

Persons, Family Relations, and Property

(Based on PD 1083, Qur'an, Hadith, and Classical Fiqh)

1. Concept of “Mahram” in Islamic Law

Definition and Concept

Mahram (مَحْرَم) — refers to a person with whom marriage is **permanently prohibited** due to blood (nasab), marriage (musāharah), or fosterage (raḍā'a).

The concept ensures modesty, social order, and lawful interaction between genders.

Legal Bases

- **PD 1083, Art. 23–26** – Prohibited marriages due to **consanguinity, affinity, and fosterage**.
- **Qur'an 4:23:**

“Prohibited to you [for marriage] are your mothers, daughters, sisters, paternal and maternal aunts, brothers' and sisters' daughters...”

- **Hadith (Bukhari, Muslim):**
“Breastfeeding makes unlawful what blood relations make unlawful.”

Examples

1. **By consanguinity:** Mother, daughter, sister, aunt, niece.
2. **By affinity:** Mother-in-law, stepdaughter (if marriage consummated).
3. **By fosterage:** Foster mother or foster sister through breastfeeding.

Bar Tip:

👉 “3 Roots of Mahram: Nasab, Musāharah, Raḍā'a.”

2. Conditions for a Valid Marriage (Nikah)

Legal Bases

- **PD 1083, Art. 15–21.**

- **Qur'an 30:21** – “He created for you mates that you may find tranquility in them.”

Essential Requisites

1. **Legal capacity** (Art. 16) – male ≥ 15 ; female \geq puberty (presumed at 15).
2. **Mutual consent** freely given (Art. 15[b]).
3. **Offer (Ijab)** and **Acceptance (Qabul)** before witnesses and **guardian's (Wali)** consent (Art. 15[c]).
4. **Customary Dower (Mahr)** – stipulated and witnessed (Art. 15[d], 20–21).

Formal Requisites

- Public declaration (Art. 17).
- Solemnization by competent authority (Art. 18).

Bar Tip:

- ♦ Mnemonic: *CLAW* — **C**apacity, **L**iking (consent), **A**cceptance, **W**ali & witnesses.

3. Types of Guardianship (Wilayah) and Their Functions

A. Wilayah over Person (Wilayah 'ala an-Nafs)

- Guardian over the **person and marriage** of minors or women.
- **Types:**
 - **Wilayah al-Ijab (marriage guardianship)** – exercised by father, then paternal grandfather.
 - **Wilayah al-Hidhanah (custody)** – primarily for mother; transferred upon incapacity.

B. Wilayah over Property (Wilayah 'ala al-Mal)

- Guardians manage **minor's or incapacitated person's property**.

Legal Basis

- **PD 1083, Title V: Parental Authority and Guardianship.**
- **Fiqh principle:** “The guardian must act in the best interest (maslahah) of the ward.”

Bar Tip:

■ **Rule:** Personal Wilayah protects **morals and welfare**, Property Wilayah protects **assets and sustenance**.

4. Inheritance Case: Wife, Two Daughters, and a Brother

Heirs & Shares (PD 1083, Art. 110–112):

- Wife (1/8)
- Two daughters (2/3 jointly)
- Brother (residuary)

Computation

1. Wife: $1/8 = 3/24$
2. Daughters: $2/3 = 16/24$
3. Remainder: $5/24 \rightarrow$ to brother (as ‘asabah).

✅ Final Shares:

- Wife – 12.5%
- Daughters – 66.67% (jointly)
- Brother – 20.83%

Bar Tip:

 “Sharers first, residuaries next, distant kin last.”

5. Division of Matrimonial Property on Divorce; Treatment of Mahr

Legal Basis

- PD 1083, Art. 37–44, 45–55
- Qur’an 2:229–231.

Rules

1. Property relations governed by contract, then by Code, then custom (Art. 37).
2. Wife retains exclusive ownership of her property (Art. 36[5]).
3. Upon divorce:
 - Wife entitled to **unpaid mahr** (Art. 21).
 - **Mut’ah (consolatory gift)** may be ordered.
 - Joint property divided based on contributions and fairness.

Bar Tip:

🕒 *Mahr* = Symbol of respect; not refundable unless *Khul'* divorce (wife-initiated).

6. Kafalah (Adoption)

Definition

Kafalah (كفالة) = foster care or sponsorship. The child's lineage (nasab) remains intact.

Legal Principle

- **Qur'an 33:5:** "Call them by [the names of] their fathers; that is more just with Allah."
- **PD 1083, Art. 9–10 (capacity, personality).**

Differences from Western Adoption

Aspect	Kafalah	Western Adoption
Lineage	Preserved	Severed
Inheritance	None automatically	Full legal heir
Mahram relationship	Not established	Treated as natural child

7. Legal Effects of Marriage on Property Rights

Legal Basis

- **PD 1083, Art. 34–37.**

Effects

1. Each retains ownership of exclusive property (Art. 36[5]).
 2. Marriage may create **conjugal partnership** if agreed (Art. 37[a]).
 3. Each spouse inherits from the other (Art. 34[3]).
 4. Husband's property liable for unpaid mahr (Art. 21).
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8. Triple Talaq in One Sitting

Definition

Talaq = repudiation by the husband.

Legal Basis

- PD 1083, Art. 45–55; Art. 30.
- Qur'an 2:229–230.

Rule

- Triple talaq (talaq bain kubra) in **one sitting** is treated as **three separate repudiations** → irrevocable divorce (talaq bain).
- Cannot remarry unless wife marries and is divorced by another husband after consummation and 'iddah (Art. 30).

Bar Tip:

⚖️ *Instant triple talaq = Bid'ah (innovative), disapproved but legally effective.*

9. Inheritance Rights of Grandchildren

Rule

When a child predeceases the decedent, **his own children** (the grandchildren) inherit through **bequest by operation of law**.

Legal Basis

- PD 1083, Art. 107: Entitled to **one-third of the share** their parent would have received.

Example

If deceased's son would have inherited $\frac{1}{2}$, his surviving child receives $\frac{1}{6}$.

10. Division of Property Among Siblings (Parent Dies Intestate)

Legal Basis

- PD 1083, Art. 110–115.

Rules

- **Full brothers/sisters:** equal in male-to-female ratio of 2:1 (Qur'an 4:176).
 - **If only females:** 2 or more sisters = 2/3 jointly; 1 sister = 1/2.
 - **If with male sibling:** he becomes residuary; "male gets portion of two females."
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11. Guardianship of Minors; Mother as Guardian

Legal Principle

- **PD 1083, Title V: Parental Authority.**
- **Fiqh:** Custody (hidhanah) differs from guardianship (wilayah).

Rule

- **Father:** natural guardian of person and property.
 - **Mother:** entitled to **custody (hidhanah)** of young children, especially under 7 years, unless unfit.
 - May become **guardian** if father dead, absent, or incapable, subject to Shari'a court approval.
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12. Difference Between Hibah (Gift) and Wasiyyah (Will)

Aspect	Hibah (Gift)	Wasiyyah (Will)
Definition	Transfer of property during lifetime	Disposition effective after death
Legal Basis	Qur'an 2:177; PD 1083 principles on property Art. 101–108	
Revocability	May be revoked before delivery	Revocable before death (Art. 108)
Share Limit	No limit	Max one-third of estate (Art. 106)

13. Rights of a Wife Upon Divorce

Rights

1. **Unpaid Mahr** (Art. 21).
2. **Maintenance (Nafaqa)** during 'iddah (Art. 56–57).
3. **Mut'ah (Consolatory gift)** at court's discretion.
4. **Custody (hidhanah)** of young children.
5. **Share in property** according to contributions (Art. 37–44).

14. Inheritance of Half-Siblings

Legal Basis

- PD 1083, Art. 110–114.

Type	Share
Uterine brother/sister (same mother only)	1/6 if one; 1/3 jointly if two or more
Consanguine brother/sister (same father)	Inherits residually if no full siblings

15. Legal Principles of “Ila” (Oath of Abstention)

Definition

Ila (إيلاء) — an oath by the husband to abstain from marital relations for four months or more.

Legal Basis

- **Qur’an 2:226–227** – “For those who swear abstinence from their wives is a waiting of four months... if they return, Allah is forgiving.”

Consequences

- If husband resumes relations → expiation required (breaking oath).
- If abstention continues beyond 4 months → **talaq bain** occurs automatically.

Bar Tip:

■ “Ila → 4 months → either return or release (talaq).”

Summary Table of Key Doctrines

Topic	PD 1083 Article(s)	Qur’anic/Fiqh Reference
Marriage requisites	Arts. 15–21	Qur’an 30:21
Prohibited marriages (Mahram)	Arts. 23–26	Qur’an 4:23
Talaq and divorce	Arts. 45–55	Qur’an 2:229–230
Succession shares	Arts. 110–114	Qur’an 4:11–12

Topic	PD 1083 Article(s) Qur’anic/Fiqh Reference	
Guardianship	Title V	Fiqh al-Wilayah
Property division	Arts. 37–44	Custom (‘urf)
Wasiyyah	Arts. 101–108	Qur’an 4:11–12
Ila	Qur’an 2:226–227	Fiqh al-Usrah

FINAL REMARK

These responses follow the framework of **PD 1083**, Qur’anic injunctions, and classical *fiqh* authorities (Hanafi–Shafi‘i–Maliki–Hanbali).

Disclaimer:

This material is for **study and research purposes only**. It does **not constitute legal advice**. For binding guidance, please consult a qualified **Shari’a lawyer or judge**.