

FATAWA MARRIAGE AND DIVORCE 2006

Financial Matters between Divorced Couples

Subject: Financial Matters between Divorced Couples with no Marriage agreement

From: Sr. Samar through Islam online

Sent: Monday, October 02, 2006 3:32 AM

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 fore 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 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: 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 3:11 AM

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 5:43 PM

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 and 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/she 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 fourth) is always one half the share of a husband (one fourth 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

Would you Proceed with Marriage if the other Party has a Sickness

Subject: marriage question

From: SAMIA

Sent: Friday, February 24, 2006 4:20 PM

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

Marriage in Private

Subject: marriage in Private

From: MIMI

Sent: Wednesday, December 20, 2006 2:38 PM

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! From 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 loses 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

Sent: Friday, December 22, 2006 9:43 AM

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

Sent: Wednesday, December 27, 2006 9:25 AM

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
