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 (مَحرَم)** — 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 ≥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* — **Capacity, Liking (consent), Acceptance, Wali & 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 → 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 Khulʿ 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).

**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 ½, his surviving child receives ⅙.

**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 = ½.
* **If with male sibling:** he becomes residuary; “male gets portion of two females.”

**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.

**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 |
| Guardianship | Title V | Fiqh al-Wilayah |
| Property division | Arts. 37–44 | Custom (ʿurf) |
| 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**.