

Fiqh **(Laws)**

Lesson 1

Categories of Islamic Jurisprudence (fiqh)

Fiqh in Qur'ān and Hadith

The word *fiqh* is usually defined as 'Islāmic Jurisprudence' but literally means 'in-depth study' or 'profound understanding'. A person with deep knowledge of Islāmic Laws, is called a 'faqih' (fem. 'faqiha' and pl. 'fuqahā').

The Qur'ān uses the word *fiqh* to mean 'learned':

﴿فَلَوْلَا نَفَرَ مِنْ كُلِّ فِرْقَةٍ مِنْهُمْ طَائِفَةٌ لِيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ﴾

But why should not there go forth a group from each of their sections to become learned in religion, and to warn their people when they return to them, so that they may be aware?

- Surah at-Tawbah, 9:122

From this āyah we realize that often one has to go out and travel abroad in order to learn religion and access knowledge. We also realize that learning the laws of religion is *wājib kifāi*, meaning a duty that is a must on everyone until some people from the community take up the responsibility to study religion and guide the community. Then the obligation is lifted from the rest of the community.

Rasulullāh (s) is reported to have said, 'whoever memorizes forty hadith for the sake of my nation (ummah), will be raised by Allāh on the Day of Judgement as a learned *faqih*.'³²

It is not known whether the term *faqih* was applied to the learned companions of Rasulullāh (s). However, we certainly know that the generation that followed the companions (*sahāba*), known as *tābi'un*, used this title for a number of scholars among them.

Imām Husayn ('a) wrote a letter to his friend and companion Habib b. al-Mazāhir in the year 61 AH, just before the event of Karbala, and addressed Habib as a '*faqih*' (a learned man).

Also, there were, for example, seven great jurists among the *tābi'un* who are known as the 'al-Fuqahā as-Sab'a' (The Seven Jurists). And the year 94 AH was known as

³² <http://www.al-islam.org/fiqh/chap1.html>

'Sanat al-Fuqahā' (the Year of the Fuqahā) because in that year, apart from our fourth Imām, Ali b. Husayn Zayn al-'Abideen ('a), jurists like Sa'id b. Musayyab, Urwah b. Zubayr, Sa'id b. Jubayr and others died. Thereafter, great Islāmic scholars, particularly the jurists were commonly referred to as *Fuqahā*.

Our Imāms (peace be on them) also used the term *faqih* quite often. They encouraged some of their companions to study religion thoroughly and become fuqahā. We also know that quite a few students of our Imāms ('a) were known as 'Shi'ah Fuqahā' by their contemporaries.

Limiting the terms *Fiqh* and *Faqih* to Jurisprudence

The Scholars (*'ulama*) in Islām have divided Islāmic teachings into three broad areas:

- 1. Principles of Faith:** These are the fundamentals that are related to one's faith, like the belief in Allāh, the Resurrection and Day of Judgement, Prophethood, the divine revelation, the angels, and Imāmah. The science that deals with all this is called Aqāid, or 'Ilm al-Kalām or Usul ad-Dīn (sometimes referred to as Theology).
- 2. Moral Behaviour and Ethics:** These sciences are aimed at improving human behaviour and cultivating spiritual aspects of our existence. They deal with God-consciousness (*taqwa*), justice, generosity, bravery, patience, submission to the Will of Allāh, and so on. And the sciences that discuss these are called Akhlāqiyāt, 'Irfān, and so forth.
- 3. Practical Laws:** This subject deals with the rules and regulations laid down for acts of worship, human relations with others, and also providing guidelines for the way these acts are to be performed. The practical laws of Islām are often very precise 'dos' and 'don'ts'. They categorize all human actions into obligatory (*wājib*), forbidden (*harām*), recommended (*mustahab*), disliked (*makruh*), and neutral (*mubāh*). In general the Islāmic code of practice is called the *Shari'ah*. And the study of the Islāmic laws, as a science, is called '*ilm al-fiqh* (science of jurisprudence) and one who studies and masters fiqh is called a *faqih* (jurist).

The 'ulama have therefore restricted the use of the word *fiqh* to the third category; perhaps because it has been a matter of most concern, and Muslims have sought such guidance more often. Today, only people with proficiency in this branch of Islāmic knowledge are known as fuqahā (jurists) (even if the term 'faqih' was used in the broad sense of '*ālim* in the early days of Islām).

Of course, in addition to the three common areas above, scholars can specialize in other areas as well, such as Qur'ān sciences and exegesis (*tafsir*), hadith sciences, Islāmic history (*tārikh*), and so forth. But Qur'ān and hadith are seen as sources (*nusus* [sing. *nass*]) rather than subject areas on their own. They are invariably required and referred to by all sciences and branches of Islām.

Usul al-Fiqh & Fiqh

In the early days of Islām, scholars only relied on the Qur'ān and hadith to understand the practical laws of Islām. They grouped all the traditions (ahādith) at their disposal based on jurisprudential issues. It has therefore been said that the early jurist (faqih) was in fact no more than today's expert of hadith (muhaddith).

In time though, a jurist had to be skilled in other sciences as well, because many practical issues arose that were beyond the scope of just a literal interpretation of the Qur'ān and hadith. There was now a need for a science that, for example, discusses not only the jurisprudential content of Qur'ān verses or ahādith but also the *general principles* behind them, that jurists could adhere to when deriving other laws on other issues. This science is called the 'Science of the Principles of Jurisprudence' (*'ilm usul al-fiqh*) or (in short) *'ilm al-usul* (the Science of Principles) or *usul al-fiqh* (the Principles of Jurisprudence). In fact many hawza scholars simply refer to Usul al-Fiqh as 'Usul' (not to be confused with Usul al-Din that discusses Islāmic principles of faith).

Of course a faqih/faqihā must also be familiar with many other sciences before he/she can derive laws in Islām. These other sciences include classical Arabic, logic (*mantiq*), exegesis (*tafsir*) of Qur'ān, sciences (*'ulum*) of Qur'ān, science of hadith (*'ilm al-hadith*), the science of hadith narrators and reporters (*'ilm al-rijāl*), history (*tārikh*), theology (*aqā'id*), philosophy (*falsafa*), ethics (*akhlāqiyāt*), and so on. And he must also be in touch and aware of current political affairs and developments in secular sciences (such as medicine) so that he can respond with the Islāmic view on these matters.

But despite all these sciences, anyone who studies at an Islāmic Seminary (hawza) with the intention of becoming a jurist and being able to derive laws on his own (i.e. becoming a mujtahid/mujtahida), the main subject of study for them is fiqh. It is *the science* around which all the other sciences revolve.

In the past, it would take 20-40 years of study before an individual could reach the level of ijtihād (i.e. become a mujtahid and faqih who derives laws in Islām independently). Nowadays, with access to modern facilities and resources, the time to attain ijtihād can be reduced significantly. However, one still needs to study at a hawza and experience the personal mentoring by other fuqahā and mujtahidín. Such mentors would usually recognize and advise a student when he/she is ready to graduate and take on the role of a faqih/faqihā.

The study of fiqh is further divided into branches and categories.

Categories in Fiqh

Due to the numerous topics to be reviewed and mastered within fiqh, the early Shi'ah 'Ulama divided all the topics into four main categories:

1. **'Ibādāt (singular 'Ibādah):** Literally means 'Acts of Worship'. All those acts which must be performed according to the sharī'ah and must be preceded by a niyyah of 'qurbatan ilallāh' are a part of the 'ibādāt. These include the acts of worship we call Furu' ad-Dīn like daily prayers (salāh), fasting (sawm), Hajj and even their prerequisites like matters related to tahārah and najāsah and ablutions (wudu, ghusl, tayammum).
2. **Ahkām (singular Hukm):** Literally means 'Legal Judgements'. Those duties that are to be performed according to sharī'ah but do not require any niyyah or any pronouncement of a specific formula while performing them are all a part of *ahkām* in fiqh. For example, the laws of inheritance, the penal code (hudúd) in an Islāmic court of justice, the laws of compensation and blood money, the laws on foods and drinks, the laws when you find lost property or stolen goods, and so on.
3. **'Uqúd (singular 'Aqd):** Literally means 'Contracts'. Those contracts of sharī'ah which do not require a niyyah but must be declared with the pronouncement of a special formula in which one party declares the intention and another responds by acceptance, are all categorized under 'Uqúd in the study of fiqh. For example, marriage (nikāh), ijārah (letting or leasing), mortgages, tijārah (buying and selling), peace treaties, joint ownerships and business partnerships, endowments and charities, making a will & testament, etc.
4. **Iqā'āt (singular Iqā'ah):** Those matters in fiqh that require pronouncements but the pronouncements do not require participation of two parties are called Iqā'āt. In other words, a person makes a pronouncement or declaration unilaterally, and the act is considered valid in sharī'ah. For example, remission of debt (releasing a debtor from his liabilities), divorce, taking vows and making pledges, offering reward or compensation in public for some work, and so forth.

The early fuqahā would write a complete book (kitāb) or booklet on each subject within a category. And each category may have 10-20 subjects. For example, within the category of 'Uqúd, a faqih would write a separate book called Kitāb an-Nikāh (the Book of Marriage) which would discuss all his findings on the laws of marriage in utmost detail, and deal with all special cases, circumstances and exceptions. Similarly, there would be a Kitāb at-Tahārah, Kitāb al-Salāh, Kitāb at-Talāq, and so forth.

The book of 'Islāmic laws' or *risāla* of a marj'a that we refer to in English is usually a very brief and summarized version of their entire work and it covers only the common day-to-day laws that people may need to know. For more detailed laws, we must refer to their original work in Arabic or ask the marj'a directly or someone from his office and either he or one of his representatives (*wukalā*) (sing. 'wakīl') would reply our questions/concerns.

Note: Some scholars divide all the fiqh topics into two categories only:

1. 'Ibādāt, which are the laws that deal with a human being's relation to Allāh i.e. acts of worship like wudu, salāh, sawm, hajj, zakāh, khums, and so on.

2. Mu'āmalāt, laws which deal with social transactions and human relations amongst themselves, such as marriage and divorce, business dealings, contracts, and so on.

It is useful to remember that the ten matters that we call *furu' ad-dīn* are part of the 'ibādāt but there are many other matters in fiqh that also have Islāmic rules and laws but they are from the Mu'āmalāt and not included within the *furu' ad-dīn*.

Lesson 2

Marriage in Islam

Islāmic Understanding Regarding Sexual Conduct

Sex is a natural instinct, but, like all natural instincts, it must be channelled towards the good, and limits must be set for it. Islām is against the suppression of sexuality; and celibacy and monasticism are severely condemned in Traditions (ahādith). Every Muslim should marry early after adulthood; in fact, marriage becomes wājib if by not get married a person is likely to engage in unlawful acts. Even devotion to religious and spiritual pursuits at the expense of marriage is not approved by Islām.

Rasulullāh (s) said:

النِّكَاحُ مِنْ سُنَّتِي فَمَنْ رَغِبَ عَنْ سُنَّتِي فَلَيْسَ مِنِّي

Marriage is my sunnah (practice), one who leaves this sunnah is not one of my followers.

Sexual needs therefore should be satisfied, but also regulated. Just as some foods are permissible and others forbidden in Islām, so also are some sexual activities permissible and others forbidden. In Islām the only legitimate way of satisfying one's sexual desires is with one's legitimate spouse; all other kinds of sexual activity, including adultery, homosexuality, and masturbation are forbidden and are major sins.

Most religions condemn adultery, and Islām considers it a cardinal sin. Adultery and fornication lead to the erosion of the family, confusion about parentage, the spread of diseases, and, worst of all, declining moral standards in society. Once adultery is considered acceptable, it can engulf the whole society, leading to an unhealthy preoccupation with sex which saps the vitality and discipline of the society and starts the process of decay.

Islām is so sensitive to this issue that it tries to block any avenue which may lead to sexual excitement and illicit relations. All kinds of nudity, pornography (whether in pictures or movies) and even nude statues are prohibited (*harām*); music and dancing that is typically played in places of sin are *harām*, and in particular music and songs with a sexual content are forbidden.

Islām puts restraints on the intermingling of the sexes. Hence it is, for example, explicitly forbidden for a man and woman to be together in private if there is the possibility of sexual temptation. It is forbidden to look at someone of the opposite sex with desire, unless, of course, one is married to them. One should not be naked in the presence of others apart from one's spouse, or look at another's private parts, even those of one's own gender. It is also forbidden for a Muslim to have any

direct physical contact with the opposite gender - even if it is just shaking hands or kissing when meeting – unless it with close relatives (*mahārim*). Close relatives only include those with whom marriage is not permitted. It is strictly forbidden for men and women to bathe or swim together.

For women it is forbidden to appear before men other than close relatives without proper hijāb. Proper hijāb for women means covering the entire body include the hair. Only the face and the palms may be left uncovered. This hijāb must also be loose clothing that does not reveal the shape of the body and an integral part of the hijāb is modest behaviour with strangers i.e. not flirting, joking and fooling around with them.

Muslims should also be reserved when speaking with strangers of the opposite sex. Nothing should give the impression that they are flirting or being frivolous. It is forbidden to try to seduce someone, in whatever way (in person, via internet chat or email, etc.). Muslim men and women should be models of chastity and dignity.

This does not mean, however, that women should be confined to their homes. They should study, work and participate in all social and political activities, but without infringing any of the precepts mentioned above. During the time of Rasullāh (s), women participated in the construction of the Islāmic society and State; they helped their men defend Islām on the battlefields. There have been, and are, prominent scholars, thinkers and spiritual personalities among women - all within the prescribed limits of *shari'ah*. It can thus be seen that Islām firmly restricts sex to the marriage relationship, and to this end, an Islāmic society should provide facilities for young people to get married.

The Importance of Marriage in Islām

Many Qur'ān āyāt and Traditions (*ahādith*) emphasize the importance of marriage, because the family is the fundamental social unit upon which a society is built.

The man and the woman who enter into an Islāmic marital relationship are considered to be equals, but, in order to ensure the smooth working of the family as a integral unit, man has been given the role of leader. The idea behind this is that in the organization of the family, as in the management of all political and economic structures, large and small, plurality of authority results in chaos. The husband, however, is restrained by checks so that he may not abuse his authority. He has accepted the wife as his life-partner: he should respect not only her individuality, but also her rights as they have been laid down by the shari'ah. But perhaps more importantly, the relationship between them should be based on love, affection, and understanding, and not on the dictatorial imposition of one partner's will.

First, it is the responsibility of the husband to be kind and loving towards his wife. Rasullāh (s) said: 'The best man is one who is kind to his wife and children'. Imām

Ali ('a) said: 'Women are like flowers, they should be treated kindly, gently and with affection.'

If a man's wife has some characteristics which he does not like, she will also have other characteristics which are valuable. He should think that he himself also has some qualities disliked by his wife, and that both of them should concentrate more on each other's positive rather than negative qualities. A husband should try to accommodate his wife instead of always trying to change her to his liking, because she, like he, has her own personality. It is very detrimental to a marriage relationship for one partner always to dwell upon mistakes and flaws in the other and not to appreciate what is good. One who always blames his or her spouse should realize that this will only generate enmity in their spouse towards them. It is especially deplorable and undesirable for someone to criticize his or her spouse openly before others, because it is an insult to the spouse's individuality.

Love, understanding, and mutual respect between a husband and wife is also necessary for the bringing-up of children. It is generally accepted that most of the problems that face the young are actually the effects of a poor relationship between the parents.

It is also the duty of the husband to earn for the family and support it financially. It is a legal obligation for a husband not only to provide sustenance for his wife and children, but also to provide all the necessary comforts for his wife which he can afford. A husband should not think that his wife must carry out the household work, for Islām has not stipulated this as one of her duties and he has no right to compel her; she must not be treated like a servant. Although it is very commendable if the wife cooks and manages the house while the husband works outside to earn their living, this should be out of love and understanding and not as a result of coercion.

Islām also does not neglect the sensual aspect of a marriage. It is a duty of a husband and wife to satisfy each other sexually. It is forbidden for the husband to leave his wife for a long time at a stretch. He may not be absent, without her consent, for more than four months; some mujtahidin have even maintained that the period is four days. Unfaithfulness between the marriage partners is strictly forbidden. Neither of them must flirt with anyone outside the marriage, let alone have sexual relations with them. Not only will such behaviour sour the marriage and also affect the children, but it will also have its punishment in the Hereafter. However, Islām also stipulates that husbands and wives should not be suspicious of each other: a false accusation of adultery carries a harsh penalty in Islāmic law.

Since the husband has these duties towards his wife within the Islāmic marriage, the wife also has her duties towards her husband. Islām enjoins upon her to be loving and obedient to her husband when he fulfils his obligations. The Qur'ān and Traditions (*ahādith*) have praised those women who obey their husbands and are devoted to them. It is the duty of a wife not to go where her husband does not want her to go. The wife should try to please her husband and keep the home free

of tensions. She must not allow anyone into the house whom the husband does not want to let in, and should not communicate with those with whom the husband dislikes her to converse. It is undesirable for a wife to face her husband with problems when he returns home; she should strive to create a peaceful atmosphere. It is also desirable that each spouse should hold the other's relatives in respect and treat them kindly, because this will increase the bonds of love between man and wife.

The husband and wife are recommended to adorn themselves and apply perfume only for each other, and are actually forbidden to do so for persons who are outside the relationship of mahārim. They are also trustees of each other secrets and should not communicate intimate affairs to others. Since a husband and wife have a life-long relationship, some occasions will inevitably arise when there is discord and anger. At that time, the other should show patience and restraint. There should always be mutual tolerance within the family.

Spouse Selection

Sometimes a marriage proposal comes to a woman's family from the family of the man asking for her hand in marriage. This is usually the culture in many communities but Islāmically, there is nothing wrong if a woman (or her family) were to propose marriage to a man. Indeed several examples of this are recorded during the lifetimes of Rasullāh (s) and the Imāms ('a) including Sayyida Khadija ('a)'s proposal to marry Rasullāh (s).

The most important quality that one should look for in a spouse is taqwa (Godconsciousness). One who has taqwa will never violate the limits of religion and therefore will not be unjust to his or her spouse as well. If a woman or her father receives a proposal from a man who is Godconscious, prays the daily salāh, comes from a respectable family and is not a reputed sinner, the proposal should not be rejected only because of the man being financially poor. Some ahādith relate that the cause of corruption and mischief in society is when women reject the proposal of decent men or demand high sums of dower (mahr).

What sustains a marriage in the long-term is not physical looks or wealth but piety, kindness of heart, patience, love and doing one's best selflessly. And what often causes a marriage to break is selfishness, laziness, intolerance, impatience and sinful habits and disregard for Allāh and religion, even when there is beauty, wealth and material possessions. A pious and religious spouse who is intelligent and not lazy will also be a positive influence on one's progeny; and the children from such a marriage will also be productive and useful members of their society. As a rule of thumb, one should seek a life partner who is as close to his or her self in religious values and social status. There is also no harm in seeking someone who is closer in financial status, education, culture and even physical stature as such closeness and compatibility only helps the new marital relationship adjust and thrive more easily and cement faster.

Lesson 3

Marriage in Islam (cont'd)

Types of Marriage

In Islāmic law two kinds of marriage are sanctioned, permanent and fixed-term marriage. In permanent marriage (*'aqd ad-dā'im*) no time-limit is mentioned and it is forever, unless terminated by divorce or death of one spouse; in fixed-term marriage (*mut'a*) the length and period of the marriage is specified. It is permissible for a Muslim man to have up to a maximum of four wives at any one given time. A Muslim woman cannot marry more than one man at a time.

Those Whom It is Forbidden to Marry (*mahārim*)

In Islām it is forbidden to marry very near blood or foster relations and near blood relations of one's spouse. Such relations are called *mahārim* (sing. *mahram*). They have been simplified into a table (below):

The following are the most common examples of <i>mahram</i> relations to a male	The following are the most common examples of <i>mahram</i> relations to a female
Mother and any wives of father (step-mothers)	Father and any previous husbands of mother or step-father
Grandmother (paternal or maternal)	Grandfather (paternal or maternal)
Daughter	Son
Granddaughter (from son or daughter)	Grandson (from son or daughter)
Sister	Brother
Niece (from sister or brother)	Nephew (from sister or brother)
Aunt (paternal or maternal)	Uncle (paternal or maternal)
Mother-in-law	Father-in-law
Daughters of wife from previous marriage	Sons of husband from previous marriage
Wife's paternal and maternal grandmother	Husband's paternal and maternal grandfather

A man cannot marry his wife's sister unless he has divorced his wife or she is no longer alive. This rule applies to both permanent and fixed-term marriage. And a man cannot marry his wife's niece without his wife's permission.

If a person is guilty of certain kinds of harām sexual relations such as fornication or homosexuality, one of the penalties include that he can then never marry even the relatives of the person with whom he committed the sinful act. For example, if a man has sex with another man he may not marry the mother, sister or daughter of that person.

It is forbidden for a Muslim to marry a non-Muslim. If a Muslim becomes non-Muslim, his or her marriage will terminate automatically. The only exception to this

rule is that a Muslim male may conclude a fixed-term marriage with a woman from the People of the Book (Jew or Christian).

The 'Aqd of Marriage

'Aqd means contract. In a permanent marriage, a solemn contract is made between a man and a woman to become life-partners and to fulfil all the responsibilities and enjoy those rights that the *shari'ah* has laid down for them; in fixed-term marriage, the contract specifies a period for the duration of the marriage.

There are pre-conditions for the validity of the 'aqd:

1. It must not take place during the *ihram* period of the Hajj.
2. The man and woman must give their free consent to marry each other, and the marriage is invalid if their consent is obtained under duress. If it is known that the woman is satisfied with the marriage, the contract is valid even though she does not explicitly state her satisfaction. A woman who is a virgin must, as an obligatory precaution (*ihtiyāt wājib*), obtain the permission of her father or paternal grandfather. The permission of the mother or brother is not necessary.
3. The man must give, or promise to give, an amount of money or property to the wife as a dower (*mahr*).

Rules Regarding the Dower (Mahr)

The *mahr* (also called *sadāq*) is the *wājib* wedding gift that the bridegroom undertakes to give the bride. It is a token of friendship, a mark of honour for the woman, and security for her. It becomes the property of the wife and she has full rights to dispose of it as she likes.

Anything that has value can be given as dower, and there is no specified amount. It should not be so high as to be beyond the financial status of the husband. It may be given at, or immediately after, the marriage, or at any time later on. It may be paid in one or several instalments. The woman has the right to allow the husband to have a physical and intimate relationship with her before or even without taking the dower.

The Permanent Marriage

The permanent marriage 'aqd (or *zawāj*) *ad-dā'im* consists of the recital of the formula (*siḡha*) that contains the assent (*ijāb*) of the bride and the acceptance (*qabul*) of the bridegroom. For the marriage to be valid the mere consent of the two parties is not enough, the marriage contract must be performed.

Either the formula can be recited by the man and woman themselves or they can deputize others to be their representative (*wakil*). The *sigha* must be read in correct Arabic, otherwise the contract is void (*bātil*). So if it is impossible for the man and woman to do this, they have to appoint someone who knows Arabic. However, if no such person is available, they are permitted to pronounce it in any language. But it must convey the sense of assent (*ijāb*) and acceptance (*qabul*) on the part of the bride and the bridegroom respectively.

One who is reciting the '*aqd* formula should be a sane, adult, practising Muslim. The reciter must have the *niyyah* (solemn intention) of reciting it for marriage, and the bride and groom must be specified. The bride and groom can have their own representative or one person can recite the formula as the representative of both, but it is recommended that the '*aqd* formula should be performed by two righteous persons, one representing the bride and the other the groom.

The Sigha with Two Representatives

First of all the representative of the bride and the representative of the bridegroom should seek the permission of the two and ask them whether they consent to be married with the other for the agreed amount of dower (*mahr*). The representative of the bride should also seek the permission of the father or grandfather of the bride, if she is a virgin.

Then the two representatives should sit together, usually in a gathering where the guests and members of the two families are present. It is recommended that first of all the representative of the bride should recite a sermon (*khutba*) that mentions the importance of marriage in Islām.

After the mustahab *khutba* (sermon) the main rite of marriage begins. What is given below is the minimum that must be recited, as it appears in the *risālas* of the *mujtahidin*. The representative of the bride says:

زَوَّجْتُ مُوَكَّلَتِي بِمُوكِّلِكَ عَلَى الصِّدَاقِ الْمَعْلُومِ

I marry my client, _____ (name of the bride) to your client, _____ (name of the bridegroom) for the dower that was agreed.

The representative of the bridegroom answers immediately:

قَبِلْتُ التَّزْوِيجَ لِمُوكِّلِي عَلَى الصِّدَاقِ الْمَعْلُومِ

I accept on behalf of my client _____ (name of the bridegroom) for the dower that was agreed.

The marriage is now complete and the man and woman become lawful to each other. It should be noted that the assent on the part of the bride's *wakil* and the

acceptance on the part of the bridegroom's representative even once is enough; the phrases are repeated with a change of words merely as a recommended precaution.

The Sigha with No Representatives

The rite for a man and a woman who do not want to engage representatives for the recitation of the formula of 'aqd is as follows. The bride says:

زَوَّجْتُكَ نَفْسِي عَلَى الْمَهْرِ الْمَعْلُومِ

I have married myself to you for the dower that was agreed upon.

The groom answers:

قَبِلْتُ التَّزْوِيجَ

I accept the marriage.

The Abrogation of a Permanent Marriage

There are some situations in which the bride or bridegroom can abrogate a permanent marriage and separate without any divorce. The following are some of the defects which, if a man finds in the woman he married when he had not been informed about them before the marriage, he is entitled to abrogate the marriage:

- insanity
- blindness
- certain sexual abnormalities
- paralysis, leprosy, leucoderma, and other similar defects.

Likewise, the woman can abrogate the marriage if, among other things:

- she comes to know after the marriage that her husband had been insane before the marriage
- the husband becomes insane after the marriage
- the husband is impotent.

Also, if a man or woman denies Islām and ceases to be a Muslim, the marriage is considered void and the Muslim spouse should immediately separate himself or herself from the spouse who is no longer a Muslim.

Fixed-term Marriage (*Mut'a*)

In *mut'a*, a fixed period for the marriage is specified. A validly contracted *mut'a* need not include any intimate relations; indeed, a woman can make it a condition of the contract that no intimacy or physical relations will take place. *Mut'a* is often

contracted when the object is to establish a *mahram* relationship (e.g. during an engagement period). When a fixed-term marriage has been entered into, the man may waive the remaining period of the marriage or wait for it to expire before contracting a permanent marriage with the same woman. In the case of a fixed-term marriage as well, if a woman is a virgin, her father or paternal grandfather's permission is necessary.

The Sigha for a Fixed-Term Marriage

If the man and the woman wish to perform the *'aqd* rite for the *mut'a* by themselves, they should first agree on the period for which they wish to be married, and the amount of dower (*mahr*) for the woman.

The woman should say:

مَتَّعْتُكَ نَفْسِي فِي الْمُدَّةِ الْمَعْلُومَةِ عَلَى الْمَهْرِ الْمَعْلُومِ

I have married myself to you for the length of time agreed upon for the dower agreed upon.

The man should answer:

قَبِلْتُ الْمُتْعَةَ

I accept the fixed-term marriage.

If the man and woman cannot recite this in Arabic, it is permitted for them to conclude the contract in their own language. The *'aqd* for *mut'a* can also be recited by representatives and it is just like the *'aqd ad-dā'im* except that the words 'for the length of time agreed upon' (*li muddat al-ma'lumah*) are added.

Rights and Obligations in a Fixed-Term Marriage

If a woman becomes pregnant in a *mut'a* relationship, the child will be the legitimate son or daughter of the father and will inherit from him. But the wife who has entered a fixed-term marriage only has the right to claim the dower (*mahr*); she does not inherit from him, nor he from her, unless such a condition was specified in the contract. The man is also not obligated to pay for the woman's expenses and upkeep unless it was agreed to in the contract.

There is no divorce in a fixed-term marriage. It terminates with the end of the specified period, or if the man waives the remainder period of the marriage.

Lesson 4

Marriage in Islam (cont'd)

Nursing a Child (*ar-Rada`*) and Foster Relations

Ar-Rada` is a technical term in fiqh and means the kind of nursing which results in foster relationships, and these in turn affect those with whom the child has a *mahram* relation. In Islāmic law there are conditions for this nursing among which are:

- the child must take milk directly from the woman who will be his or her foster mother i.e. not through a bottle, etc.
- the child must take milk more than fifteen times, or be fed entirely on the woman's milk during one day and one night.
- the child must be less than two years old.
- the milk which the child sucks must be lawful (e.g. it should not be a result of the woman's adultery).

If a child is nursed by a woman, and these conditions are fulfilled, she will become the child's foster-mother, her husband the foster-father, and her children the foster-brothers and sisters. The child will be *mahram* to them and cannot marry them. The parents and siblings of the woman who nursed the child also become *mahram* to the child. Likewise the uncles and aunts of the foster-mother, parents of the foster-father, his siblings and uncles and aunts also become *mahram* to the child.

However, the foster relatives of a child do not become *mahram* to the siblings of the child unless the sibling(s) were also nursed by the same foster-mother.

If a man marries a woman who already has a foster-daughter, he cannot marry the foster-daughter either and she also becomes his mahram after his marriage to the woman is consummated.

Note: It is recommended that foster relatives should respect each other and look out for each other, but they do not inherit from each other.

Birth of a Child

After delivery, it is recommended that the child should be nursed with its mother's milk, and the nursing period is up to two years.

Also, after the birth of a baby, it is recommended that the adhān should be recited in its right ear and the iqāmah in its left ear. This act should be performed immediately after the child is washed and wrapped in a cloth, or even later but within a few days.

It is recommended that Surah al-Hāqqah (69), Surah al-Falaq (113) and Surah an-Nās (114) should be written on a piece of paper and attached around the neck of the baby as an amulet against evil and harm.

`Aqiqa

On the seventh day after the birth of a child *'aqiqa* is performed. Family, friends and other Muslims should be invited. *'Aqiqa* consists of giving a name to the baby, shaving its hair, and offering a sacrifice. It is recommended that the newborn baby should be given either a compound name containing one of the beautiful Names of Allāh (e.g. 'Abd al-Hamid), or the name of one of the fourteen Ma'sumeen ('a) or another holy personality; or that a name should be found from the Qur'ān. In the latter case, the Qur'ān is opened with the *niyyah* (solemn intention) of seeking Allāh's guidance and blessings and saying *Bismillāhir Rahmānir Rahim*, and then a name derived from the root of one of the Arabic words found and chosen on that page.

The following du'a is then recited:

If it is a boy:

In the Name of Allāh and through Allāh, this is the 'aqiqa of ... (name of the boy), son of... (name of the father): its flesh [i.e., the flesh of the sacrifice of the 'aqiqa] for his flesh, its blood for his blood, its bone for his bone, its hair for his hair, its skin for his skin. O Allāh, let it be a protection of the family of Muhammad, peace be upon him and his family.

And if it is a girl:

In the Name of Allāh and through Allāh, this is the 'aqiqa of... (name of the girl), daughter of... (name of the father): its flesh for her flesh, its blood for her blood, its bones for her bones, its hair for her hair, its skin for her skin. O Allāh, let it be a protection of the family of Muhammad, peace be upon him and his family.

The hair of the baby is then shaved. It is recommended to weigh the cut hair then give the value of the same weight in silver, to the poor or orphans as alms.

A goat, a sheep, or other such animal should then be sacrificed either after shaving the hair or at the same time, but not before. It is recommended to read the following prayer at the time when the animal is about to be slaughtered:

O gathering, I am free from what you associate; I turn my face to He who split the heavens and the earth, a true believer and a Muslim, and not one of the polytheists. My prayer, my piety, my living, and my dying are for Allāh, the Lord of the Worlds. O Allāh, from You and to You, in the Name of Allāh; Allāh is greater. O Allāh, bless Muhammad, and accept [this] from ... (name of the child) son/daughter of... (name of the father).

After the sacrifice, the greater part of the meat should be distributed among the poor and needy. It may also be served to the guests, but it is disapproved for the parents of the baby and their dependents to eat it.

If, due to any reason, 'aqiqa is not performed on the seventh day after the birth of the child, it may be offered later on, at any time, even by the child itself after attaining puberty.

This rite (of 'aqiqa) is mustahab and not wājib but there are many ahādith that emphasize it.

Circumcision (Khatn)

The circumcision (*khatn* or *khitan*, or in many Islāmic countries simply 'sunnah') of a male child is an obligation (wājib) on every Muslim before the child reaches puberty. If the parents fail to have this rite performed, it is the duty of every adult uncircumcised Muslim to be circumcised. Those who embrace Islām should also perform this rite if they are not already circumcised. Circumcision is not mentioned in the Qur'ān, but it is much emphasized in the ahādith, and the consensus of the 'ulama is that it is obligatory (*wājib*) on all Muslim men.

Circumcision should preferably be performed when the baby is only a few days old, or otherwise at any time before his puberty. In many countries it is normally carried out between the ages of three and seven, but it is recommended to perform this rite on the seventh day after the birth of the child. Facilities for circumcision are normally provided at hospitals.

In this rite also it is recommended to invite guests and family friends and arrange food for the poor. It is also recommended to recite the following du'a at the time of the circumcision:

O Allāh, this is Your practice and the practice of Your Prophet (s), Your blessings be upon him and his family; obeying Your ideal and Your Books is the result of Your volition, and Your will and judgement are the result of a command which You willed, a judgement you decreed, a rule You executed. So take away from him the pain of the knife in his circumcision and his scarification through a command - You are more knowing of it than I, O Allāh. And cleanse him of sins, prolong his life for me, drive away injury and pain from his body, increase him in wealth, and fend off poverty from him; for You know and we do not.

Divorce

Divorce is permissible but highly discouraged and disliked in Islām. In Islāmic law a married man automatically has the right to divorce his wife, but a woman only has that right if she makes it a pre-condition at the time of making the marriage contract. In certain cases, when it becomes evident that a husband is not fulfilling his

responsibilities and is treating his wife unjustly, a mujtahid can interfere and pronounce a divorce even without the husband's consent.

If a husband divorces his wife, there are pre-conditions for the validity of the divorce:

1. The man must be sane and adult, and should not be forced by anyone else to divorce his wife.
2. He must pronounce the divorce with the intention of divorcing; thus, if he pronounces the formula in jest, it will not be a valid divorce.
3. At the time of divorce the woman should not be in a state of menstruation (*haid*) or puerperal bleeding (*nifās*). Any divorce pronounced during these periods is null and void (*bātil*).

The Rules of Divorce

The formula of divorce must be uttered in correct Arabic. The word *taliq* (divorced) must be said, and two witnesses of probity (*'adil*) must be present for the divorce to be valid.

Revocable and Irrevocable Divorce

In Islāmic law, all forms of divorce belong to one of two categories: revocable (*raj'i*) and irrevocable (*bā'in*). If a divorce is revocable, the husband has the right to return to his wife during the *'idda*, approximately three months, which follows a divorce. In an irrevocable divorce, the marriage is immediately terminated and dissolved.

The usual kind of divorce is the revocable. It allows the man and woman to settle their differences and return to each other within the *'idda*. During the *'idda* the woman continues to live in her husband's house and is supported by him financially. She also has to obey him and not leave the house without his permission. However the husband and wife cannot have physical relations unless the husband decides to revoke the divorce. If the man informs the woman of his intention to revoke the divorce, or makes it clear by gesture that he has done so, they will become husband and wife again. The presence of witnesses is not necessary in revoking a revocable divorce.

'Idda

'Idda is the prescribed **period of waiting** after the end of a marriage during which a widow or a divorced woman may not arrange another fixed-term or permanent marriage. Its purpose is to leave no doubt about the paternity of a child born after the dissolution of the marriage. In cases of divorce it also gives the man an opportunity to change his decision if it was taken in haste or under stress.

'Idda is prescribed in almost all cases of the dissolution of a marriage which has been consummated.

For a widow, the 'idda is four months and ten days. If she is pregnant she should observe an 'idda equal to the time between the death of her husband and the birth of the child, or of four months and ten days, whichever is the longer. A widow has to observe 'idda even if she is past the menopause or the marriage was not consummated.

During a widow's 'idda, she may not marry and should mourn her husband. Wearing colourful clothes and jewellery, or using perfume is forbidden (harām) for her during this period.

If a woman was married in a fixed-term marriage and the marriage was consummated, then after the fixed-term marriage has come to an end of the specified period (or because the husband has waived the rest of the time) the woman must observe an 'idda period of two menstrual periods. If she has no menstruations she should wait for forty-five days. If she is pregnant, her 'idda lasts until the child is born.

If a woman is divorced before the marriage was consummated then there is no 'idda, regardless of whether it was a permanent or fixed-term marriage.

Lesson 5

Islamic Bioethics

Life is a gift from Allāh. No one has a right to take it away except Allāh. It is harām for a person to even attempt taking his or her own life. When Islām legislates capital punishment for certain crimes or jihād as an armed struggle, it is only in extreme cases, after many conditions have been fulfilled, and because Allāh commands that, in order to prevent harm to the rest of the human society and/or to preserve Islām, the religion of Allāh.

Similarly, Islām values human relations and the family structure in Islām. Any practice that affects a child's right to inheritance (such as having children out of wedlock) or destroys the Islāmic view of a family (such as gay marriages) is condemned by Islām.

This lesson looks at some common practices in the field of medicine that have ethical implications and what Islām has to say about them. This is called Islāmic bioethics. Bioethics itself is a philosophical study of the ethical controversies brought about by advances in biology and medicine. This includes issues like organ transplantation, end-of-life care, use of respirators and life-support machines, abortion, cloning, artificial insemination and so on.

Life Bioethics

Reproduction: When it comes to matters related to reproduction and the birth of human beings, Islām allows the use of science and medicine to help in the process when it is not naturally possible for a lawfully wedded husband and wife to conceive. 'Lawfully wedded' means a marriage based on an established religion - not a civil marriage that is recognized by the government only. So an Islāmic marriage between a man and a woman is a lawful marriage. A Christian man and woman who are married according to the laws of their religion are also lawfully married. But a gay marriage, a common-law relationship, or even a civil marriage is not considered to be a lawful marriage in Islām. A man and woman married in court only are still non-mahram to each other.

Examples of lawful practices that a lawfully wedded husband and wife can engage in, in order to have children, include taking fertility drugs, artificial insemination, In Vitro Fertilization (IVF), and so on.

All these are permissible in Islām, provided the procedure does not involve using or taking anything from a man/woman other than the lawfully wedded man and woman. Examples of unlawful practices are artificial insemination when a woman 'buys' sperm from a sperm bank or takes it as a donation from a man not married to her. Similarly, using the egg of a woman who is not the wife of a man is not

permissible. Also, it is not permissible to use another woman to carry the child of a couple in her womb.

Organ Donation: Islām allows a person to receive the organ of another person who is dead e.g. lungs, heart, eyes, etc. However the dead body of a Muslim cannot be cut open unless it is absolutely necessary e.g. to save the life of another Muslim or for a criminal investigation. So the organs of a dead Muslim cannot be donated to a non-Muslim. This is not about discrimination because Islām *does* allow a Muslim to donate certain things to non-Muslims whilst still alive, provided it does not harm him or her e.g. donating blood or bone marrow.

As science progresses and makes new discoveries in cloning, organ farming, and so on, these basic principles will continue to be guidelines on what is and is not permissible.

Adoption

Islām speaks very highly of adoption especially if it involves the care of orphans. The Qur’ān has numerous āyāt on orphans and there are very many ahādith as well. The Messenger of Allāh (s) had himself adopted a son called Zayd, who is also mentioned in the Qur’ān.

The Messenger of Allāh (s) said: ‘I and the guardian of an orphan shall be like ‘this’ in Paradise... (and he joined his index and middle fingers when saying ‘this’)³³

In his will, just before passing away, Imām Ali (‘a) said: ‘Allāh, Allāh (i.e. I remind you of Allāh) concerning the orphans. That they should never be hungry or lost while you are present. For I heard the Messenger of Allāh (s) saying: ‘One who supports an orphan until his needs are met, Allāh, the Mighty & Glorious, makes Paradise wājib on him because of that; just like He makes the Fire wājib on one who consumes the property of orphans.’³⁴

And Imām Ali (‘a) has also said: ‘If any believing man or woman places their hand on the head of an orphan, out of mercy for them, Allāh would write for them a good deed for every hair that their hand passes through.’³⁵

So it is clear that Islām encourages adoption. However, there are certain rules that must still be observed with adoption:

1. Because an adopted child is not a biological child, he/she does not become mahram to the parents adopting them unless the child was nursed by the mother at birth. This means if the adopted child is a girl, she will become a non-mahram to the father (and any bāligh boys in the family) after she

³³ Mizan al-Hikmah, Hadith # 22881

³⁴ Mizan al-Hikmah, Hadith # 22877

³⁵ Mizan al-Hikmah, Hadith # 22880

attains bulúgh. And if the adopted child is a boy, he will become a non-mahram to the mother (and any bāligha girls in the family) after he attains bulúgh.

2. An adopted child cannot take the name of the adopted family. He/she must maintain his/her biological parents name unless they are not known, etc. Even then, it is important that the adopted child does not claim to be the real son/daughter of the adopting parents. This is to ensure there is no mix-up in matters like marriage, inheritance, and so forth.
3. An adopted child is not automatically entitled to inheritance of the adopting parents according to the Islāmic laws (as are other biological children). Adopted children can get a share if the parents give them that share during their lifetime or if they specify a share for them in their Will. But Islām allows a person to only decide about one-third of his estate in his Will. The remaining two-thirds are divided according to Islāmic *shari'ah* and given to spouses and blood relatives. In later lessons we learn more about these laws.

End of Life Bioethics

When it comes to matters of death and dying, as mentioned earlier, only Allāh has the right to take a life and in exceptional cases, Allāh allows others to do so, such as for capital punishment (when decreed by a just and lawfully appointed Islāmic court of law) or in the case of Jihād if all other options have been exhausted and the only way to save Islām or defend one's honour, property or life is by fighting and killing the enemy.

Suicide: Suicide is absolutely forbidden in Islām and a person who takes his own life is doomed to be punished in the Hereafter by Allāh. In a hadith of Imām Ja'far as-Sādiq (a), he was asked if a true believer can die of leprosy. He said, a believer can even die of drowning or being burnt, etc. A believer can die any death, except one: he or she never commits suicide. If a person is clinically diagnosed with depression, it is wājib for them to take the necessary medication and seek therapy or any help to prevent suicidal thoughts.

Birth Control: If a husband and wife wish to stop the birth of a child, they are allowed to take measures to stop conception from taking place (such as, by the use of contraceptives). But abortion is not allowed and absolutely *harām* unless the life of the mother is in danger if she continues with the pregnancy. In exceptional cases like when it is known in advance that the child to be born is severely deformed and handicapped, a mujtahid would have to be consulted on what to do.

Euthanasia: Sometimes a person is very ill or in a coma and is not expected to survive and some people choose to end the person's life in order to relieve his or her suffering and pain. This is called euthanasia or 'mercy-killing'. It is *harām* in Islām. However it is not wājib to put a person on a respirator or other machine that helps keep them alive, if they are already in a coma.

If a patient is in a coma but able to breathe on their own and not expected to ever wake up again, you can choose not to use any life-support machine and leave the matter in Allāh's hands. This is usually the best choice. Or you can choose to use the machine. But once you do that, you cannot remove it if you know that removing it will definitely kill him/her. You can only remove it again if the doctors say the patient is strong enough to breathe on their own and there is a chance they will not die immediately if the machine is disconnected.

Also, if a patient in a coma is having a hard time breathing and the doctors wish to administer strong drugs to calm the patient, it is allowed in Islām even if doing so may further reduce their chance of survival. Because the intention is not to end their life. It is to give them relief from pain.

Of course if a person is conscious or if medical experts believe there is a strong likelihood of their survival and waking up again, then it is wājib to do everything possible to save their life even if they will be handicapped or paralysed thereafter.

Remember always: Life is precious and a gift from Allāh. Allāh says in the Qur'ān:

﴿مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا﴾

...Whoever takes a life without any reason... it is as though he has killed all of mankind; and whoever saves a life, it is as though he has saved all of mankind....

- Surah al-Māidah, 5:32

Lesson 6

Inheritance Laws in Islam

Importance of Leaving a Will (*Wasiya*) in Islām

It is recommended that a person should make a last will before his or her death, especially when they feel that death is near. He or she should return to people what they owe them, and all debts should be settled, or the executors of their will should be instructed to do so through the will. If he or she has not paid khums, it should be paid, and also instructions should be given for Hajj, if that duty was unfulfilled, and also missed prayers (*salāh*) and *wājib* fasts.

A person who thinks that death is near should also inform his successors about his or her assets, especially any concealed assets that they may not discover. Those Muslims appointed as executors to a Muslim's will (*wasiya*) are bound to act according to the instructions in the will unless the instructions are for a sinful act or denying the Islāmic right of an heir, and so on.

A person can also cancel his will at any time before death and make a new one. In this case, it is the final version that is binding.

One who makes a will should be intelligent enough to discriminate between right and wrong and make it of his or her own free choice. The will of a child who is ten years of age or older is legal as far as the relatives are concerned. The executor(s) to whom the will (*wasiya*) is addressed must be sane (*'āqil*), adult (*bāligh*) Muslims who are trustworthy. If a person agrees to be someone's executor then it is *wājib* for them to fulfil that duty. They can only reject this responsibility while the testator is alive and not after his or her demise.

It is *wājib* for the heirs of the deceased to use any wealth the deceased leaves behind to first pay for the Hajj if it was due on the deceased, and for any missed fasts and prayers, and to pay any khums and *zakāh* which was due, even if the deceased did not make a will or specify this in his or her will.

Is It Necessary to Write a Will?

Even though in *shari'ah* it is *mustahab* to leave a will behind, it becomes *wājib* given the circumstances we live in today (i.e. in non-Muslim countries). In Canada for example, If a person dies without a will, the government appoints an executor who will divide the estate among the heirs as he sees fit. The executor/lawyer will also take his pay for the work he does from the estate of the deceased. A lot of one's estate is lost to lawyers' fees and bureaucracy and often there is a lot of delay before even the heirs get anything. Furthermore, the division by the executor will not be according to the Islāmic law.

Therefore a Muslim living in a non-Muslim country should consider it as wājib to leave a will behind so that he is not guilty of not giving his heirs their rightful Islāmic share. Even if a spouse or child contests a person's Islāmic Will after his or her demise and the court decides in their favour, the deceased will have at least done his or her Islāmic duty before Allāh.

If a person does not have the means or funds to hire a lawyer and to get a formal will made for himself, they should write their entire will in their own handwriting and sign it. Such a will is called a 'holographic will' and in many courts of law it is accepted even if there are no witness signatures to the will. In order to write a will, a person does not have to know all the divisions and rights of heirs according to Islāmic law. They can simply write in their will that they would like their estate to be divided as per the laws of the Usuli Imāmiya Shi'ah Ithna 'Ashari Muslim faith and they may also specify the name of a Shi'ah scholar or individuals from the Shi'ah Muslim community that they would like to be the executors of their will. It is much better of course, if a person also asks these executors beforehand and if possible, make them witnesses who sign the will as well.

It is also a good idea to mention in one's will that in case both you and your spouse were to pass away suddenly (e.g. in a tragedy) who you would like to designate as the guardian of your children. This is especially important if your extended family – siblings, uncles, aunts, parents, etc. – do not live in the same country as you. Typically if a person does not specify a guardian and there are no relatives to take care of the child, the government will put the child under the care of the Ministry of Child Services who in turn will put the children in a foster home. Very often this is a non-Muslim foster home where the children stay until they get adopted by others.

The One-Third Share

Instead of permitting a Muslim to distribute all his or her estate as they please or the other extreme - not giving them any say - Islām allows a Muslim to dictate how up to one-third of their estate is to be distributed after them, provide they make this request a part of their will. If a person does not mention how they wish to spend up to a maximum of one-third of their estate, then the entire amount is distributed as per the Islāmic law. In fact, according to some scholars, when the Qur'ān asks a person to make a *wasiyyah* before death (e.g. 2:177) it is referring to the one-third only. And when the Qur'ān talks of sinning by depriving an heir his or her right (e.g. in 2:182) it is referring to the two-thirds.

If the specified expenditure by the deceased is more than one-third of the estate, the will is valid only if his legitimate heirs explicitly agree; otherwise it will be binding only to the amount of one-third. If the specified expenditure by the deceased is more than one-third of the estate, and the legitimate heirs give their consent during the lifetime of the deceased, they cannot revoke this agreement after the death of the deceased, and it will be binding.

Basics of Inheritance in Islām

In Islāmic law, people who have a blood or matrimonial relation with the deceased can inherit. The relatives who can inherit are classified into three categories. In the presence of relatives of the first category, even if there is only one, the relatives of the second category do not inherit anything. And in the presence of relatives of the second category, even if there is only one, relatives of the third category do not inherit anything. A person belonging to the lower category will receive an inheritance only if there is no person in the higher category. That said, a husband and wife always inherit from each other in all cases.

The Three Categories

The first category consists of the deceased's parents and children. If there are no children, his or her grandchildren inherit in their place, but they do not inherit if even one son or daughter of the deceased is alive.

The second category consists of the deceased's brothers and sisters and paternal and maternal grandfathers and grandmothers. If no brother or sister is alive, their children inherit in their place, but they do not inherit if even one brother or sister of the deceased is alive. Relatives of this category inherit only if there is no relative belonging to the first category.

The third category consists of the paternal and maternal uncles and aunts. If none of them is alive, their children inherit in their place; but they do not inherit if even one uncle or aunt is alive. If there are no uncles and aunts or cousins of the deceased, then the deceased's parents' paternal and maternal uncles and aunts (or their children or grandchildren) inherit. In such rare cases, if the deceased only has, for example, a paternal step-uncle and the son of a real paternal uncle, then the son of the real paternal uncle will inherit from him to the exclusion of the paternal step-uncle.

A husband and wife are outside these three categories. They inherit from each other regardless of the presence of any relative of the three categories.

The shares of the inheritance allotted to the members of the appropriate categories are worked out following a fairly complex calculation, and it is advisable to consult a qualified legal (*fiqh*) expert to determine the proportions of the inheritance. Some basic calculations are discussed in the next lesson.

Those who are banned from Inheriting in Islām

In some cases, those who normally inherit from a deceased relative are not allowed to receive their share. These include:

1. A murderer does not inherit from his victim, even if he or she is the nearest relative of the deceased. But one who has killed someone unintentionally can receive inheritance.
2. One who has renounced Islām cannot inherit from a Muslim relative, but a Muslim can inherit from a non-Muslim relative.
3. If the deceased is heavily in debt, these debts must first be settled from his assets, and if nothing remains, his relatives will not receive anything.

Hiring Someone to Pray and Fast

During one's lifetime it is not permitted to hire anyone to perform salāh on your behalf, even if you are unable to perform them. However, after death, it is possible for the eldest son to hire someone to perform the compensatory (qadā) prayers for a parent's omitted wājib prayers. It is therefore permissible to pray and to fast in compensation for the missed prayers and fasting of a deceased person and to receive payment for this.

The person who is hired must be an Ithna 'Ashari Shi'ah who is bāligh and 'āqil. He or she must know the necessary rules (*ahkām*) of salāh (or fasting as applicable). A person who is hired for this purpose may pray for a person of the same or of the opposite sex, and must pray according to what is prescribed for themselves, e.g. a woman must perform all the prayers in a lowered voice, and man must perform the morning, evening, and night prayers in a loud voice, even if performing the qadā prayer for someone of the opposite sex.

The person who is performing qadā salāh for a deceased person must make the intention of performing them for the missed prayers of that person, and must also specify which salāh he or she is compensating for. When the compensatory (qadā) salāh has been performed, the deceased person will be considered free of his or her obligation.

What is Estate?

An 'estate' is the collective name for everything you own at the time of your death.

Before distributing a person's estate amongst the rightful heirs, the executor(s) of the will must pay off all the deceased's debts, legal as well as religious. Legal debt would be, for example, money the deceased had borrowed from others or payments they had to make but never settled. Religious debts are outstanding dues such as unpaid zakāh, khums, kaffāra, and so on. It also includes the cost for wājib hajj, and missed prayers and fasts (if someone needs to be hired to compensate for them). Additionally, the cost for the **wājib** portion of the funeral expenses can also be deducted from a person's estate before it is distributed (e.g. cost of grave, coffin and shroud).

So an executor must:

1. Calculate the total estate.
2. Subtract any legal or religious debts.
3. Subtract any costs for the funeral that are **wājib**.
4. Following the deceased's instructions for up to one-third of his estate (if the deceased specified this in his or her will).
5. Finally distribute the **remaining estate** to the heirs as per Islāmic laws.

Sometimes a person may have joint bank accounts (e.g. with a spouse) in which both partners have agreed to share everything equally. In such a case, only half of the total amount in all such joint bank accounts and investments belong to the deceased. The other half is not a part of the estate unless a different understanding existed between the partners that is specified in the will or another document of proof.

The House: For most people, most of their assets (financial worth or value) lies in the value of their Home. According to Canadian law, when a person dies, the home belongs to the spouse. According to Islāmic law, 50% of the house's value belongs to the deceased and therefore must be counted as a part of his or her estate.

To circumvent this matter, so that the surviving spouse is not left homeless, each spouse can give their share to the other, in their lifetime, as a 'conditional gift' (*hiba mashruta*). The gift is conditional because it is given 'on the condition that it must be returned if the marriage ends in a divorce or the spouse dies.'

This means if there is a divorce, each one takes his and her share back and the house's value is divided equally. And if one spouse dies, the surviving spouse gets back their original share that they had given away (since it was *hiba mashruta*) plus they have the share of the spouse who died since it was given to them in their life time. In this manner, both a husband and wife are assured of not being homeless if the other dies and the house is then not added to the estate for distribution to the other heirs.

Lesson 7

Inheritance Laws in Islam (cont'd)

Calculating Inheritance Based on Islāmic Laws

Heir Categories

Category	Group (must be biological/blood-related)	Rule
1	Parents & Children	No one else inherits as long as someone from this group is alive.
1b	Grandchildren	Only inherit the share of their parents (who are children of the deceased) if not a single child of the deceased is alive.
2	Grandparents & Siblings	Only inherit if no one from the previous categories is alive.
2b	Nephews & Nieces	These are the children of the siblings (in category 2). They inherit the share of their parents (i.e. the deceased's siblings) only if their parents were deserving to inherit and not a single sibling of the deceased is alive.
3	Paternal & Maternal Uncles & Aunts	Only inherit if no one from the previous categories is alive.
3b	Children of Paternal & Maternal Uncles & Aunts	Only inherit if their parents would have (from the deceased) and not a single paternal or maternal uncle or aunt is alive.
	Spouse	Spouse always has a share regardless of who else inherits unless he/she was divorced before the deceased passed away.

Notes:

1. A person can only state how one-third of his estate is to be distributed. Two-thirds is dictated by Islām.
2. The cost for fulfilling wājibāt and paying off debts of the deceased must be subtracted before estate is distributed. E.g. missed hajj or salāh or sawm by the deceased or wājib parts of his funeral e.g. cost of kafan and burial/grave.

Fraction Shares For Spouse and First Category

1. First distribute the 1/3 option if the deceased had made any special requests for it in his/her Will.
2. Then calculate the spouse's share.
 - a. Wife gets 1/8 (12.5%) of total distributable estate (after removing obligatory costs and debts) if there is a child.
 - b. She gets 1/4 (25%) if there is no child.
 - c. Husband gets 1/4 (25%) if there is a child. He gets 1/2 (50%) if there is no child.
3. Then calculate parent's share.
 - a. Mother gets 1/6 (16.66%) if deceased has child or brother (even though brother does not inherit when mother is alive). She gets 1/3 (33.33%) if the deceased has no child or brother.
 - b. Father gets 1/6 (16.66%) if deceased has a child. Otherwise he gets all the balance after spouse and mother have been given their share.
4. Then calculate children's share.
 - a. Children get all the rest of the estate after spouse and parents have been given their share. The male children get twice the amount that the female children inherit.
5. The reason why male children or husbands always inherit twice what female children or wives inherit is explained below. If a person wishes to give more to his daughter or wife, then he can specify this as the 1/3 option in his Will that he is allowed to distribute as he pleases.

The Share of Male vs. Female

Why does Islām give a son twice the share of a daughter? And why does a husband inherit more from the wife than the wife from the husband? This is often misunderstood as a male vs. female issue, when in fact it is not. If it was about favouring one gender over the other than it would not allow cases when the female inherits more than the male. For example:

- If a daughter is the only heir of her father, she inherits 100% to the exclusion of the male members of the family in the 2nd and 3rd category like her grandfather and uncles.
- A mother, in most cases, gets the same 1/6 share as the father.
- In the categories 1b and 2b in the table above, when grandchildren or nephews and nieces inherit the share of their parents, the granddaughters and nieces will get more than grandsons and nephews if the former are

taking the share of male heir (i.e. their father) and the latter are taking the share of a female heir (i.e. their mother).

The reason therefore why Islām gives more to the son and husband as a general rule is because in Islām, the responsibility of maintaining a family is always on the male. A girl's upkeep is the responsibility of her father (and grandfather) before marriage and her husband after marriage. If she is widowed, her son is obligated to pay her expenses and look after her. Even if a woman owns businesses or is employed or very wealthy, according to Islāmic law, she is not obligated to spend any of her wealth for the expense of the family. For a man, it is the opposite. His father is not obligated to keep supporting him once he is mature and grown up. He must maintain his wife and children and when his parents and grandparents grow old, it is wājib for him to also look after them and cover their expenses if he can. He may also have to look after his sisters who never get married or are divorced.

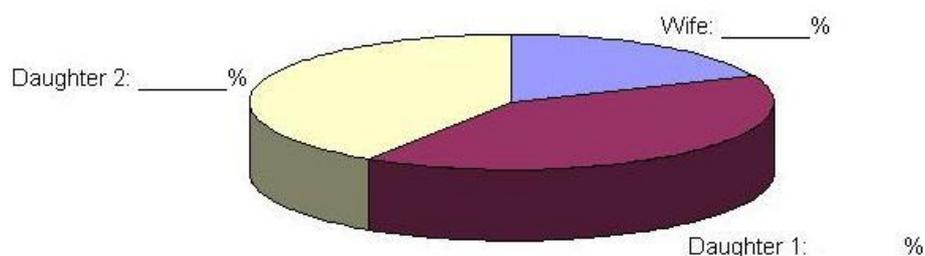
Special Circumstances:

The laws of Islām are to cover most general situations. There may however be situations where a man knows before his demise that his daughters are in greater need of support than his sons, and so forth. This is where a person is encouraged to act responsibly and use two options at his or her disposal:

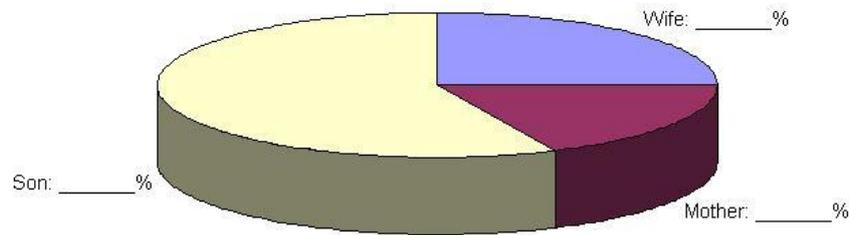
1. Give away some wealth or assets during one's lifetime to those who may inherit less after one's demise. What is given away in one's life time is not a part of a person's estate.
2. Exercise the one-third option. Since every Muslim can dictate where they want up to one-third of their estate distributed, a person may specify that they wish to give one-third of their estate to their daughters, for example. And in this way, the daughter will in fact inherit even more than the son because she is still entitled to her Islāmic share from the two-thirds as well. The last question in the exercises below will demonstrate this.

Exercise Questions:

1. A man dies and leaves only a wife and two daughters. What percentage of his estate will each one receive?

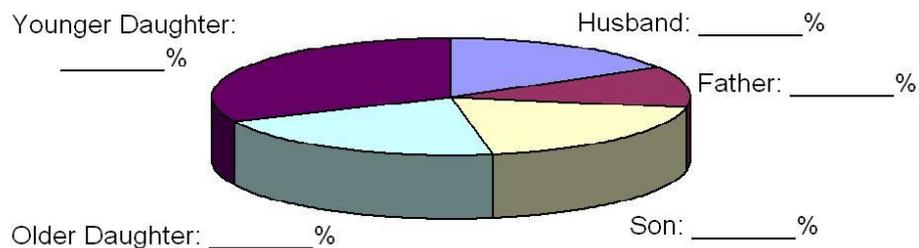


2. A man dies and leaves a mother, a wife and a son. What percentage of his estate will each one receive?



3. A man dies leaving \$43,000. He never performed hajj that was wājib on him. And he had borrowed \$3000 from someone that he never paid back. The cost of hajj at the time of his demise was \$6000. The cost of a grave including burial and kafan is \$4000. His family also wishes to erect a tombstone on his grave that costs \$500. How much of his wealth is to be distributed for inheritance?

4. A woman dies and leaves a father, husband, a son and two daughters. She also specifies in her Will that out of the 1/3 option to distribute her estate as she pleases, she would like to divide that into 3 parts and give one part to the older daughter who is married and two parts to the younger daughter who is not married. What percentage of her estate will each one receive?



A Sample Islāmic Will

This is the last will and testament of

.....

son/daughter of

.....

currently residing at

.....

.....

made on (date)

I hereby revoke all former wills and testaments made by me and declare this to be my last will.

I testify that I am a practising Muslim of the Shi'ah Ithna Ashari faith believing in one God, His Prophets - the last of whom is Muhammad (s) and the institution of Imāmah with the Imām of the time being Imām Muhammad al-Mahdi ('a).

I appoint

.....

of

to be the executor of this, my WILL.

I DIRECT that all my debts, funeral and testamentary expenses be paid as soon as is convenient after my death.

I DIRECT my Executors to pay

..... my KHUMS.

After all these payments have been made the remainder of my estate should be divided in the following proportions.

One third of the estate - here forth known as portion A

Two thirds of the estate - here forth known as portion B

Fiqh

Portion A (specify details below)

Portion B

This conforms to the Shi'ah Ithna Ashari laws of inheritance.

In witness, whereof I, the said (name)

.....

have signed my name on this (day and date)

.....

Signed by the said (signature)

.....

In the presence of us both present at that time, who in his/her presence and in the presence of each other have hereto subscribed our name as witnesses:

1

.....

2

.....