

FATAWA MARRIAGE, DIVORCE 2008-2012

Subject: Marriage Documentation

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

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: 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 Alhamdulillah, 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, is it 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 uprising 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, P.b.u.h, 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

Sent: Tuesday, December 10, 2008

Location: Chicago, US

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 Qayim. 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, Pbuh, 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 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.

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 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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(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:

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: 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

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

Subject: Conditions in Marriage

From: Munirul

Sent: Sunday, October 28, 2012

Location: United States

Question: Divorce in hand of the wife and other conditions

Assalalamualaikum 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

Subject: Same couple Remarrying after divorce

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 (أنت 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: 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

Subject: Child Bearing and Adoption

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

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

Subject: Justice when marrying two wives

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

Subject: Divorce and Khul', 'Iddah and property Settlement

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

Sent: Friday, June 06, 2008

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

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

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 طلاق 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 Niyah 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: 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

From: Ibrahim

Sent: Sunday, December 26, 2010

Location: Nigeria

Question: distribution of assets at divorce

Bismillah Rahmaani Raheem wa Salatu wa Salaamu ala Rasuluhil 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: 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

Subject: Finance marriage expenses

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

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

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
