

PERSONS, FAMILY RELATIONS AND PROPERTY – Review Questions

1. Explain the concept of 'Mahram' in Islamic law. Provide examples of relationships that are considered Mahram.

- **Answer:** A 'Mahram' is an unmarriageable kin with whom marriage or sexual relations would be considered incestuous and, therefore, haram (forbidden). Examples of Mahram relationships include:

- Direct ascendants and descendants (e.g., parents, grandparents, children, grandchildren).
- Siblings and their children (e.g., brothers, sisters, nieces, nephews).
- In-laws in direct line (e.g., mother-in-law, father-in-law).

2. Discuss the conditions required for a valid marriage (Nikah) in Islamic law.

- **Answer:** The conditions for a valid marriage (Nikah) in Islamic law include:

- Consent of both parties.
- The presence of witnesses (at least two adult Muslim males or one male and two females).
- A Mahr (dower) agreed upon by both parties.
- A proposal (Ijab) and acceptance (Qubul) were exchanged in the same meeting.

3. Describe the different types of guardianship (Wilayah) in Islamic law. How does each type function in relation to family and property?

- **Answer:** The different types of guardianship (Wilayah) in Islamic law include:

- **Wilayah over person (Wilayah al-Nafs):** Guardianship over the personal well-being and decisions of the ward (e.g., minors, orphans, women in certain circumstances). The guardian (Wali) ensures the personal care and protection of the ward.

- **Wilayah over property (Wilayah al-Mal):** Guardianship over the financial matters and property of the ward. The guardian manages the ward's assets, ensuring their preservation and proper use.

4. **A Muslim man dies leaving a wife, two daughters, and a brother. Explain how the property would be distributed according to Islamic inheritance law.**

• **Answer:**

- Wife: 1/8 of the estate.
- Daughters: 2/3 of the estate, to be divided equally between them.
- Brother: Remaining estate as Asabah (residuary heir).

If the estate is valued at 800,000 PHP:

- Wife's share: $800,000 \times 1/8 = 100,000$ PHP.
- Daughters' share: $800,000 \times 2/3 = 533,333.33$ PHP, each daughter gets $533,333.33 \div 2 = 266,666.67$ PHP.
- Remaining estate: $800,000 - 100,000 - 533,333.33 = 166,666.67$ PHP.
- Brother's share: 166,666.67 PHP.

5. **What are the rules regarding the division of matrimonial property upon divorce in Islamic law? How is the Mahr treated in this context?**

• **Answer:** Upon divorce in Islamic law:

- Each spouse retains ownership of their personal property acquired before and during the marriage.
- The wife is entitled to receive her deferred Mahr if it was agreed upon at the time of marriage.
- Any jointly acquired property may be divided according to the agreement between the parties or local customs, if any.
- The wife is entitled to maintenance (Nafaqah) during the Iddah (waiting period).

6. **Explain the concept of 'Kafalah' (adoption) in Islamic law. How does it differ from the Western concept of adoption?**

- **Answer:** Kafalah is a form of foster care in Islamic law where a family takes care of an orphan or abandoned child without giving the child the family name or inheritance rights. It differs from the Western concept of adoption where the child legally becomes part of the family and typically assumes the family name and

inheritance rights. In Kafalah, the child's lineage is preserved, and they remain legally distinct from the foster family.

7. Describe the legal effects of marriage on the property rights of spouses in Islamic law.

- **Answer:** In Islamic law, marriage does not affect the separate property rights of spouses. Each spouse retains ownership and control over their personal property. The husband is responsible for providing Nafaqah (maintenance) to the wife, which includes housing, food, and clothing. Any property or wealth acquired jointly can be subject to mutual agreement or local customs regarding its division.

8. What are the legal implications of Talaq (divorce) pronounced thrice in one sitting?

- **Answer:** Pronouncing Talaq thrice in one sitting results in an irrevocable divorce (Talaq al-Bain). The marriage is immediately dissolved, and the spouses cannot remarry unless the wife marries another man, consummates that marriage, and then gets a divorce (known as Halala). The wife must also observe the Iddah period before she can remarry.

9. How does Islamic law address the inheritance rights of grandchildren when their parent (the deceased's child) predeceased the grandparent?

- **Answer:** In Islamic law, grandchildren generally do not inherit directly if their parent (the deceased's child) predeceased the grandparent unless the estate is distributed through Takharruj (compromise) or if there are no other direct heirs (such as the deceased's own children). However, in some interpretations and regions, grandchildren may be given a share as part of the extended family's consideration.

10. Discuss the principles governing the division of property among siblings in Islamic inheritance law when a parent dies intestate.

- **Answer:** When a parent dies intestate in Islamic law, the property is divided among the children according to fixed shares:
 - Sons receive a share that is twice that of the daughters.
 - If the deceased is survived by both sons and daughters, the estate is divided so that each son receives twice the share of each daughter.
 - For example, if there is one son and two daughters, the estate is divided into four parts: the son receives two parts, and each daughter receives one part.

11. What is the Islamic legal stance on the guardianship (Wilayah) of minors? Under what circumstances can a mother become the guardian of her minor children?

- **Answer:** In Islamic law, the guardianship (Wilayah) of minors typically falls to the father. However, if the father is deceased, incapable, or unfit, the guardianship may pass to the closest male relative, such as the paternal grandfather. A mother can become the guardian of her minor children in the absence of a suitable male guardian or if the male guardians are deemed unfit or unable to fulfill their responsibilities.

12. Explain the difference between 'Hibah' (gift) and 'Wasiyyah' (will) in Islamic law. Under what conditions can each be revoked?

- **Answer:**

- **Hibah (Gift):** A Hibah is a transfer of property or wealth made voluntarily by the giver (donor) to the receiver (donee) during the donor's lifetime. Once accepted and delivered, a Hibah is generally irrevocable, except in specific circumstances such as coercion or fraud.
- **Wasiyyah (Will):** A Wasiyyah is a declaration by a person to bequeath a portion of their property or wealth after their death. A Wasiyyah can be revoked or altered by the testator at any time before death. The Wasiyyah must not exceed one-third of the estate and must not infringe on the rights of legal heirs.

13. What are the rights of a wife upon the dissolution of marriage due to divorce in terms of maintenance and property division in Islamic law?

- **Answer:** Upon divorce, a wife is entitled to:

- **Mahr (Dower):** Any unpaid portion of the agreed Mahr must be paid immediately.
- **Maintenance (Nafaqah):** She is entitled to maintenance during the Iddah (waiting period).
- **Property Division:** Each spouse retains ownership of their individual property. Jointly acquired property may be divided based on mutual agreement or local customs.
- **Mut'ah:** A one-time financial gift provided to the wife by the husband as a goodwill gesture (varies by interpretation and local practice).

14. Describe the rules governing the inheritance rights of half-siblings in Islamic law. How do they inherit compared to full siblings?

- **Answer:** In Islamic law, half-siblings (those sharing only one parent) have specific inheritance rights:

- **Half-Siblings through the Father:** They inherit as residuaries (Asabah) if there are no full siblings, receiving the remainder of the estate after the fixed shares have been distributed.
- **Half-Siblings through the Mother:** They inherit as sharers, receiving a fixed share. If there is only one, they receive 1/6 of the estate; if there are multiple, they collectively receive 1/3 of the estate, to be divided equally among them.
- Full siblings typically have priority over half-siblings in inheritance distribution.

15. Discuss the legal principles of 'Ila' (oath of abstention) in Islamic family law. What are the consequences if the husband fulfills or breaks his oath?

• **Answer:**

- **Ila:** It is an oath taken by the husband to abstain from marital relations with his wife for a period of four months or more. During this period, the wife has the right to petition the court for reconciliation or dissolution of marriage.
- **Consequences of Fulfilling the Oath:** If the husband fulfills the oath and abstains for the specified period, the marriage may be dissolved if the wife petitions for it. The husband must resume marital relations or face judicial intervention.
- **Consequences of Breaking the Oath:** If the husband breaks the oath by resuming marital relations before the period ends, the Ila is nullified, and the marriage continues without any legal consequence.

These additional questions provide a broader understanding of the intricate aspects of persons, family relations, and property in Islamic law, preparing candidates thoroughly for the Shari'ah Bar Examinations.