

Fatawa Marriage and Divorce 2004

Family disputes

Subject: marriage small skirmishes

From: Khalil

Sent: Wednesday, October 06, 2004 5:21 PM

As salaamu alaikum,

Monzer,

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 because he earns his living in New Jersey. In any event while she was up here they had a simple dispute regarding regular 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, boycotted 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 6:27 AM

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

Marrying more than one Wife

Subject: Second Marriage

From: Irfan

Sent: Sunday, December 26, 2004 1:38 PM

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

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

assalamoalaikum

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 these 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

Subject: We did not get Children? – Urgent

From: Tayyaba

Sent: Friday, December 24, 2004 8:06 AM

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. Embroys (like child) - and in my opinion the saragotta mother just the women who breat feed nurish the kid - but here like blood nurients and womb protection - and the relation cuold 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 10:30 AM

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 council. 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 agreed 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

Divorce Matters

Subject: Re: Divorce Contracts

From: Khalil

Sent: Tuesday, March 02, 2004 2:30 PM

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

Sent: Wednesday, March 03, 2004 5:25 PM

Wa Alykum Salaam,

Yes I divorced but if I am correct I pronounced Talaq then after every mensrual cycle i pronounce Talaq until affter 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 month, 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
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 arised out of this situation are to much for me. I am having problems with my the 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

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
