America, without any prenuptial agreement, the new husband may be considered, from Shari'ah point of view, responsible for the provision of these children because he must have known that the law of the land requires him to do so; this kind of knowledge may be considered as an alternative to a stipulation in the prenuptial agreement. This is of course unless the former husband was providing for them and then stopped after the new marriage.

2 - Again according to Shari'ah, if the wife allowed her husband to move into her owned house, he remains a "guest" in the house since living in it does not make him a co-owner no matter how long he lived in it and at any time she can ask him to pay her rent for the whole house (i.e., that she and he use together) because it is his responsibility to provide her with adequate housing.

3 - If the wife needs any money for matters that do not fall under the responsibility of her husband (e.g., spending of her children from a former marriage, giving substantial gifts to her family and friends, making substantial Sadaqah, paying Zakah on her properties, etc.) she can borrow from her husband and vice versa. The property ownership of each of them is completely independent, although she is authorized to spend from his money on the family and for Sadaqah (charity), with or without his knowledge, as long as she does that within usual and customary reasonable limits.

4 - You certainly expect from your husband to be kind to you and your children from a former marriage and to treat them as close as possible to his own children in all matter even financially. This is part of the Islamic ethics and morals, no doubt about it. After consummation between you and him, female step children are forbidden for marriage to him for ever, the same way as his male children from a former marriage are forbidden in marriage to you for ever. But you can't blame him if he did not contribute financially because he is not obligated to unless it is in the marriage agreement. When they grow up, please notice that your children from a previous marriage and his children from a previous marriage are not brothers and sisters at all and they can marry each other. This is the riddle that is known as "she is a (half) sister of my (half) brother but she is not my sister"

5 - A post nuptial agreement needs not be signed by nor witnessed nor even shown to a local Imam. What you need to do is to draft one the way you want it to be, certainly with the help of a lawyer because there are many legal requirements in post nuptials, and consult a Shari'ah expert (unfortunately most local Imams don't have such expertise). I am attaching a revised version of a post nuptial, you may benefit from some of what is in it but certainly do not take it as a legal advice since I am not a legal expert.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Meetings of women and men emale

Sent: Tuesday, March 04, 2003

Question:

Bismi Allah Al Rahman Al Raheem

My most respected brother

Assalm u alaikum wa Rahmatu Allahi wa barakatuhu

May Allah shower His Rahma on you for the prompt reply for my previous question. Though I accept the fatwa but I am not sure if it can be applied to my husband and me. InShaAllah some other time I would like to discuss with you our own situation. Today I am writing to you regarding another important issue in our community. Unfortunately I am the victim. I have been working with the Muslim Association since more than 4 years. In 1998 I was appointed as honorary director in the construction committee for the construction of the new Mosque and Education Centre. Since then I have been working also as fundraising director, education director of the Women Chapter and recently last year I worked as the chairperson of the Women Council.

Since last year my right to sit in the construction committee has been taken away the new chairman insists, inspite of all efforts by most of the brothers to bring me to the committee on refusing to do so along with his best friend who is the secretary. Let me inform you that both these brothers' wives worked with me in the women's chapter and Allah knows best who was the mischievous among the women directors who played a big game to remove me from board by bringing their relatives and friends so that non gives vote to me but to them.

As Allah says they are doing their plans and Allah is also planning. Out of 11 contestants 10 got elected and I was out. But within fifteen days Allah showed His plans one very old lady resigned due to her ailment and I entered the board automatically according to the rule and I took my same portfolio of education. The chairperson woman with Allah's plans was a friend of mine and when she took me to the first meeting of the council they elected me the chair of the council. After my tenure finished this year I did not take part in election because for 3 reasons

1. I wanted to work from background without post
2. I never wanted to get insulted by them again if they did not vote for me.
3. All the voters come from their friends and relatives. I don't have time neither I want to make members of my friends in order to have more votes. I want to please them by coming out of the board so that they enjoy the posts.

Allah knows best why the Brother is not willing to have my right to work as an honorary director who according to the constitution of the Association is a life time director and has a right to attend any meeting though he/she has no right to vote for any resolution. The reason he gave to the members of construction committee that I am the only women among all the 15 men sitting there. And he thinks the religious board might object. The other brothers told him that I am sitting there since 5 years and there had been other sisters also who have been sitting alone in such meetings previously and no body objected before. They also gave examples from Islamic history but he does not want to listen.

MY QUESTION: I want to challenge him in writing by producing scholars' opinions and verdict from Hadith and if any from Qur'an. Can a sister sit with a group of Muslim

brothers (here 10-15 are present) in a business meeting and the business is construction / Fundraising of a Mosque? Is it required that at least 2 sisters should sit? (Specially this sister has devoted all her time for this cause). Please reply me in the light of Islamic rules and history

Wassalam and Jazak Allahu khairan

Sr. Nuzhat

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Hafeez

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

The question must be reversed. that is there is nothing in the Qur'an or in the Sunnah that prevents one woman from meeting with any number of men except being alone with one who is a non-Mahram (close relative) in a closed place that provides privacy (what is called in Fiqh Khalwah). Otherwise whoever claims prohibition must give evidence. It is a false claim. On the other hand there are numerous Sayings about women attending in the mosque learning classes, Friday Khutba, being together in traveling and in war and in the market. there are evidences about visitation that the prophet used to go and visit so and so (women companions) and Abu Bakr and Umar used to visit an old lady and serve her food and make housecleaning for her. There is nothing at all that requires at least two women or none to sit in a meeting that has men. This is a total fabrication that lacks evidence. People may fabricate hundreds of things and you cannot bring Sayings to falsify these fabrications. They must be asked to support their claims!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Giving interest money to family

From: Islam on line

Sent: Friday, February 28, 2003

Name Mohammed Country India

Question

ASSALAMU ALAIKUM MAY ALMIGHTY ALLAH REWARD FOR YOUR SINCERE EFFORTS TO GUIDE PEOPLE IN STRAIGHT PATH. THERE IS SOME INTEREST MONEY IN MY NRE ACCOUNT WHICH I AM NOT USING. SO CAN GIVE THIS INTEREST MONEY TO MY POOR NEPHEW TO BUY WORK VISA FOR ABORAD.

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Mohammed

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

You poor nephew's expenses may be your responsibility if you are the closest father side financially able relative of his. If you are responsible for his expenses you may not give him your interest money because it amounts to giving it to yourself. If your nephew is a son of your sister or if there are able relative closer to him than you and they are not shouldering their responsibility toward him for any reason, you may give him your interest money because you are not responsible for his sustenance.

By the way, selling a visa is forbidden if the price is anything more than the fees government take. For those who buy visas it may not be forbidden for them because they are paying it out of necessity to obtain jobs, but whoever takes the money takes it as Haram because there is no such a commodity for which he is charging that cost. Certainly if you hire someone to follow upon the transaction this person deserve a wage according to the market rate.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Divorce and Unofficial Remarriage

From: fatwae@islam-online.net

Sent: Wednesday, January 29, 2003

Name of Questioner: Abu Zayd

Country U K

Question

Recently, my wife's father passed away. She is from Lebanon, and her father previously received a state pension. According to Lebanese law, if any daughter is dependent (i.e. unmarried or divorced), then the pension will pass to her. She has asked me to undertake an official divorce in her country in order to claim this pension, followed by an unofficial Islamic (i.e. private, not registered) remarriage. Is this permissible, or is it a case of forbidden deception?

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Abu Zayd

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

If you guys actually get divorced, it can't be a deception because a divorce is real. And if you decide later to get remarried (provided certainly this is the first or second divorce only) but "unofficially" you are still officially unmarried. If you accept this kind of life for yourselves I don't see it violating the law unless the Lebanese law also prevents persons who are married unofficially from the pension and you are going to give the government false information. It may be morally doubtful, but you are following the law of the land to its letter.

Wa Allahu A'lam
Wa Alhamdu li Allah Rabbi al 'Alamin
Wassalam
Sincerely,
Dr. Monzer Kahf

SUBJECT: Sale of a Community Property after Khul'

From: fatwae@islam-online.net
Sent: Thursday, January 23, 2003
Name of Questioner Umm Mohiz

Question

Assalamu Alaykum Wa Rahmatullahi Wa Barakatahu Please advise me or get me a fatwa from a scholar regarding my situation. I need to know if it is permissible for me to sell a house in USA which belongs to me and my ex-husband. I need to explain a little about my situation first. I was married for 16-17 years, have 4 children from this marriage, we used to live in USA and i used to work for my husband (at the time), in his small business but never got paid. For reasons which may be explained later if needed to, i had no choice but to run away from him and ask for a Khul', at the time i asked my children if they wanted to stay with their father or come with me, they all wanted to come with me so i came back to UK with my children to join my family here. My ex came to UK trying to drag us back but Al HAmduLillah he couldn't. He then left to go to Pakistan, and as been there ever since. I think he is not intending to go back to USA due to visa and other problems. He is not paying me anything for the upbringing of his children, i know that they are suppose to stay with him Islamically but he does not practice Islam, and he does too many Haram things and is a very bad influence on the children. 2 of my children went to visit him in Pakistan for 10 days he promised, but they never came back, because he did not allow them, Subhanallah. Anyhow the situation now is that the house in USA be abandoned and no one lives there for last 4 years, taxes are being piled up and i am paying someone to maintain the grass (which is hard for me) as i do not work here. The house is in my and my ex's name, so is it permissible for me to try and sell it? If so, how should the money be distributed? As I have asked a lawyer and he said that he would charge 45% from my share of the property. Please advice. Jazakallahu Khayrian Wasaalam. Umm Mohiz

Please do not put my question on the website. Jazakallahu khayrian
Subject: RE: financial 2, selling a house

My Answer:

Bismi Allah al Rahman al Rahim
Al Hamdu li Allah Rabb al 'Alamin
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in
Dear Sr. Umm Mohiz

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

You mentioned that you had a Khul' with your ex husband. Did you have in a court and did you settle all financial consequences of this Khul'? If you had it in a court and have settled its consequences except for this property in the USA, and it is in both names, you

cannot sell it without your ex's consent. Do not give the lawyer one half of its value, give it to the owner (your ex-husband), though you don't like him now! you have to find a way that you either agree with him that he sends a legal authorization, like a power of attorney, to somebody if not to you and sell the property together or find a legal way to sell it and put his share in an escrow until he claims it. You can also sue him, since you have children that you care for and get their expenses charged to his share of the value of the property.

But from a Shari'ah point of view, you certainly cannot sell this property that is owned half and half without either a court order or your ex's consent.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2002

SUBJECT: Woman traveling in a group without a close relative

From: islamonlinenet@hotmail.com

Sent: Monday, December 30, 2002

Name of Questioner: raida

Country Jordan

Question

1- I work for an American company that sells and implements software for scheduling commercial airlines. My job involves sales and protecting the interests of the Arab carriers we are dealing with. I use a large part of my salary towards Muslim and Palestinian charities and I use my high profile role in this company(as a Muslim woman wearing Hijab) to enhance the view of Islam/spread the word of Islam in the Western culture. Is my job (due to the current political situation) Haram or Halal? 2- Sometimes my job involves travel alone (2-3 days) by plane to attend a training course. Is this ok if I observe the Islamic rules of behavior during travel?

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashasihi Ajma'in

Dear Sr. raida

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Although this question is not in my area of specialty I dare answering it because it relates to me as a person who is involved in living and working within a Western culture that is eager to know more about Islam. What you are doing and presenting is excellent and you working in this environment, with your abilities and what you described about

your behavior is rather an obligation and of high reward. Remember the saying of the Prophet, pbuh, " أنزل الله عليك حملتس عوالن اسبأموالنفمبس عوهم " To it means we can only prevail by our values, morality and spiritual strength.

For the matter of travel, there is flexibility in our religion. The Prophet, pbuh, mentioned with praise that a woman would go from Sana'a to Hadramawt alone, fearing none but God and the Scholars mentioned that if a woman travels without Mahram but with a safe group, as in a plain today, that is permissible. Don't worry and go on in prevailing InShaAllah and May God be always with you and reward you.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: a Wrong doing, how about the man?

From: islamonlinenet@hotmail.com

Sent: Monday, September 23, 2002

Name of Questioner: Myra

Question

I have had the opportunity to research this site quite well in the past week, but I have some concerns. It seems like many of the Muslim sisters have similar concerns as mine, yet our questions are not being answered to the fullest. This is why I have chosen to address my question as fatwa rather than counseling. My question is regarding pre-marital relationships. I understand clearly the implications of this sin and realize that many of the Muslim sisters with this concern do also. The importance of repenting is very crucial and InShaAllah, that is what we intended to do. Although, having said that, what about the fact that this individual promised to marry and as we all know the Shaitan plays a role in all these situations. Unfortunately he was able to intervene and allow for the individuals to take part in this sin, but what about our intentions. Granted, we have sinned, I'm not taking that lightly at all. What I need to know is, what happens to the male who insists on performing this act, getting as he wishes, verily the love does exist, but what are his obligations? we have both sinned, does it make it ok for him to walk away after making such an empty promise to the girl and her family and his family? Where do the women rights come into play? What about our rights as being the weaker gender? Do we not have any rights pertaining to the fact that we have been fooled or mistreated because we are more vulnerable? Clearly my intention was to do as Allah had commanded us to do but unfortunately I was foolish and I will continue to seek forgiveness for what I have done. I feel destroyed now. My life has been demolished by someone who played and fooled many people. Please tell me how to deal with him. I need to know how people are dealt with when they mistreat or lye to others causing great harm in their life. InShaAllah I will beg for forgiveness, yet, please help me deal with this matter regarding this fellow. the reason I feel so negative is because I feel that none of the answers addressed the fact that the women has been played and reality is, that she has made a mistake but she has also had good intentions but was fooled.

Please help address this issue to all women who feel this way. I know that Allah is most forgiving when one tries to do well, but what about one who does not repent or look back at his sins, believing that what he has done is not wrong at all. May Allah help all these Muslim sisters who have committed this sin and forgive them for this act.

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Myra

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

I am not specialized in the area of your question so I am sorry to request you that you resend it again and ask that it is addressed to a specialized person. Probably it was sent by mistake to me as my area is Islamic finance and economics.

But as a brother who also lectures about Muslim women rights, please allow me to make a few "crude" points

1- You clearly mentioned that sisters who fall into this direction of action are fooled and lured into it by a man who betrayed his promise, and that the act is both sinful and shameful no matter what intention sits behind it.

2- All of us are sinful and the Prophet, pbuh, said "the best of the sinful are those who repent." repentance, seeking God's forgiveness and increasing the good deeds including prayers and other forms of worships and charity remain the main "stain remover" as God said in the Qur'an "Verily good deeds remove the bad ones."

3- Girls may sometimes be the weaker party to such a relation, but remember they are also the most protected one. This is one the reasons why covering all the body, except face and hands, is required for them not for men. Moreover other protections are also given in Shari'ah such as: women don't travel alone, they travel with a kin male who can help when needed, man and a woman may not be alone in a closed place, no socialization is permitted between men and women on individual basis, even within groups socialization is limited. Girls who observe these Shari'ah limits are less likely to fall in such traps than those who take it easy with the limits of Shari'ah.

4- From Islamic point of view there is no difference in the degree of sin between a man and a woman who commits this act. They are the same. In fact, the man's penalty is even bigger as it includes one year exile and prevention from living in the area. Additionally, the moral sin of fooling her, with the promise of marriage or affectionate love, is a sin that can also be persecuted in an Islamic court and can be punishable in addition to the punishment of fornication. However, it is very unfortunate that the Muslim societies today socially discriminate, as you well know, between the sin of the man and that of the woman. There is no base for such discrimination in the Shari'ah whatsoever!

5- Solution: repentance, don't let it be known by anybody even husband in the future, observe the Shari'ah requirement of Hijab and other behavioral norms, increase your prayers, Duaa and good deeds and try to expose the man who is fooling girls without implicating yourself.

Once again I am not an expert, please seek help from experts.

Wa Allahu A'lam
Wa Alhamdu li Allah Rabbi al 'Alamin
Wassalam
Sincerely,
Dr. Monzer Kahf

SUBJECT: Buying a house for daughter and divorced wife with a bank loan

From: islamonlinenet@hotmail.com

Sent: Monday, September 23, 2002

Name of Questioner: Asma

Country : Tunisia

Question

My parents are divorced since i was 4 years old and i have been living with my mother in my grand-fathers house with my aunts and cousins. Today, after about 25years, my mother can no longer bear this life especially that she has continuous problems with my aunts and that the house is small. My mother started taking tranquilizers and is crying all the time. Then my father decided to buy for us a house.. And after we agreed with the seller and I can not describe to you the happiness of my mother, my father mentioned something about bank loan but I did not take it seriously because my father is rich and also because at that time I was not praying and did not understand that it was not allowed by Islam. I signed the contract, but formalities took one year, and I was praying in FAJR Prayer that he will not take a bank loan and that God will not let us down (my mother & me). And whenever I try to mention to my mother that we might to not have the house, she breaks down. Unfortunately, He did take a bank loan interest based. And now I can not describe to you my fear of God and my despair because the loan is in my name even though I am not paying it. And it is useless that I talk to my father, because my father (May God forgive him) does not pray, and will not listen to me. Yesterday I cried all night, I don't want to live in a house acquired by "Riba". What can I do so that God forgives me?

Notes: please reply to this long question, because this sin is too heavy on my heart and kills me. JAzakom Allahou Khairan.

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Asma

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

You are now a mature woman that can make decisions for herself and what you said of the prohibition of Riba is certainly correct. The sin of the decision on buying the house is not yours although the house is in your name and you signed the purchase agreement. Your father took a loan from the bank to finance the purchase and gave you the house as a gift. You got the house and the loan is his not yours although the lien is put on the house to the benefit of the bank as a guarantee of the loan. In other words, your signature on the bank's papers does not change the fact that your father made the purchase and the loan.

However, to get out of this conscience pain you have two options: 1) Since every thing is in your name you can go to the Saudi Tunisian Finance House, it is an Islamic bank, and you can substitute this bank loan with Islamic financing that is compatible with Shari'ah. You may have to get your father to agree to change payment to the new bank instead of the current one, or to guarantee the payment from your own income. 2) You can vacate this house and rent on your own or buy through the Islamic Bank and live in a new house that is pure of any sin of Riba.

Always pray for the guidance of your father. He can benefit from your prayer and your kind advice with the help of God and do not disturb your mother who apparently had suffered a lot and need now your help as a natural tranquilizer!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Woman's income

From: islamonlinenet@hotmail.com

Sent: Monday, September 23, 2002

Name of Questioner: samim

Country U K

Question:

Assalamu Alaikum I wrote you a post about a problem but I have not heard from you. I specified for it not to be made public and I preferred a personal reply to my email. Maybe you sent me a reply and it got sent to the junk folder or perhaps I used a different account. So my problem is that I have worked a while and saved a lot of money, enough money to put a deposit on a house or buy a car. I have almost sixteen thousand pounds. The thing is that I finish InShaAllah my degree next year and my parents aren't too keen on me doing a post graduate coz they want me to marry. As I won't be able to work after I get married coz my parents said no, I want to keep the money I have earned. I have looked at what women's rights are but they won't acknowledge them. They say I have to spend it on a deposit and on house equipment but those are not my responsibilities so I don't see why I should. I always say to them nicely but now I have given up. I have earned that money and I want to keep it for my own children. They say my husband will take it off me so I should spend it, he will demand me and I get the impression that I am not allowed to have any sort of independency after marriage. I even offered to give three quarters so I can have a little bit for my self. But even that was a no. I have scrimped and saved that money. I go without a lot of basic things which is why I have done well on savings. Now they want me to buy a hundred thousand pound house and I have not even seen it. It's like everything gets decided for me and I don't want such a big mortgage coz I am still studying and I can't cope with everything. My studies and housework are basically fulltime and I can't do that many hours at work coz of that. But they want me to get a mortgage and I don't think I can cope with it as I have enough to do please advice.

Jazaka Allah kairan

Notes: Please do not make this public

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. samim

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Your earned money is certainly yours and no one has any right to interfere with it or what you do with it. Your parents have a right on you to treat them kindly and be always nice and obedient to them without forsaking your rights. Husbands have no financial rights whatsoever on their wives, nor do they have any right to interfere with the decision their wives takes with regard to their own properties whether such properties are inherited, earned or even given as gifts from the husband or from any other person. It is unfortunate that many of the well-established-in-Shari'ah women rights and especially wives' rights are ignored in the Muslim societies in the Arab countries and in the Pakistani/indo/Bangladeshi culture.

I am sending you a draft that is still in the initial stage of preparation of a format of a marriage contract that I prepared for Muslims women and men who are getting married. Please read it carefully it shows most of the point, may be all, that relate to financial relations between husband and wife in accordance with Shari'ah. Please if you have any question, after your read it, do not hesitate in writing me again.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Spending on divorcee/ minor's care provider and child custody

From: islamonlinenet@hotmail.com

Sent: Thursday, August 15, 2002

Name of Questioner

Question

Assalamu Alaikum, Dear Brother, I have two questions. I married my wife in Jordan. Then we moved to the US. Then we moved to United Arab Emirates (UAE). My wife came back to the US for her citizenship. I came this summer to visit them in the US. We had a lot of problems in our life. So I decided that we should get divorced. I still live in United Arab Emirates and she wants to stay in the US with our two boys (4 years and 3 years). 1. Should I give her the "nafaqa" (child support) based on laws in Jordan, or UAE, or the US? How much should I give her based on Shari'ah? 2. Since she wants to live in the US and I am living in UAE, is it better for the children to stay with her or with me? If they stay with her, till what age should they stay with her? What about if she gets married? Jazakum Allahu khairan. Wassalam. Ahmad

Notes: I am now in the US for the summer. I cannot read email in Arabic

My Answer:

Bismi Allah al Rahman al Rahim
Al Hamdu li Allah Rabb al 'Alamin
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in
Dear Br. Ahmad

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Your question has a Shari'ah facet and a legal facet of implementing the shari'ah directives. Because unless very carefully prepared through a prenuptial agreement, before the marriage contract was done, it is very difficult to have the courts in the USA to accept the Shari'ah points of view on certain issues. Let me please take them on a piecemeal manner:

Custody in the sense of care giving to minors (i.e., they live with her under her care) is the right of the mother provided she is Muslim, non married, mentally and physically capable and willing to take it. When we deal with divorce, i.e., the father is alive, if she gets married she loses care giving right, this right moves to her mother under same conditions, then to father's mother, then mother's sister, then father's sister. In Shari'ah care giving is the right of the Child, not any of the child's parents, and the Shari'ah defends the child's rights.

Custody in the financial sense goes to the father, it can go to the mother by mutual agreement.

There is no definite age limit on both care and financial custody. It can continue until majority for boys and even until marriage for girls, as there are different Fiqhi opinions among the different schools of Fiqh to accommodate that much range.

If there is a fear on the religious upbringing of the children in America, i.e., if the mother is not religious and exposes them to negative influences that may deprive them from finding the true and righteous way of life, leaving them to live in USA becomes prohibited from the Shari'ah point of view. Notice that this point and the case if she gets married will never pass an American court. Therefore, unless you solve them by mutual agreement.

The Nafaqa is always your responsibility, no amount is determined but it is determined in accordance with the following factors: your income and wealth, your standard of living during this marriage and after divorce, the cost of living in the area where the children and their mother live. The Nafaqa covers housing and living expenses for the children and their care giver, and medical and education of the children, not the care giver. The determination of the amount of Nafaqa can be by mutual agreement or by the court where the children and their care giver live, even if it were to be a non Muslim judge. Any free-will agreement between the divorcees on the amount of Nafaqa is accepted from Shari'ah point of view because the care giver can even forsake it completely if she so chose.

Wa Allahu A'lam

Wa Alhamdu li Allahi Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Gifts to children and Separation

From: islamonlinenet@hotmail.com

Sent: Tuesday, August 13, 2002

Name of Questioner shamim

Country Bangla

Question

As salamu alaikum, I have a vast problem and I hope you will look into the matter with scrutiny. My father purchased a plot and registered on my mother's name. After that my father built multistory buildings including market places there and exposed my mother as the owner of the building and market which fetches huge income tax as owned by a single person. So, my mother wants to bequeath those properties among our brothers and sisters with a view to diminishing tax value. . I have one brother and four sisters. My parents intend to bequeath with a certain variation. My second sister is mentally abnormal. In her early life she was normal and ambitious and was firmly determined to get herself admitted into medical studies but in vain. She was extremely shocked and gradually developed mental problem. Parents left no stone unturned for treatment but she did not improve. At last parents got her married so that marriage might alter the situation. In her short time of conjugal life she gave birth to a daughter but the problem was not eliminated rather intensified. After the child birth my sister has been living with us away from her husband for about four to five years. Her husband after waiting for several years married another one. Is my sister still under wedlock or automatically got divorced as she have been living away from her husband for several years? My sister is still under treatment which costs thousand taka (currency of Bangladesh) per month. Now regarding the bequeathing will my parents want to deposit about five lakhs taka in my account so as to facilitate my bearing expenses for her treatment when I will be in charge. In this regard I must add that my parents want to do this without the knowledge of my elder brother. Parents lack in faith upon him for his being irresponsible and luxurious. Will this step that is going to be taken by my parents be valid or not? If invalid I may inhibit my parents but if it is valid then I have another ask. If five lakhs taka is deposited in my account it will make profit(in stead of usury I mentioned profit because I opened account in Islamic bank).Can I take the profit or it will be added with the capital and remain restricted for sisters benefit only. Pray for me, for my sisters and also for my elder brother so that he succeeds in attaining faith of parents.

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. shamim

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

I understand your question and this kind of dilemma. You need to untangle such matters very carefully so that you achieve the objective of serving future needs of the unfortunate person without violating the laws of Shari'ah nor upsetting the laws of the land.

1) Your sister illness seems to be psychological more than mental, although the first may affect the latter and the body as well. Under all circumatances keep the medical

care and treatment and add reading Qur'an and Duaa (prayers) because the Prophet, pbuh, told us that both help. May God give her full recovery and cure from all illness.

2) Your sister is still married unless her husband divorces her or a divorce order is issued by a court on your family's request or on her request. Marrying another woman does not affect her marriage and the long period she is separated at her family's house does not affect that either.

3) It is permissible, in Shari'ah and in the Anglo Saxon laws to establish a Waqf (trust) for the treatment and living expenses of your sister. Parents are required to spend on their needy children, even when they are adult. Your father/mother can establish a waqf to take care of such expenses. It can be set in such an amount so that its income in an Islamic bank can satisfy her annual needs. This Waqf is temporary and must terminate when she is cured or when she dies. Upon termination the waqf principal can either be given to charity or distributed to all four brothers and sisters according to the rules of inheritance (it can also be distributed in any other way but I think it is inappropriate to distribute to brothers and sisters in any way that is not consistent with the inheritance rules, 2 shares to a male and 1 share to a female because parents are required to make complete justice between their children). You can be the trustee (Nazir or Wasi or Qayyim) of this waqf by appointment from the waqf founder.

4) Whatever your father put in the name of your mother can be a gift to her, there is no limit on the amount of gift one may give anyone else, relative or not, and a person has full authority to dispose of a person's property the way a person pleases. This is certainly unless they have an understanding between them, written or verbal, that this is only for tax or other purposes but he remains the real owner. Either parent can give any amount of gift to their children. However the Prophet, pbuh, refused to be a witness to a gift to one child when other children were not given equal gifts and called it injustice (Zulm). Hence, gifts to children must be equal, male and female, not like the inheritance. Either of your parents can give a gift to you and your brother and sisters, in equal amount, for in an untrue way for tax and other purposes, with written or verbal understanding, provided there is a guarantee that such understanding shall be honored in case of death (either because of religiosity or consciousness of the child). In case of no such guarantee, fake giving is meaningless and useless, the point that makes it a must to give other children equal amounts.

5) Inheritance in Islam is regulated by mandatory rules as specified in the Qur'an, mainly in Sura 4. therefore bequest must follow these rules without the slightest violation. If you have grand parents, each of them inherits 1/6 of the net estate of their child (i.e., after expenses, debts and any last will to non heirs within a maximum of one third). If your mother dies before her husband, he inherits 1/4, and if I assume she is survived by her two parents too, the remainder, 5/12 should be divided between the four of you on the basis that a son takes twice as much as a daughter. Should your father die before his wife, she takes 1/8 and with two parents surviving the remainder, 13/24 will be divided between the four of you the same way.

6) It is extremely important to notice that bequesting can only be done after death, giving while alive is gift and cannot be treated as inheritance. Gift to children must be equal between them and bequesting to children follows the rule of 2 to 1 male/female.

7) The income from the trust make for the treatment of your sister must be used for her treatment and any left over must be added to principal. The founder of the trust may add other objectives, if she/he so chose, and whatever stipulations mentioned in the waqf deed must be honored unless they are discreminatory against female beneficiaries.

Finally, may Allah. Ta'ala, guide you, your brotherand your family, me and all of us to the right path and to always do what pleases Him.

Wa Allahu A'lam

Wa Alhamdu li Allahi Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: The Amount of Mahr

From: islamonlinenet@hotmail.com

Sent: Thursday, June 20, 2002

Name of Questioner Amina

Country U S A

Question

My sister is getting married and wants to ask for the Sunnah Mahr. We know it is 400 Dinar, which we are told is the same as \$300, but obviously \$300 was worth a lot more in the time of the Prophet (SWS) than today. I was able to find out the relative value of \$300 in 1789 which would be worth \$5999 today. How can I find out the relative value of the sunnah mahr to the value of money today?

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. Amina

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

There is no Sunnah amount of Mahr. The Qur'an (4: 20) refers to a large pile as a possible Mahr. We have in the Sunnah the Mahr of the Prophit pbuh, in his marriages and we have Mahr he given by his companions. In Most of his marriages, the Mahr he, pbuh, gave was 400 Dirham (not Dinar, the Dirham is from silver and the equation at His time was 20 Dirham = 1 Dinar in value) the only exception was the Mahr for the Mother of believers, Habibah bint Abu Sufian. Her mahr was very large (I think it was some 4000 Dinar, but I am not sure!) her marriage contract was done by proxy on the Prophet's behalf by the King of Ethiopia and it was a "King's" Mahr that was donated by the King. The Prophet also had more that one marriage done by His companions with his approval on Mahr that was much smaller than 400 Dirham. Ther is a report about Abd al Rahman bin Awf that he got married for the weight of a date seed of gold (a fraction of one Dinar). Another companion paid an iron ring as a Mahr. Fatimah, May God be Pleased with Her, was married to Ali for a Mahr of 480 Dirham.

Finally we have several reports about daily wages and prices of consumption goods at the time of the Prophet, pbuh. Together, the give an idea that a day's work (obviously

unskilled) used to be worth of 1 (one) Dirham, and the cost meat and flour of one decent meal for a family of 4-5 mix of adult and children was about a dirham too.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Assigning a given periodical amount for wife's expenses

From: Islam on line

Sent: May 11, 2002

Name of Questioner shareen

Country U K

Question

Dear Scholars, is it necessary from Islamic point of view for my husband to give me a fixed amount of money every week/month for my personal use, even though we have joint bank account and i have full access to it and he has no objection as to how much and where i spend the money. I am asking this question because few of my friends do receive regular money for personal use from their husbands and say that such an act is an obligation on the husband from Islamic point of view.

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. shareen

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

It is not necessary that a husband must give periodical allowance to his wife, nor it is preferred or better. In Shari'ah husbands are required to provide all living expenses of their wives and other family members (children and parents if living with them as one household) at the same level the husband himself lives and (or course unless if he is very greedy and rich then only) in accordance with his income and wealth. That is regardless of whether she has income and/or wealth of her own. It makes no difference in Shari'ah whether he spend directly, gives her the right to sing on his account, gives her periodical allowance with supplement in case of need and with or without taking back the surplus if any.

However, if checking and/or saving accounts are made as either joint or community property, i.e., in the two names together (this is different from having the account in his name and he gives her the right to sign) I interpret it as an agreement between them to share the balance in such accounts on a half/half basis at any time a case arises such as at death of either husband or wife and need for distribution of estate or at a case of dispute. This is so regardless of whether deposits in the account are all from his income and wealth or from her income and wealth.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Disposal of property of a married woman

From: Islam on line

Sent: Tuesday, May 07, 2002

Name im ibrahim abdullah

Question

Assalamu Alaikum I am a married sister living with my husband, and his family and I would like to ask about my rights to have my own property. When I got married, my husband's family gave me gold jewelry as a present. A few weeks ago when all the fighting began in Filasteen, I made the intention to give the gold a Sadaqah. However, I did not have a chance to go to the Masjid and give it because very often my husband is not able to take me with him to the Masjid. Today, I accidentally hit my brother in laws car when I was backing out of the driveway. I swore to myself that I would pay for the damage out of my own money (the gold is the only money that I have --neither I nor my husband work) and I wanted to go sell some of the gold to pay for the damage and still give the rest as Sadaqah. However, my husband will not allow me to sell my gold for either reason and I informed him that it is part of my right as a Muslim woman to sell, buy, or run transactions with my own property. He told me that he knows that it is my right and he willingly is not going to let me practice it and that he will divorce me if I sell the gold. My husband has no money to fix the car and I want to give my brother in law his Haqq as soon as possible and still give Sadaqah. Please help me...I have not made my husband give me any of my other rights that just involve me personally and I would like to make him give me this right because it involves a third person. Please help me.

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Sr. im ibrahim

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Your right to do whatever it pleases you with your property is unquestionable and unequivocal. You do not need your husband's permission or approval to dispose of your property the way you want and he no right to interfere or even ask about what you do and what you did with your own property and if the jewelry is given to you as a gift, it is fully yours and no body else including your husband has any right to restrict your action in this regard.

I like to add two other things: 1) your husband might be thinking that your are taking an unwise decision, do you want him to have such a feeling? and wouldn't such a feeling affect your family life? and if he threaten to divorce you, which he should have not done, wouldn't you consider in your own mind that this may not be because you want to do what you want with your property but because you feel that this is a very wrong decision that you are making, keeping in mind that you have no job or income? May be he want to reconcile with his brother in a different way and may be pay him later, especially if the car is drivable with its damage.... 2) the Prophet, pbuh, advices that Sadaqah must be given out of richness and at one time a poor person who was living on

charity gave a Sadaqah and the Prophet, pbuh, ordered him to take it back because he needs it. If this is the only thing you own and you have no income nor job, I think you may like to reconsider your decision to in the light of the teaching of the Prophet, pbuh, and make Du'a for the Mujahideen and the deprived in Filisteen instead of giving your jewelry, especially that you know that when you sell jewelry it goes as gold metal for melting and loses a big amount of its value, that part related to the artisanship in making it.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Gifts to children

From: islamonlinenet@hotmail.com

Sent: Sunday, April 14, 2002

Name of Questioner Minhajuddin

Country India

Question

Dear Brother, ASAK, Can you help me. I have a house built by me and my father. I have sold that house for 650,000. We are a family of Six children (2 sons + 4 daughters), father and mother are alive Alhamdulillah. I want to give the shares of my sisters (all married), What is the share of my sisters in the above amount. Please note that me, father, mother and brother are in one house. Looking forward to receiving your reply. Minhajuddin

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Minhajuddin

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

you did not mention the share of your father in the 650000, how much is it? But you really don't need to tell me because there is no inheritance in this case . Your father, MaShaAllah is alive and no one can be inherited alive. Surely he (and you too) can give any gift to any body, especially to his children and to your brothers and sisters. Gifts given to children by any of their parents must be given on equal basis, depending on needs either in kind or in money. It means if a parent give one child (equally male and female. since this is not like inheritance) the cost of marriage, he should give the cost of marriage to all other children (this is in kind) and if a parent gives to a boy US\$ 10000 he/she should also give to every girl and every boy 10000, equally.

In inheritance, i.e., after death, a son get twice as much as a daughter and a wife gets one eighth since there are children, if the wife dies first her husband gets one quarter as long as she left at least one child.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Wife's Work and Her Earnings

From: Islam on line

Date: 2/16/2002

Name of Questioner

Question:

Al Salam Alaykum I am married and working. In the past, I used to save my salary and my husband used to buy me my needs including clothing and even lets me drive his car. Bearing in mind that my husband gets a good salary (4 times what I get) masha'allh and we are working in a Gulf Country. But after his parents visited us, his father told him that from the religious point of view, since I am working I should provide all my needs including paying for transportation, clothing, and the baby sitter's salary. So now I am providing for myself, and I am not even asking a Dirham of him now. But it's not a problem of money. I can provide for myself, but I don't feel my husband's supremacy or his dominion any more. Anyway, what is the right Islamic way in my situation? Thank you

Notes: I would like to thank you for your site. I really get to know many things I didn't know about before by just reading the answers to the frequently asked questions. God bless you.

My Answer:

Dear Sr

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

Your question is huge, it needs an essay or a book. I will try to put main ideas in points as follows:

1- The marriage contract in Shari'ah is a civil contract; it defines the responsibility of the two parties, as specified in Shari'ah. It is essentially an exchange contract, you give some and you get some. By the Way, it does not provide for "supremacy" of husband. YOU EXCHANGE YOUR AVAILABILITY FOR HIM FOR THE MAHR AND SPENDING ON YOUR LIVELIHOOD NEEDS.

Some contemporary Fuqaha tried to include home service as a duty on the wife. THIS IS INCORRECT AND HAS NO EVIDENCE in the Fiqh of marriage contract in Shari'ah.

2- Whatever you own/earn, from inheritance, gifts even from your husband, work, growth and investment of your wealth is YOURS ONLY. Husband has nothing to do with it. You can do what pleases you with it and you are not required to spend any single Dirham from your property/income on your livelihood expenses, transportation, baby-sitter, and what not.

3 You may VOLUNTEER to spend on yourself and the household and even your husband and whatever you volunteer is considered a gift from you; you will be rewarded for it in the Life After InShaAllah; your husband must be grateful for it and you have no right to claim it later (because you spent on matters of his responsibility).

4- Unless you made it a condition in the marriage contract, even verbally, he may (or may not) give you permission to work and unless it is in the contract such a permission

may be withdrawn at any time. Such permission may also be given conditional, and conditions may be added to continue the permission. Such conditions may include any compensation for the permission such as: spend on yourself, on the baby-sitter, on transportation, even on him, even give him a given amount every month, even he will marry a second wife. Etc (BTW, marrying second wife does not need your permission). Such conditions cannot be retroactive, i.e., they may not apply on the past. With or without permission, what you earn is yours only and he has no right to interfere with your use of it.

Obedience at home is "bi al Ma'ruf" it is not a servitude, it applies especially in sex matters, add only normal behavior of co-living. Home service should always be shared unless he (at his expense) employs a home maker/cook. Yet our middle eastern and Arabic customs and traditions must not be completely overlooked, If you are not working and he is, it may become fair that most, not all, of housework become yours. Finally, what your In-law said is incorrect, but don't go and fight with him. Unless your working was in the contract, your husband can prevent you from it and can add conditions for continuing the permission at any time.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Parents' interference with children's properties

From: Islam on line

Date: 2/11/2002

Name of Questioner Rizwana

Country UK

Question

Salam. Please help me with my problem. I have some money saved and I don't have any plans for them but my parents constantly pressurize me about them. I work part time and I save most of it and when my parents tell me to withdraw money from the bank I have to. If I refuse they call me a spoilt brat and they also say that my husbands going to take it off me anyway so I might as well hand it over. They keep my bank books and I also fear that my father may ask me for it because he is looking for a bigger house. He might need it for the deposit. I feel so pressurized I just don't know what to do anymore. Sometimes I feel like giving it all to him but then I'll have nothing. Please help. Thanks a lot.

My Answer:

Dear Sr. Rizwana

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

The Fiqh part of your question is: 1) your parents, if they need can take from your assets, without notifying you and without your permission. This applies to parent child relation, i.e., it doesn't matter father or mother, and daughter or son. It is not because you are female. 2) When you get married your husband has no right whatsoever to take any of your property. This is absolute even if he is in need even to spend on you and

your household. Your property is completely independent from his and he alone is the one who is required to spend on you, the children and the household.

3) If your parents, or any of them, are not in need, giving them is better, but not obligatory. I advice you to be always kind to your parent and to please them as much as you can, when you grow up your children with then do the same to you and Allah Ta'ala will reward you InShaAllah, in this life with more income and wealth and in the life after with Jannah.

If you decide not to give them, and they don't need your help for their living, you will have to very kindly resist their asking and do not expose your finance to them.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Custody of minors and spending responsibility after death of husband

From: Islam on line

Date: 12/25/2001

Name of Questioner Kareema

Question

Assalamu Alaikum I have a few questions. I did look through the Fatwa bank but did not find answers to my questions there. 1-I understand the division of property when a man dies and leaves parents, children and a wife. Is it normal to leave the division until the youngest child reaches maturity (18 years of age)? 2- Related to the delay of dividing inheritance. There is a bit of a problem as to what to do about my husband's car. I am using it to provide for my children but lately it has been costing a lot of money to maintain. I don't know if I can sell the car or trade it? 3-If a widow re-marries, do her children automatically get taken away from her? I have been told this is what will happen...an implied threat really. I am a revert living in a foreign country with no family support. My late husband's family has not been supportive or kind. Also if I do not remarry can my children still be taken away from me? 4-I was pressured to leave my husband's house after my period of Iddah. I thought that a widow and her children could at least stay for 1 year living in peace in my late husband's home?

My Answer

Dear Sister Kareema

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

Let me start, Sister, by praying for mercy and grace to the soul of your late husband and for help and support from Allah, Ta'ala, to you, your children and to us, all.

It is very unfortunate that we, in the United States, live under laws of property, inheritance and minors' custody that are not compatible with the Shari'ah. Unless there is a clear and court-defendable Last Will and a Pre/Post Nuptial agreement between the couple that clarifies these issues, whenever the law allow for personal freedom, the matters become sometimes complicated.

Ownership upon death

In Shari'ah, the properties of a deceased become owned by the heirs the moment death occurred, obviously in the shares prescribed in the Qur'an. Shari'ah does not tolerate a concept of estate unless for a very very short period sufficient to pay the debts that may exist on the deceased. If both parents survive, they get one-sixth each, wife get one-eighth and the rest should be divided between the children giving the female half as much as the male. The rule is that owners must not be hindered from disposing of their properties the way they choose. This requires that if any of the heirs wants to dispose of her/his property, s/he must be enabled by having the actual division done in timely fashion.

In Muslim countries the court can impose such division on request from any heir if the heirs did not already do that on their own. But if no heir asks for actual division, estates may stay undivided for decades and any action related to them requires the approval of all heirs together. The fact that one of the heirs may be a minor does not have to delay division since minors always have their custodians or guardians who take care of the minors' interests and properties. This is the answer to your first question; there is no reason for delaying division because a child is still below 18 years old.

(Only when there is a fetus heir, division must be delayed until the fetus is born alive, even if its gender is known before birth. The fact is: even a fetus does not delay division because you can assume the highest share for it and divide the rest. When the fetus is born alive and she/he may deserve less than the amount left aside, such a remainder may then be divided again.)

Your second question is more difficult because the answer depends on three things: 1) who should be providing for your living expenses and those of the minors after the death of their father, and for how long 2) ownership of the car before the division of estate and 3) what country do you live in (you said foreign country, is it foreign to Shari'ah, meaning it does not apply Shari'ah in family matters, or foreign to the country you came from) and what kind of legal support do you have in this country.

Living Expenses

The Shari'ah rule, with a few variations from one Fiqh school to another, is: You are entitled to living expenses, including suitable residence and including needed transportation (even with the restriction on movement during Iddah) for the period of Iddah. And if you are caring for a minor you and the minor are entitled to the same until the minor reaches maturity. During the Iddah period, these living expenses are the financial responsibility of your adult children (if there are any) and of the father of your late husband.

During the ensuing period when you are caring for any minor child until they reach maturity, the living expenses of yourself and the child are the responsibility of:

- 1- your minor child if he/she can afford it, (considering he/she may have been enriched by the inheritance)
- 2- if the minor child cannot afford it, of any adult children you may have AND of the father of your late husband.

It is not your responsibility even if you are rich before or after inheritance.

(This means, among other things, that there is no Shari'ah justification for pressuring you to leave the house, bequeathed by your late husband, after Iddah. See details below under "The House").

The Car

It seems that a car is your normal transportation you are used to when your husband was alive. If so you are entitled to a car. After the death of your husband, his car becomes owned by all the heirs in proportion to their respective shares, until the estate is actually divided.

Country and legalities

If you live in a Muslim country that applies Shari'ah in family matters, you cannot trade or sell the car before making actual division of estate; but if you live in a country with Latin-cum-Anglo-Saxon Laws you become, by law, owner of the car and you can dispose of it.

Since from Shari'ah point of view you are only a partial owner, i.e., you only own your inherited share, any action you take on the car must be either by permission from other partners in ownership or as a partner in what is called "involuntary partnership in property." your action must then be to the best interest of all owners of the said property.

While you are entitled to transportation, if the car is left with you as your means of transportation, that is considered as an implicit contribution towards fulfilling the responsibility of providing transportation, even if it means you are paying part of your transportation that should otherwise be paid in full by grandfather or adult children.

If the car is left with you after the expiration of your entitlement to a transportation this is a good gesture on the part of other owners you should be grateful for.

In either case, selling the car or replacing it requires a permission from all owners, and if your parents-in-law are not supportive nor cooperative, you may still replace it, if this is to the best interest of all owners (you said it has become uneconomical to run!) but keep records of its value to add it to the estate for actual distribution to heirs, when the division happens. At the same time, keep records of the cost of your transportation, for the period you are entitled to, to adjust this cost toward the share of the car value belonging to grandfather and adult children.

If you sell it after the expiration of the period of the grandfather's and adult children's financial responsibility, this latter situation requires you to estimate the value of the car at the end of that period because the value of the car then must be distributed to all the heirs.

Therefore, the answer to your second question is: it is better to take permission of other heirs before replacing the car. If your parents-in-law are not cooperative, your action in selling must be to the best interest of all owners, remember you and your children own two-thirds, and you need to keep records of shares as explained, you are also entitled to cost of transportation and other living expenses as explained above, records of it should also be kept to be charged to whoever is responsible for them when you make the division.

The house

Remember, you and your children (majors and minors) together own most of the estate of your late husband and you cannot be removed from a house and other properties--you own two-thirds of them!

During Iddah and while you care for a minor child, you are also entitled to residence of the same level you were living in before the death of your husband, and the same house is obviously the most qualified residence to that level.

The answer to your fourth question is that you cannot be removed from the house left by your late husband. After the Iddah and the period in which you are raising minor children, if any, you will owe your parents-in-law rent for 'their' shares in the house.

Custody and guardianship of children

In Shari'ah, minors have a right to be provided guardianship/custody. This is the right of the minor, not something "belonging to" any body else, including the mother. Here are the basic principles of custody and guardianship, to give you the big picture:

Minors have a right to be with their parents if they are alive and living together.

At divorce, minors have the right to be with the Muslim parent because they have the right to be exposed to the religion of Fitra (created nature) and a non-Muslim parent may negatively influence this Fitra as the Prophet, pbuh, mentioned in an authentic Hadith.

If both parents are Muslim and one of them dies (your situation), Minor children have the right to be with a caring blood-related female under a blood-related male as head of family. The list of relatives with custodial priority is given by the Prophet, pbuh, as follows:

1. the mother if not married, or married to a brother of the deceased;
2. the mother's mother, provided she is not married to a man not related by blood to the children;
3. the father's mother, provided she is not married to a man not related by blood to the children;
4. The children mother's sister, then their father's sister, with the same condition.
5. When none of the above are available (they do not exist or are mentally or behaviorally unqualified), the court assigns foster parents by returning to this same list of priorities and using the first one available even if they are married to an unrelated man, then going to others on the ground of what is best for the minors.

Let us apply these principles to your case. If you remain unmarried, or if you marry a brother of your late husband, your minor children remain with you.

Since you don't have a Muslim mother or sister, if you marry an unrelated man, custody would go to the minors' paternal grandmother, as long as she is still married to the paternal grandfather (or widowed).

If you don't get married, Shari'ah does not permit them to take a minor from you.

There is a little problem though with the definition of a minor child. Fiqh Schools differ on the age limit that determines who is considered a minor child. For instance, if you live in Saudi Arabia, grandparents can take a girl at the age of 9 (probably even at 7, I am not sure) and a boy at puberty as this comes from the Hanbali school. If you are in Egypt, both can stay with you until puberty (I am not sure too, probably until marriage

for the girl and until 18 for a boy). There are countries that allow minors to select their guardian after a certain age.

All these views are accommodated in the text of Ahadith, and apparently, it must depend on the other circumstances.

Also important: There is a distinction between financial custody and care-providing custody or guardianship. Financial custody --the responsibility for managing the minor's property--rests with the paternal grandfather, even while the mother is the care-providing custodian, the one who actually raises the children. But from Shari'ah point of view, you are qualified to be your minor children's financial custodian. If you are in a Muslim country that applies Shari'ah in Family matters (most Muslim countries do, only exception may be Turkey and to some extent Tunisia and may be Indonesia, on the other hand India applies Shari'ah for Muslims there) you have to fight for it in court and prove that you are a better financial custodian than your father in law. And you can get it.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

FATAWA MARRIAGE, DIVORCE, RELATED PROPERTIES 2001

SUBJECT: Legally-given subsidies to wives

From: dialogue@islam-online.net

Date: 8/8/2001

Name of Questioner Ummu Saleh

Country Netherlands

Question:

I have a question about taxes. In the Netherlands we face a new tax-regulation which leads to some difficulties in some Islamic families. The case is taxes are withheld from de salary of the husband. This amount of money plus about 175 guilders extra will be put on the bank account of his wife. According to Dutch law this money is hers. Some husbands however force their wives to use this money for groceries etc., so she is not able to safe it for other purposes. The reason the men give is because it is not a ruling according to Islam. But, on the other hand, they work in a non-Islamic country. Do they have to abide by the rulings of the country or not? Jazakumullahu khairan, was Salamu Alaykum wr.wb.

My Answer:

Dear Sr. Ummu Saleh

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

This is an interesting case. If I were the government of Netherlands I would place certain restrictions on withdrawal from this account by the wives. Otherwise, what is really the purpose of it in a country that has reasonably high percentage of wives working outside their homes and earning their own income?

If the amount taken from husbands is a tax collected by law and the amount given to married women is given by virtue of the law, I should say this money is hers and her husband has no right, in Shari'ah, to force her out of it, whether for household needs, her own clothing and other personal needs, groceries or any spending on him, the children or her normal and customary personal expenses.

The reason for my opinion is the following: We, Muslims, who live under non-Muslim Laws recognize these laws as laws of the land. Laws of the land can impose taxes and can give subsidies. What is taken as a tax is gone to the government and no one has a right to recover part or all of it by forcing some other person out of her money.

On the other hand, what is given to a married woman is given to her from the government. The government can do that, like any other subsidy. Here again no one has a right to force the owner out of her property. That is her money given to her by a legal authority and with legal procedure. The husband cannot claim that it is his by any means. And Shari'ah does not allow husbands to dispose of their wives money except by due course of free consent. If it is given to the husband by free consent, as the Qur'an describes it "if they give it to you with their soul pleased" then you may take it with joy and eat it with right good cheer, (see Verse 4:4)

Wa Allahu A'lam
Wassalam
Sincerely,
Dr. Monzer Kahf

SUBJECT: Property division at divorce

From Mohammad

Sent Aug. 1, 2001

Question

Assalamu Alaikum wa Rahmatullahi wa Barakatuh,

Br. Dr. Ahmad Sakr asked me to answer your question about division of property between husband and wife in case of divorce. Whether the share of a divorced wife includes "all property she brought into marriage, her earnings during marriage and her Mahr. And if she opted for an American-law division whether what she takes above what is permitted to her in Shari'ah is Halal or Haram. And whether it would be better for the divorced husband to give her the extra as a gift so it would become Halal for her should she opt for the American-law division of property.

Dear Br. Dr. Mohammad

My Answer:

Al Hamdu li Allah wa al Salatu wa al Salamu ala Rasuli Allah,

The question is very pertinent and very important. We Muslims in America live in a situation that does not allow us the benefit of an overall or umbrella Islamic law that makes our disputes solvable in accordance with the Shari'ah. The ultimate solution is

only one that is to lobby for the enactment of a family law for Muslims in America that is compatible with the Shari'ah. We must work toward that objective, Muslim minorities in more than one country in the world have achieved it.

Until that happens, there will always be troubles regarding this and all other matters related to family and inheritance laws.... Wa Allahu al Musta'an.....

A temporary solution that helps a lot is to have pre-marital contract between the bride and groom that they want to apply Shari'ah for all their family matters (and they must count most titles of such matters) and to appoint an arbitrator (such as the ISNA Fiqh Council) or the Fiqh committee in a named Islamic Center, etc.) So that the determination of what is the Islamic position on an issue shall not be left to an American family court.

Coming now to the points you raised (please notice Br. Dr. Shafi, I followed the pattern set forth by the Prophet Yusuf, pbuh, when he started his answer with a general statement).

There are a few basic points in Shari'ah that need to be put forward clearly:

The marriage contract in Shari'ah does not provide for mixing or intermingling of properties of the husband and wife (nor for change of family name). This means that her property before marriage remains hers to the extent that if she was rich and he was poor she is permitted to pay her Zakah to him as a poor. A case happened at the time of the Prophet pbuh, and he advised Zainab, wife of Adullah bin Mas'ud that she can pay her Zakah to her husband even though she knew he was going to use the money to spend on the family including herself. The same independence and separation of properties applies to the husband. The marriage contract itself provides for a transfer, from the husband to the wife, of certain property (or an amount) under the name of Mahr or Sadaq. This transfer may be immediate, at the time of the contract or delayed, wholly or partially to a specific due date or without a due date. When the Mahr is delayed it becomes a debt like any other debt, for instance it can be supported by a collateral or a lien and in case of bankruptcy it is treated like other debts. If no specific due date is mentioned in the marriage contract, it becomes due on the earlier of two incidences: death of either of them, or divorce.

Hence we have here three rules:

NO PROPERTY MIXING BETWEEN HUSBAND AND WIFE AS A RESULT OF THE MARRIAGE CONTRACT;

THE MAHR IS HERS, WHETHER PAID IN FULL OR NOT; AND, EACH ONE OF THEM, ESPECIALLY THE WIFE (BECAUSE THERE IS CONFUSION ON THIS IN SOME MINDS) IS COMPLETELY FREE TO DISPOSE OF HER/HIS PROPERTY THE WAY SHE/HE PLEASES. NO PRIOR CONSENT, APPROVAL OR EVEN INFORMATION IS NEEDED FROM ONE TO THE OTHER.

Some of the implications of these three rules are that if she used part or all of the Mahr to buy household furniture or any other property for family use, that property remains hers during marriage and after marriage and whatever she owned before marriage or as a result of the marriage contract also remains hers.

The Household expenditures are the sole responsibility of the husband. This is another effect of the marriage contract. This is implied in the qur'anic verses especially those

that deal with spending in cases of divorce with child nursing and this is the prevailing opinion in the four schools of Fiqh, Very few Muslim scholars argues that if she was rich and he was poor, she is required to spend on him and the family. In my opinion this argument is weak and overruled by verses like (Let he who has plenty spend from his plenty and he whose means [Rizq] are limited must spend from what Allah has given him) and by the saying of Ibn Mas'ud and by several other texts and rules.

Hence rule No. 4 is:

HUSBAND IS REQUIRED, SOLELY, TO SPEND ON THE HOUSEHOLD.

When the wife spends on the household or gives any thing to her husband, if this giving came out of her voluntary decision, with no social pressure and out of her good self, then it is O K for the husband to take it. This is completely Halal, irrespective of whether this giving or spending comes from her Mahr or from any other source such as earnings, bequeath from her family, part of her property she had before marriage, gifts he or any other person gave her, etc. This is based on the verse 4:4 about the Mahr that means: After you give her the Sadaq with full ownership becoming in her hand if she gives any part of it to you out of her good self, you may eat it with full pleasure and full ease.

Hence we get rule No. 5:

ANY THING GIVEN BY A WIFE TO HER HUSBAND OR SPENT ON HIM OR ON HIS BEHALF IS PERMISSIBLE AND IS CONSIDERED A GIFT PROVIDED SHE VOLUNTEERS IT OUT OF HER OWN GOOD SELF WITH COMPLETELY FREE DECISION.

4- Now, let us apply these rules to divorce in America:

If there is a pre-marital agreement that stipulates the application of Shari'ah, each one gets what she/he owned before marriage, plus any and all increments resulted from the investment or growth of these properties, and if they maintained separate bank accounts for each of them, each get what is in that account. Properties she bought before, after or during the arrangement of marriage are hers, her earnings and Mahr are also hers. She is not entitled for compensation of the wear and tear or amortization of properties she put for household use because she obviously put them to be used in the house. She could have, at the beginning of marriage asked for rent on such properties, but the fact she did not ask for rent means she volunteered it.

If there was no pre-marital agreement, as normal in most Islamic marriages here and most couples who came from Muslim countries. Still Properties she brought to the household, personal properties (jewelry, etc.), Mahr, and earnings are hers if separated. But most couples do not separate cash and bank account and sometimes real properties. Here the best solution is a friendly agreement at the time of divorce, such an agreement should be based on generosity and forsaking on part of the husband.

c. If no agreement could be reached. The legal Shari'ah position is as follows:

Since the usual practice of most Muslim couples is to have accounts in the names of the couple together, and to have titles to properties also in the two names together, also whatever they both earn, from work and from growth and investment of assets is mixed together and put in one account from which household spending is done. Working Muslim wives in America usually have the feeling that they participate in spending and they are partners in ownership of anything the couple own on a 50/50% basis, regardless of who earns more than the other, all these kept in mind, it means:

If the wife brought in marriage a property that still exists at time of divorce such as real estates, furniture, securities, these are hers at divorce. No compensation for use and wear and tear during marriage.

If she worked during marriage and they bought some properties as a result of her earnings (not reducing the importance of his contribution), they do not calculate savings of each and they share on the basis of half/half. This is because when the property was purchased this was their assumed intention that is revealed by the fact of putting the title in both names, this may be supported further if her take-home income was big enough to warrant the 50/50% sharing.

If the wife was not working and did not participate to purchasing the community properties except by the fact that she was home, providing comfort for her husband as usually said in American courts. All that is not a sufficient ground to share the husband's properties in Shari'ah. She is required to provide comfort (this does not mean to serve in cleaning and cooking, which is an other issue that I do not intend to discuss here) by virtue of the marriage contract the same way as he is required to spend on her, give her the Mahr and provide her with comfort too.

If there are children and the divorced wife takes care of them, the husband is required to provide her and their children with all household needs including housing in accordance with the level of his income and living standard before divorce.

Finally, in all cases, dealing with a divorcee with generosity is recommended in Shari'ah, there are several indications in Qur'an that point out to this (bi al Ihsan). Obviously, if the husband thinks that an American court may give his divorcee more than what she is entitled to in Shari'ah and decided to give her that as a gift instead, so that it becomes Halal for her, he will be rewarded, Allah will, for that from Allah.

5- In specifics, to what you mentioned in your query, at time of divorce:

The divorcee is entitled to her Mahr and to properties she had before marriage, unless there is evidence that she intended to give that to her husband as a gift out of good self; She is not entitled to an amount equal to her earnings during marriage that she spent on the household unless she can prove that she did that as a loan to her husband;

A working woman is entitled to one half of community property unless there is evidence on the part of the husband to prove other proportion.

Relations between husband and wife, even at divorce must be based of generosity, forgiveness and forsaking especially from the husband.

Wa Allahu A'lam

Wassalam,

Sincerely,

Dr. Monzer Kahf

SUBJECT: Living in the USA after divorce

From: live Fatwa on Islam on line, Aug. 8, 2001

Name seeker

Question

Salam dear brother,

I am going to divorce my husband, I live in USA, is it Haram for me to go on with my life and continue to work and live in the USA.

Thank you for your work. Salam

My Answer

Bismillah wa al Hamdu li Allah wa al Salatu wa al Salaam 'ala Muhammad Rasuli Allah.

Divorce is the most hated action from among the allowed actions, as the Prophet, May the peace and blessings be upon him, declared it. So we know that what is allowed are not all of the same level. Some are hated and some may be recommended.

We are called on to live Islamically wherever we happen to reside, be it in the United States or else where. As long as you can perform all of the Islamic obligations (fara'id) and live within a Muslim community there is no place on the earth that is not allowable to live and work in, as long as the work that we do is in the area of the permissible.

Allah knows best (Wa Allahu A'lam)

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Distribution of property at divorce

From Live Fatwa Session on Islam on line,

Sent Aug. 1, 2001

Name dounia

Question

Salam. What are my financial rights at divorce? I would like to add that after 7 years of marriage, he proposed to give me 5,000 \$, take my clothes and leave the house.

How does it work financially?

My Answer

Bismillah, Al Hamdulillah wa al Salatu wa al salaam ala Muhammad Rasuli Allah

Marriage in Shari'ah is a civil contractual agreement in which the obligations and rights of the two parties are clear as stated in the Shari'ah, although each one is free at the time of the contract to negotiate any financial conditions.

Marriage ends by either of three actions: a) Divorce, b) Khul' or c) divorce imposed by a judge. In the case of divorce, the husband is required to pay any unpaid part of the Sadaq (Mahr assigned to the wife in the contract). He is also required to pay for the living and housing for the period of the 'Iddah, if the divorce is revocable (The first two are revocable and the third is final). If there are children and the wife chooses to take care of their upbringing (That is her right which she can refuse to take advantage of), the father is then required to provide her and the children with adequate housing and other expenses in accordance with his financial ability exactly as the provision during the 'Iddah is related to the financial ability and standards of the Husband. The Husband is not required to give or spend on a divorced wife beyond what is mentioned, unless there is a clause to that effect in the marriage contract.

Khul' come on request of the wife, who will negotiate with her husband an agreed compensation for bringing an end to their marriage contract. This is normally something like returning the paid part of the Mahr and or for giving up the unpaid part.

Divorce that is imposed by the judge comes normally on request from the wife because of ill treatment by her husband. The court then decides on an adequate compensation in addition to payment of the unpaid part of the Mahr and the living expenses during the 'Iddah.

In specific answer to your question, the number of years of marriage is not important in determining your rights in the contract and an amount of 5,000 is equally irrelevant as what is due on him are provisions for the period of 'Iddah and the unpaid part of the Mahr. This is on the assumption that you do not own any community property in which your share comes either from your own income/wealth during and before marriage or from gifts he gave you when you purchased that community property (assuming that he paid for the property, but said that he would put it in both of your names together, that is a gift).

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf
