

# FATAWA MARRIAGE 2016

From: Tayyaba

Sent: Sunday, January 17, 2016

Location: USA

## **Question:**

Assalamu Alaykum

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

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

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

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

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

He asked me to leave the world Bank/ UN job - I never spare a minute to obey him- but now I cannot take this at this time of life - when I thought that we have solved our financial issue and we will enjoy our daughter and life - when he is now financially stable he thought to have second wife for sons - he said even if I would have one son he would go for more kids

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

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

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

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

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

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

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

Waiting for reply please

Tayyaba

**My Answer:**

Bismillah al Rahman al Rahim

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

Dear Sr. Tayyaba

Wa Alaykum Assalamu wa Rahmatullah wa Barakatuh.

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

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

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

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

Seek help from Almighty Allah and increase your prayers and Duaa to Him, ask Him with confidence and repetition and insistence. Think of this problem as a short term crisis (and you

have long time to live for yourself and your young daughter) that you, with help of Allah and help from professional counseling, will pass it successfully InShaAllah. Make your Duaa for you AND for your husband to guide you both to the right way. Think of the many bounties and good things Allah gave you and be thankful and appreciative, you may put these bounties in writing in a personal notebook in front of you and on top of them your lovely daughter and your health.

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

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

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

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

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

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

And please write me anytime you like.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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From: Mayssun

Sent: Monday, February 08, 2016

Location: Jeddah

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

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

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

Has the second wife really been divorced or not?

Have all the 3 divorces occurred?

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

If divorce is irrevocable, what should she do now?

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

**My Answer:**

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

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

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

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

Allah knows best.

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**From:** Sherif

**Sent:** Tuesday, February 09, 2016

**Question: Use of IVF in Marriage**

Dear Dr. Kahf:

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

Thanks and Kind Regards,

Sherif

**My Answer**

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

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

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Maseer

**Sent:** Sunday, February 14, 2016

**Question: Adoption, breast nursing and remarriage**

Dear Dr. Kahf:

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

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

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

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

Kind Regards.

**My Answer:**

Bismillah al Rahman al Rahim

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

Dear Br./Sr. Maseer

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

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

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

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Sharif

**Sent:** Sunday, February 14, 2016

**Location:** USA

**Question: Borrowing eggs from wife's sister**

Dear Dr. Kahf:

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

The situation, concisely, is as follows:

1. I have been married before but have not been blessed with children. My ex-wife suffered a condition that made her chances of having children less than 10%. Half a dozen failed IVF attempts, due to poor egg quality, caused A LOT of strain on the marriage and we ended up deciding to go our separate ways.
2. I have gotten to know another lady for the purpose of marriage and, even though I have met her and her family only once, we have gotten really close through email communication over an extended period of time. Because I had been married before, her family required that we undergo medical tests, basically to rule out the possibility that I was responsible for not having children in my previous marriage.
3. The results of the medical tests came back OK for me alhamdulillah but, Subhan Allah, her results showed the exact same condition as my previous wife! Her chances to have children are less than 5%. Doctors (in the West) have advised that her chances basically lie in egg donation.
4. Of course, this news is devastating. She is still unable to break this news to her family.
5. She has two younger sisters, also unmarried since, as you are aware, chances of finding good matches in non-Muslim countries are extremely diminished.
6. I am contemplating the thought of us suggesting that one of her younger sisters donate eggs to her. Of course, that sister would need to be married to me (temporarily/nominally) throughout the process of egg donation. The resulting embryos (InShaAllah) would then be

frozen until such time that I am legally married to the older sister. We would use those embryos only IF her natural eggs fail to do the job.

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

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

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

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

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

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

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

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

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

Kind Regards.

Sherif

**My Answer:**

Bismillah al Rahman al Rahim

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

Dear Br. Sharif

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

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

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

The third option that I suggest is: get married to this woman. Search for a child (very young baby almost just born) for Islamic adoption (adoption while keeping full accessible official records of the reality). Have your wife nurse this child (I know of several cases of women unable to have children who were able to breast feed their adopted children). There are also medical enhancements for this breast feeding. This child will be yours as nursed child and by that you

overcome the issue of adoption. You still make more condensed attempts for having a child even with 5% chance. Adoption with breast nursing is a good alternative. PLEASE RESIGN TO THE WILL OF GOD, HE KNOWS BEST.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Sharif

**Sent:** Sunday, February 14, 2016

Dear Dr. Kahf:

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

Thanks and Kind Regards,

**My Answer:**

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

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

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Tayyaba

**Sent:** Saturday, February 27, 2016

**Location:** USA

**Question:**

Assalamu Alaykum

Thanks for your continuous help and guidance

There is one development in our issue or case

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

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

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

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

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



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

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

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

Generally, he says that he follows Qur'an and Sunnah- but we follow in general the Hanafi Fiqh. Allah may give you the Ajr for all of your help and please pray for me - I have again started IVF treatment, please keep me in your prayers for more children.

**My Answer:**

Bismillah al Rahman al Rahim

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

Dear Sr. Tayyaba

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

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

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

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

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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From: Amjed

Sent: Saturday, March 12, 2016

**Question: Question on Divorce**

Assalamu Alaykum,

I have another question about divorce.

This is the scenario, a wife asked her husband a question and to verify he is truthful, asked him to say she is divorced if he was not truthful with the answer. If the husband answered based on his understanding of the question but later (couple of hours) kept on thinking of the question and provide a better answer. Did divorce take place?

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

Jazaka Allah Khair,

**My Answer:**

Bismillah al Rahman al Rahim

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

Dear Br. Amjed,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

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

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** rila

**Sent:** Tuesday, May 24, 2016

**Subject:** Khul' and Iddah

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

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

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

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

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

Same as above; why waiting for 10 years?

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

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

Thanks and Salams

Rila

**My Answer:**

Bismillah al Rahman al Rahim

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

Dear Sr. Rila

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please see my answers below the questions:

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Sarah

**Sent:** Tuesday, May 24, 2016

**Subject:** Marriage contract

Assalam Alaykum Mr. Kahf,

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

Kindest Regards,

Sr. Sarah

**My Answer:**

Dear Sr. Sarah

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Thank you for your kind email.

I am not in the business of drafting contracts.

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

Best Regards,

Wassalam

Prof. Dr. Monzer Kahf

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**From:** rila

**Sent:** Wednesday, May 25, 2016

**Subject:** Iddah of bread- winning mother

Dear Dr. Monzer, Assalamu Alaykum

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

There is another simple question.

There is at the moment a massive flooding in Sri Lanka and most, especially Muslims, who were living in low lying areas of Colombo are very badly affected with submerged homes, belongings, and vehicles. I have some Bank Interest money with me and can I give it to Muslim flood victim

to repair their homes or repair vehicles or for any other use asking them not to use the interest money for eating purposes? Or to give it to Non-Muslim victims?

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

Yours sincerely,

Rila

**My Answer:**

Dear Sr. Rila

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

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

For the Iddah and bread winning.

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

Best Regards,

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Abuelezz

**Sent:** Friday, August 19, 2016

**Subject: Subject: community property between spouses**

Wa Alaykum Assalam our dear Dr. Monzer, may Allah bless you and keep you healthy for us and the Muslim community.

I want to clarify something. The lady is from Florida, US and not from Canada. I am sorry it is my mistake. I didn't clarify that. She is from the community I was serving before in US. Does that change anything in the fatwa? Is it OK if I substitute America with Canada in the fatwa before forwarding her your fatwa?

For me I would like to ask for some clarification for the fatwa in general so I can answer the people well. As I understood from the fatwa that the rights given to a Muslim wife in Canada/America such as the right of 50/50 share of the matrimonial house, shared account or wealth that might be acquired during marriage while she is a full-time house-wife, spousal support, and the right for the children custody above 7 yrs. old are permissible by Shari'ah? Is that because the husband didn't try before the marriage to make an agreement with his wife to oppose any of these rights/privileges? بمعنى هل هذا لأن الزوج يعتبر قبل ضمناً بهذه الحقوق الممنوحة للزوجة؟  
بالقانون الكندي أو الأمريكي حيث يعيش ولم يعترض أو يتفق من البداية على ما يخالف هذه الحقوق أو الامتيازات؟

Jazakumu Allah Khayran

Abuelezz

**My Answer:**

Bismillah al Rahman al Rahim

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

Dear Br. Imam Abuelezz

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Yes you can with no doubt replace USA and Florida in place of Canada and province. I remember that Florida is a community property state anyway.

As you mentioned the rationale of accepting property distribution of the community property laws is that they live under this law and they put properties in both names (or even without this condition as the case of having her signing papers or putting a property in one name under a law that considers it owned by both even with this one name recording) without making any arrangement otherwise. In Shari'ah we consider that a legitimate gift given from the spouse who paid more to the other spouse who paid less or nothing. Gifts between spouses are permissible, recognized and encouraged in Shari'ah. (the normal thing is: when relation between them is good they do not care about that and when there is a dispute the husband likes to take it all with an action that he wants it applied to the past).

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Abuelezz

Assalam Alaykum Dr. Monzer,

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

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

هل يعد القانون الوضعي الكندي عرفا صالحا معمولا به أم يعد من نوع العرف الفاسد المخالف للشرع بتمليك أحد الزوجين مال الآخر بغير وجه حق؟

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

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

وهل بعد فتواكم هناك أي دراسة متوسعة لكم أو لأحد العلماء حول هذا الموضوع تحيلنا عليها لمزيد البحث والإطلاع

Jazakumu Allah Khayran

Abuelezz

**My Answer:**

Bismillah al Rahman al Rahim

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

My Dear Br. Abuelezz

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

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

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

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Abuelezz

**Sent:** Wednesday, August 17, 2016

Assalam Alaykum Dr. Monzer,

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

Assalam Alaykum,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

He is still paying utilities and house mortgage.

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

Threats me of not paying for utilities as well!

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

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

1. My financial rights (matrimonial house, spousal support, children support).
2. Seeking divorce through the American Court is Halal or Haram (ok or not) especially with my husband refuses to divorce me and leaving me all this time completely and by myself?

3. Spousal Support. After 20 years of marriage and patience to keep the kids together as a family as long as possible.
4. Children's custody and support especially the 9 y old.
5. I have concerns about possible plans to take the 9 y old and go back to Egypt next year and as soon as he gets his retirement money.

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

Jazaka Allah Kheir.

**My Answer:**

Bismillah al Rahman al Rahim

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

Dear Br. very respected Imam

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

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

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



10. Children custody (for boys above 7) is flexible in Shari'ah, I do not know what do courts in Egypt adopt but if divorce is done by a Canadian court whatever rights it gives to either spouse are OK because of this flexibility and difference between schools of Fiqh.

Accordingly,

- a. If amicable divorce is not reached, seeking a court order from a Canadian judiciary system is permissible in Shari'ah.
- b. All properties in Canada that are in both names or in his name alone (even with the papers you signed) may be claimed as 50/50 and if a court order in Canada gives you this right, it is permissible in Shari'ah to take it.
- c. Yes, unfortunately in case of divorce or disturbed marriage he can prevent you from entering the marital apartment he owns or rents in Egypt unless an Egyptian court gives you a right to it. you can take back the furniture also by court order after evidence (or customarily known) that your family paid for it.
- d. Egyptian courts will not give you any rights to any other properties he owns in Egypt (the luxury apartments) but a Canadian court order (made final judicially) most likely will give you right to one half of these properties if you prove that he obtained them during marriage period in which you acted as full time house wife, such decision is acceptable in Shari'ah as long as they are paid for from income acquired in Canada during marriage can be implementable in Egypt.
- e. Unfortunately judicial process in Canada and in Egypt is long and costly and requires a lot of payment to lawyers.
- f. Canadian courts may give you right to spousal and child alimony since the day he left the house, but since you are working and earning this may not be substantial. What the court gives is permissible in Shari'ah.
- g. You should not worry about your separate bank account and you still have right to 50% of the joint account if it is still open or by a court order to 50% of amounts he withdrew without your knowledge after starting the dispute. This is permissible in Shari'ah.
- h. Always, a negotiated solution with help of friends and family is better even if you lose some of what is rightfully yours and it may turn to be less costly financially to both of you especially that it seems that you are financial more tender than him.

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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**From:** Hani

**Sent:** Thursday, September 29, 2016

**Subject:** Custody in Islam

Assalamu Alaykum Dr. Kahf,

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

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

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

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

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

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

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

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

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

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

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

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

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

As such, does the mother in Islam have the exclusive right to make all important decisions about how to care for and raise a child without the involvement of the father; in other words is custody in Islam synonymous with the legal definition of custody. **Or is custody in Islam more consistent with primary-residence and care-giver status but the father has to be consulted on**

important issues regarding his child's upbringing? This is the Islamic way and add to it that: It is the father's word that goes in case of conflict unless he is proven Safih.

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

Jazaka Allah Khair,

Hani

**My Answer:**

Bismillah al Rahman al Rahim

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

Dear Br. Hani

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

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

Wa Allahu A'lam

Wa Alhamdu Lillahi Rabb al Alamin

Wassalam

Prof. Dr. Monzer Kahf

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