

LLB –Part 2

Muslim Personal Law

(Paper-V)

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Q 01: Define and discuss the legislative functions of the Holy Quran and Holy Sunnah.

1) Introduction

- Quran is Primary source of Law and it is in very Words of ALMIGHTY ALLAH .The holy Quran is basically direct revelations on Holy Prophet (P.B.U.H) by ALMIGHT ALLAH.
- Sunnah is the Second primary source of Law. If any jurist is unable to find a Hukm from Quran, he has to recourse to Sunnah because Sunnah is Special bond between Quran and Sunnah. Sunnah is explanation of Holy Quran without Holy Sunnah it is very difficult to understand the general rules of the Islamic law laid down in the Quran

2) Meaning of Quran and Sunnah

- The word Quran derived from Arabic word Qura'a which means "TO READ"
- Sunnah means "Well known path" is being which is being followed again and again

3) Definition of Quran by Al Bazdawi

- Quran is revealed on Holy Prophet (P.B.U.H) and it has been transmitted to us by Holy Prophet (P.B.U.H). Quran is an authentic revelation without doubt.

4) Definition of Sunnah

- Sunnah are the Sayings ,acts and approvals of Holy Prophet (P.B.U.H)

5) Revelation of the Holy Quran

- Quran revealed on Holy Prophet (P.B.U.H).First revelation was on Holy Prophet (P.B.U.H) in age of 40.Surah Al Alaq was revealed firstly upon Holy Prophet P.B.U.H

Following is the verse of Holy Quran:

" READ IN THE NAME OF THY LORD, WHO CREAT THE MAN
FROM A CLOT"

6) Constitutional status of Holy Quran and Holy Sunnah

- In west, constitutional law is supreme law but in Pakistan as it is an Islamic state there is in Islamic jurisprudence Quran is constitutional law. Quran provides all norms (Namonay, Misalen) for livelihood
- Sunnah performed pivotal role in making constitutional. God delegated powers to Holy Prophet (P.B.U.H) for legislation. Holy Prophet (P.B.U.H) gave a practical shape to injunctions of Quran

7) Quran as a source of Law

- Quran is complete code of creed (mazhab) because Islamic laws based on Holy Quran and Quran Guides the man in all aspects of life and it is a major source of law

8) Division of Verses of Holy Quran

Verses of the Holy Quran are divided into three portions.

i. First portion

- The first portion of the verses of the Holy Quran deals with Religious duties such as Belief in one ALLAH, Holy prophet (P.B.U.H) is the last prophet

ii. Second portion

- Second portion of the verses of the Holy Quran deals with Quranic ethics like behavior with neighbors, dealing with parents etc.

iii. Third portion

- Third portion of the Holy Quran deals with individual relationships with one another (Purchase, Sale, Lease ,Evidence)
- It develops relationship among people, furthermore, deals with other Social duties.

9) Sunnah as a source of Law

- ALLAH ALMIGHTY delegated powers to Holy Prophet (P.B.U.H) for law making. Sunnah is obligatory on Muslims Because Sunnah is source of Law. Holy Sunnah also was revealed on Holy Prophet (P.B.U.H)
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10) Legislative functions of Sunnah

- Sunnah is 2nd primary source of law. Jurist can't move to Sunnah unless the search from Quran completed. Jurist unable to comprehend the text of Quran unless he recourse to the sunnah. Sunnah is explanation of Quran itself

I.Original law making

- When no hukam is found in Quran for commission or omission of certain act at that time, Holy Prophet's own decision becomes an original law

II.Provision the details of General rules

- Ahkams in Quran are undetermined but Sunnah explains these Ahkams

➤ Example

As Quran says, the male two shares of the female,
Sunnah explains murderer will not inherit

III.Explanation of the Implicit

- Some Quranic verses are unclear but Sunnah makes them clear and without sunnah all of us are unable to understand these Ahkams

➤ Example

Quran says hand of each thief to be cut

Sunnah explains it, the thief who steals wealth equal to Nisab from the protective custody

IV.Elaboration of Ahkams

- Ahkams in Quran are unelaborated. Sunnah explains these Ahkams

➤ Example

Quran order prayer, Sunnah provides its timings, numbers and Rak'as of prayer.

V.Linkage of case

- Sunnah links the case with well-known principle of Quran

➤ Example

Quran permits to eat good things, Forbid to eat khabaith ,
Sunnah categories of animal with Molars (Peesne k daant) and birds with Claw (Panjay)

VI.General principle laid down by Sunnah

- Sometime Sunnah lays down a general principle but sunnah explain them for the benefit of the humanity

➤ Example

"NO Injury is to be caused or to be borne" while Quran says,
"INJURY TO OTHERS HAS BEEN PROHIBITED"

11) Kinds of Sunnah

Following are the kinds of sunnah.

i. Sunnah Al Qauliyah

- These are Saying or narration of the Holy Prophet (P.B.U.H) and the main object of the sunnah is to explanation of Ahkams

ii. Sunnah Al Failiyah

- These are deeds and practices of the Holy Prophet (P.B.U.H) such as his prayers ,fasts etc. these kind of sunnah are purely based on practical

iii. Sunnah Al Taqririyah

- These are Commission of certain acts by words or deed of the Holy Prophet (P.B.U.H). If something was done before Holy Prophet (P.B.U.H) but Holy Prophet (P.B.U.H) remained silent and Such silence also would be considered as Sunnah

12) Relation of Quran with Sunnah

- Sunnah is mode of interpretation & elaboration of Quran. Sunnah does not go against Quran and Quran does not go against Sunnah. Sometimes it becomes difficult to maintain that these are two separate sources

13) Conclusion

- Quran major and primary source of Islamic law and Holy Sunnah helps jurists in this regard. As well as validation of other sources is by Quran. One of the biggest feature of Holy Quran is that it doesn't has details in it for multiple general rule laid down in it and in this regard jurist has to recourse the sunnah for explanation of these rules. Quran is not a book of law but book of guidance for humanity.

Q 02: Ijtehaad plays significant role in Islamic legislation explain and illustrate. Also highlight the qualifications of a mujtahid.

1) Introduction

- Ijtehaad is one of the sources of Islamic law when a jurist makes an effort or works hard in order to find out answers to some questions which are not found in the Holy Quran, Holy Sunnah and Ijma under the light of Islamic injunctions. Because jurists cannot leave the matter unresolved. Its results should not contradict the Quran, and Holy Sunnah and it should not be used in cases where ijma has been performed, according to many scholars. Islamic reformers call for a revitalization of ijtihad in the modern world.

2) Meaning of ijtehaad

- The word ijtehaad is derived from an Arabic word "Jihaad" which means to "Strive hard to find out solution of an issue under the light of Holy Quran and Sunnah."

3) Definition of Ijtehaad

- Ijtihad is the procedure which is conducted by the jurists of Islam and it is a technical term of Islamic law that describes the process of making a legal decision by interpretation of the legal sources which are the Qur'an and the Sunnah.

4) Arguments in support of Ijtehaad

- Allah Almighty completed Islamic religion and Holy Prophet P.B.U.H is the last of the prophets. If any rule of law is not found in the Quran and by Holy Prophet (P.B.H.U) then ijtehaad is permitted to Muslim jurists and they can find out the laws for rising issues of the modern age.

i. Qura in support of Ijtehaad

"OBEY GOD AND OBEY PROPHET (P.B.U.H) AND THOSE AMONGST YOU WHO HAVE AUTHORITY"

ii. Hadith in support of ijtehaad

"MY FOLLOWERS WILL NEVER AGREE UPON WHAT IS WRONG"

5) Kinds of Mujtahids

Following are the kinds of Mujtahids.

I. Mujtahidin Fish-Sharayee

- These are those mujtahidins who don't follow any other mujtahids and have absolute authority to explain the Islam such as Abu Hanifah, Imam Malik ibn Ans, Imam, Imam Ahmad bin Hanbal comes under this category.

II. Mujtahidin Fil Mazhab

- These are those mujtahidins who follow other mujtahids but are not bound to follow them and have absolute authority to explain the Islam such as Abu Yousuf comes under this category.

III. Mujtahidin Fil Masail

- These are those mujtahidins who have absolute authority to explain the particular questions of Islamic law which had already not been settled by the other jurists such as Khassaf and Qadi Khan comes under this category.

IV. Mujtahidin Muqallid

- These are those mujtahidins cannot deduct an law but have authority to explain the particular questions of Islamic and can provide solutions of the islamic problems.

6) Qualifications of Mujtahid

Following are the qualifications of Mujtahid who can perform ijtehaad.

- ✓ Mujtahid should be scholar of Quran and Sunnah
- ✓ Must expert of Arabic Language
- ✓ Must know the priciples of Naskh
- ✓ Must know the principle of Qiyas
- ✓ Must have an impartial thinking
- ✓ Familiar with the traditional science
- ✓ Competent to explain law as well as questions of Islamic laws
- ✓ Up to date with knowledge of society

7) Validity of Ijtehaad

Following are the reasons of validity of ijtehaad.

i. Ijtehaad by Mujtahid

- Ijtehaad is valid if it is performed by Mujtahid who has attained the status of Ijtihad

ii. Performed by Muslims

- Ijtehaad is valid if all participating jurists are Muslims or from Ummat-e-Muhammadi

iii. Unanimous opinion

- Ijtehaad is valid where all jurist or Muslim scholars must have unanimous opinion on a religious issue

iv. After the death of Holy Prophet (P.B.U.H)

- Ijtehaad is valid if it is performed after the death of Holy Prophet (P.B.U.H) if it has been performed within the life of Holy Prophet (P.B.U.H) then it will not be accepted as valid

v. Upon rule of Law

- Ijtehaad is valid if it is upon a rule of law because it can't be applied on non-legal matters

vi. Reliance upon a Sanad (Evidence)

- Ijtehaad is valid if it relies upon some sanad otherwise it will not be considered as valid ijtehaad

8) Ijtehaad as a source of law

Scholars of modern age can perform ijtehaad if they are eligible or qualify as Mujtahid

I. Enforcement of Ahkams of Quran and Sunnah

- The act of ijtehaad discovers the new Laws and enforces the Ahkams of Quran and Sunnah

II. Interpretation of Sharias

- The act of ijtehaad helps the Muslims scholars in interpretation of Laws of sharia laid down in the Holy Quran and Holy Sunnah

III. New legislation can be made

- After Quran and Sunnah ,new legislation can only be made with the help of the act of ijtehaad which is permitted in Islam

9) Position in Pakistan

- The federal Shariat court of Pakistan uses the formula of ijtehaad in his judgment for the questions of law as it has been permitted by the Islamic laws in order to resolved the disputes among the people of Islamic Republic of Pakistan.

10) Conclusion

- To conclude I can say that , the act of ijtehaad is permitted in Islamic injunctions and all of those Muslims Jurists or Muslim scholars are allowed to perform this who qualify as mujtahid. They can find out the solutions of the problems which had already not been settled before. There are some limitations on the jurists regarding performance of ijtehaad

Q # 03: Define Marriage. What are the essentials of marriage?

1) Introduction

- In Islam, marriage is a legal and civil contract between two people. Both the groom and the bride give their own free consent to the marriage. This contract defines rights and duties of the groom and bride. There must be two Muslim witnesses of the marriage contract. And contract of marriage comes to an end after death of any partner or by act of divorce between the partners.

2) Meaning of Marriage

- It means the union of two people as partners in a personal relationship specifically a union between a man and a woman for procreation of children.

3) Definition of Marriage

- Marriage is the physical relationship between man and woman by a contract of marriage which makes that relationship lawful and both partners physically enjoying each other in the manner allowed by the Sharia's.

4) Essentials of marriage

Following are the essentials of a valid marriage.

i. Offer and Acceptance

- For a valid contract of marriage, there should be an offer by one party and it must be accepted by the other party. It is called offer and acceptance.

ii. Offer and acceptance must in same meeting

- For a valid contract of marriage, offer and acceptance should be in same meeting, if an offer is made in another meeting and it is accepted in another meeting in this case it will not considered a valid marriage.

iii. Free consent

- For a valid contract of marriage, consent of both of the parties should be free from any social pressure, misrepresentation or free from fraud. If the consent is taken by undue influence, in this case it is not a valid marriage.

iv. Majority

- For a valid contract of marriage, both of the bride and the groom have attained the age of majority and must be an adult at the time of marriage and no one should be minor by age.

v. Fosterage

- For a valid contract of marriage, both of the bride and the groom should not be fosterage (Mehram) for each other and they don't have blood relation such as brother sister, Uncle auntie etc.

vi. Dower (Amount of mehar)

- For a valid contract of marriage, the fixation of the amount of the mehar (dower) is necessary at the time of marriage because a marriage without the fixation of amount of mehar (dower) is not a valid marriage.

vii. Opposite gender

- For a valid contract of marriage, the marriage should be between the two person of opposite gender such as man and woman. Because Islam does not allow to sign the contract of marriage to the same gender.

viii. Witnesses

- For a valid contract of marriage, there should be available two witnesses at the time of marriage but the witness must be of sound mind as well as an adult.

ix. Must be Muslims

- For a valid contract of marriage, both of the bride and the groom should be Muslims by faith if anyone of the partner is non-Muslim so there is no valid marriage.

5) Objects of marriage

Following are objects of a marriage.

I. Legalization of sexual inter course.

- Under the Islam, the main object of the marriage is legalization of sexual intercourse of the husband and the wife in order to protect both of them from evils of the society.

II. Breeding of children.

- Under the Islam, another object of the contract of marriage is breeding of children by the husband and the wife.

III. Preservation of human race

- Under the Islam, another object of the contract of marriage is protection of the human beings from committing an evil.

IV. Regulation of social life.

- Under the Islam, another object of the contract of marriage is regulation of the social life in order to run the business of the society without sexual offenses.

6) Number of Wives

- Under the Islamic rules of law, a person who is Muslim can have four wives at a same time and it is permitted by Islam, but not more. If he marries a fifth wife because he has already four wives, in this case such kind of marriage would be considered as irregular or invalid.

7) Different benefits of Marriage

Following are the different benefits of marriage.

i.Social benefits

- The Holy Prophet (P.B.U.H) encourages the contract of marriage because Islam gives high respect to a married woman and protects her from social evils and such marriage becomes cause of stability of the social life of man and woman.

ii.Religious benefits

- After a contract of marriage a Muslim man and a Muslim woman can save them from committing illegal sexual intercourse which is sin in the eye of Islam so that marriage saves them become guilty in the eye of Islam.

iii.Legal benefits

- After a contract of marriage, the sexual intercourse and breeding of the children become legal in the eye of the Islam because Islam legally allows these act after contract of marriage. And a married woman cannot make another marriage.

8) Conclusion

- To conclude I can say that marriage is not a social ceremony but a civil contract between two persons of opposite sex. Every Muslim man and woman of sound mind who have attained the age of sexual maturity can enter into contract of marriage. There are some essentials of marriage such as offer and acceptance, age of majority, non-mehram, free consent, number of witnesses,.

Q 04: Define marriage. And explain its kinds such as valid, irregular and void marriage?

1) Introduction

- In Islam, marriage is a legal and civil contract between two people. Both the groom and the bride give their own free consent to the marriage. This contract defines rights and duties of the groom and bride. There must be two Muslim witnesses of the marriage contract. And contract of marriage comes to an end after death of any partner or by act of divorce between the partners.

2) Meaning of Marriage

- It means the union of two people as partners in a personal relationship specifically a union between a man and a woman for procreation of children.

3) Definition of Marriage

- Marriage is the physical relationship between man and woman by a contract of marriage which makes that relationship lawful and both partners physically enjoying each other in the manner allowed by the Sharia's.

4) Kinds of Marriage

Following are the kinds of marriage.

I. Valid Marriage

- According to the Islamic rules of law, such marriage is a valid marriage which is free from all defects and illness and completes all the requirements of a valid marriage, is perfect in all aspects such as:
 - The existence of offer and acceptance
 - Offer and acceptance should be by willful consent
 - Both of the bride and groom should be major in age
 - Both of should be non-mehram for each other
 - Fixation of the amount of the dower (Mehar)
 - Gender should be opposite
 - Existence of witness
 - They should be Muslims by faith

II. Void marriage

- According to the Islamic rules of law, such marriage is a void marriage which is in itself an unlawful marriage and full of defects and illness and does not complete all the requirements of a valid marriage is called void marriage. This type of marriage can be terminated by either party without obtaining a divorce, and is imperfect in all aspects such as:
 - The non-existence of offer and acceptance

- Where the consent is taken by undue influence
- Marriage on based of sympathy
- Existence of fosterage
- Marriage with the wife of another person

III. Irregular marriage

- According to the Islamic rules of law, such marriage is not unlawful in itself but there are some other reasons of irregularity of this marriage such as:
 - Marriage without witnesses
 - Marriage with a woman who is in the period of IDDAT
 - Marriage with a woman who is not a Muslim by faith
 - Marriage with two women who are sister, at a same time
 - And fifth marriage ☺

5) Kinds of marriage under Shia law

Following are the two kinds of marriage as under. The shia law only recognizes only following.

i. Valid marriage

- Valid marriage is such marriage which is lawful in the eye of law and completes all the requirement of the law.

ii. Void marriage

- Void marriage is such marriage which is an unlawful in the eye of law and does not complete all the requirement of the law.

6) Difference between void and irregular marriage

Following are the differences between void and irregular marriages.

I. As to restriction

- The restrictions on void marriage are complete and absolute
- The restrictions of irregular marriage are temporary

II. As to enforceability

- Void marriage is not enforceable by law
- Irregular marriage is enforceable by law after removal of some restrictions which may be made it irregular.

III. As to legal status

- Void marriage is completely unlawful marriage
- Irregular marriage is not an unlawful marriage

IV. As to Children legitimacy

- In void marriage, the child born is not a legitimate
- In irregular marriage, the child born is a legitimate

V. As to conversion

- Void marriage cannot be converted into valid marriage
- Irregular marriage can be converted into valid marriage

VI. As to rights and obligation

- Void marriage does not create any civil right and obligations
- Irregular marriage may create any civil right and obligation

7) Ways of avoiding irregular marriage

Following are the three ways to avoid irregular marriage.

i. By Husband

- A husband can avoid his irregular marriage by rejecting his contract of marriage.

ii. By wife

- A wife can avoid her irregular marriage by rejecting her contract of marriage.

iii. By court of law

- The court of law can avoid the contract of irregular marriage if it is brought under the consideration of the court.

8) Conclusion

- To conclude I can say that marriage is not a social ceremony but a civil contract between two persons of opposite sex. Every Muslim man and woman of sound mind who have attained the age of sexual maturity can enter into contract of marriage. There are different kinds of marriages such as valid marriage, void marriage and irregular marriage.

Q # 05: What are impediments to a valid marriage under Islamic law?

1) Introduction

- In Islam, marriage is a legal and civil contract between two people. Both the groom and the bride give their own free consent to the marriage. Muslim personal law prohibits a valid marriage under some circumstances because Muslims are allowed to marry with whom where marriage is allowed under Islamic rules of law. It means that there should be no impediment to make a valid marriage.

2) Definition of Impediment to marriage

- Under Islamic law, to stop someone to marry a woman or a man on the grounds of fosterage, or sympathy is called impediment to a valid marriage.

3) Kinds of impediment

Following are the kinds of impediments to a valid marriage.

I. Permanent impediment

- Permanent impediment is such impediment which creates a permanent restriction on a valid marriage due to some very valid reasons, in case of blood relations, fosterage or affinity or polyandry (a women marrying more than one person at a same time). It is permanently Haram in Islam.

II. Temporary impediment

- Temporary impediment is such impediment which creates temporary restriction on a valid reason but such kind of restriction can be removed by eliminating the reason of restriction.

4) Grounds of impediments

i. Impediment due to consanguinity (Blood relation)

Following are the restrictions of a valid marriage with the following person due to blood relations.

- ✓ The father's wife, whether divorced or widowed
- ✓ The mother, including the grandmothers
- ✓ The sister, including step-sisters.
- ✓ The daughter, including the granddaughters
- ✓ The paternal aunt
- ✓ The maternal aunt
- ✓ The brother's daughter e.g. his niece
- ✓ The sister's daughter, i.e., his niece.

ii. Impediment due to affinity (In Law Relation)

Following are the restrictions of a valid marriage with the following persons due to relation in law.

1. With his mother in law or grandmother in law
2. With his daughter in law or granddaughter in law
3. His wife, s daughter by a previous marriage

iii. Impediment due to fosterage

Following are the restrictions to a valid marriage with the following persons due to fosterage. A man cannot marry to:

1. His foster mother
2. His foster sister
3. His foster mother's sister

➤ Exceptions

Following are the exceptions where a man can marry to the following person.

1. Sister's foster-mother.
2. Foster sister's mother.
3. Foster son' sister.
4. Foster brother's sisters

iv. Impediment due to polyandry

- Under the Islamic law, it is an unlawful for a woman to have more than one husband at a same time. Because a married woman cannot contract a second marriage during the life of her first husband.

v. Impediment due to polygamy

- Under the Islamic law, it is an unlawful for a man to have more than four wives at a same time. If he marries a fifth wife where he has already four wives, in this case the marriage is not void but irregular, in this situation he can remove impediment by divorcing one of four wives. If she marries with second person in this case she would be punished as per rules of criminal law.

vi. Impediment due to difference of religion

- Under the Islamic law, it is an unlawful (Haram) for a woman to marry a non-Muslim man whether he is people of the book or not.

➤ Quran says

“It is not permissible for Muslim women to marry non-Muslim men.”

vii. Impediment due to unlawful conjunction

- Furthermore, a Muslim cannot marry at the same time with two sisters who are so related to each other by consanguinity, affinity or fosterage,

viii. Impediment due to iddat

- Under the Islamic law, it is unlawful for a man to a woman who is spending the period of iddat after the death of his husband.

ix. Impediment due to difference of religion

- Under the Islamic law, according to the Sunni school of thought if a person who is in Pilgrimage cannot marry a woman and it is an absolute impediment. If he does in this situation his marriage will be considered as invalid.

5) Effects of impediments

Effect of the permanent impediment cannot be avoided in any case. But the effect of the temporary impediment can be addressed or removed.

a) Legal effect on children

- IN PERMANENT IMPEDIMENT, the children are considered as illegitimate
- IN TEMPORARY IMPEDIMENT, the children are not considered as illegitimate.

b) Legal effect on marriage

- IN PERMANENT IMPEDIMENT, the marriage is not legal in the eye of law
- IN TEMPORARY IMPEDIMENT, the marriage is legal but irregular.

6) Conclusion

- To conclude I can say that the marriage among Muslim is not ceremony but it purely is a civil contract. In order to constitute a marriage as valid there should be no impediments to the marriage. Because Islamic law enforces some restrictions on the right of a person to enter into martial relation with a person of opposite sex.

Q # 06: What is khula? Who can exercise it and on what grounds?

1) Introduction

- Under Islamic law, khula is a procedure through which a woman can divorce her husband, after returning the dower (mahr) that she had received from her husband. In this case the husband takes the payment back and lets his wife go. Before promulgation of Islam a woman had no rights to divorce her husband by paying the dower back to him but Islam has introduced this.

2) Meaning of Khula

- Khula is an Arabic word which means to “Put off”

3) Definition of Khula

- Right of divorce which is granted to a woman for separation from her husband without his consent after paying back the dower, while he refused to divorce his wife

4) Essentials of Khula

Following are the essentials of khula.

a) Wife's consent

- Under the Islamic law, in order to get separation from her husband, wife will have to show her consent in this regard

b) Husband's consent

- Under the Islamic law, in order to get separation from his wife, husband will have to show his consent in this regard

c) Dower

- Under Islamic law as per rules in order to get separation the wife will have to give or will have to show her intention to give the amount of dower to her husband before separation

5) Grounds for Khula

Following are the judicial grounds for khula.

1. Disappearance of husband for 4 years
2. Failure to maintain his social obligations for 2 years
3. Husband has been imprisoned for 7 years
4. Husband has been failed to perform his marital obligations from 3 years
5. Husband became insane
6. Husband get sexual serious illness
7. Any other reason recognized by the court of law for khula
8. Husband contracting polygamies

➤ **Hadith Says**

- In the time of The Holy Prophet (S.A.W), the wife of Thabit bin Qais requested the Holy Prophet (S.A.W) for a divorce from her husband. The Holy Prophet (P.B.U.H) asked her to return the amount given to her at the time of marriage as dower (Mahr). She accepted this condition and the marriage were dissolved.

6) Revocation of khula

- Under the Islamic person law, Islam gives permission to a woman who has made a request for khula can be revoked (cancelled) at any time before the acceptance of the offer by her husband.

7) Khula under compulsion

Khula under compulsion by sunni and shia perspective.

a) Under Sunni law

- According to the Sunni law khula is valid if any woman who has requested it under compulsion

b) Under Shia law

- According to the Shia law khula is not valid if any woman who has requested it under compulsion

8) Legal effects of Khula

Following are the legal effects of Khula.

I. Right of marriage with another

- Under the Islamic law, after taking khula, a woman can marry with another person without any legal restriction on her

II. Right of remarriage

- Under the Islamic law, after taking khula, a woman can remarry with his previous husband without any legal restriction on her

III. Right of inheritance

- Under the Islamic law, after taking the khula, wife's rights of inheritance come to an end once the divorce is completed

IV. Period of iddat

- Under the Islamic law, after taking khula, wife will have to spend the period of iddat.

V. Sexual intercourse becomes unlawful

- Under the Islamic law, after taking the khula, the sexual intercourse between the divorced husband and wife or living together is unlawful once the divorce has been completed

VI. Payment of dower

- Under the Islamic law, after taking the khula, wife is legally bound to give or shows her intention to give the dower to her husband.

9) What may be given as dower

- Under the Islamic law, everything can be given as the payment of dower to the husband, the dower may be in immoveable or the form of currency, property whether moveable or any other thing.

10) How khula is granted

Following of the two ways of granting khula.

- By mutual agreement
- By the order of the court

11) Duty of the court

- Court is under an obligation to determine the case which is filed on the basis of khula and try to find out the reasons on which khula has been requested by the woman before the court or dissolution of the marriage.

12) Conclusion

- To conclude I can say that Islam has given the right to women who can request for dissolution of marriage in the shape of khula before the court of law but she will have to pay the dower for this separation which she had taken at the time of contract of marriage in order to proceed her request.

Q 07: Define divorce? What are the different modes of divorce and what are its various kinds?

1) Introduction

- Under the Islamic law, divorce is one of the modes of dissolution of marriage. Both wife and husband have legal and religious rights to dissolve a marriage by divorce or khula. A verbal divorce is not recognized by law and the husband's failure to send written notice to the wife makes the divorce ineffective. Divorce is permitted in Islam but it is a last option if it is not possible to continue a marriage

2) Definition of divorce

- Divorce is dissolution of marriage, termination of a marriage or marital union, and it is the way of canceling of the legal duties and responsibilities of marriage under the Islamic law.

3) Modes of divorce

Following are the modes of divorce.

i. Death of any spouse

- Under the Islamic law, death of any spouse is an automatic mode of divorce between the husband and the wife. All the marital liabilities come to an end by this way.

ii. Divorce

- Under the Islamic law, pronouncement of the words of divorce by husband is also mode dissolution of marriage between the husband and the wife. All the marital liabilities come to an end by this way

iii. Khula

- Under the Islamic law, khula is mode dissolution of marriage between husband and the wife where a wife puts a request for separation from her husband. All the marital liabilities come to an end once khula is completed.

iv. Annulment of irregular marriage

- Under the Islamic law, an annulment of irregular marriage is a mode of dissolution of marriage between husband and the wife and it happens when contract of marriage does not complete the requirement of a valid marriage. All the marital liabilities come to an end by this way.

4) Kinds of divorces

Following are the kinds of divorces. Details are as under.

I. Talaq-e-Ahsan

- Talaq-e-Ahsan is such talaq where a husband pronounces talaq to his wife in a single sentence and waits for the completion of the period of iddat. This type of talaq can be cancelled during the period of iddat but after iddat, it cannot be cancelled.

II. Talaq-e-Hassan

- Talaq-e-Hassan is such talaq where a husband pronounces talaq to his wife by three times consecutively after a break of 30 days between each talaq. This type of talaq can be cancelled during the period of iddat but after iddat, it cannot be cancelled.

III. Talaq-e-Biddat

- Talaq-e-Biddat is such talaq where a husband pronounces talaq to his wife thrice in a single sentence. This type of talaq cannot be cancelled once it has been stated at thrice. In this situation, in order to remarriage the husband and wife will have to do “Nikah Halala.

IV. Khula

- Khula is a kind of divorce where a woman can divorce her husband, after returning the dower (mahr) that she had received from her husband. In this case the husband takes the payment back and lets his wife go.

V. Mubarrat

- Mubarrat is such divorce where husband and wife dissolve the contract of marriage by their mutual agreement and wants separation from one another. It is called mubarrat.

VI. Judicial divorce

- Under the marriage act 1939, judicial divorce is such divorce where a woman can file a case in the court in order to get divorce from her husband on the ground of false charge of adultery. Court gives order for divorce in this regard.

➤ Appeal

Appeal cannot be filed against the decree of the court on this ground of falsely accusation of sexual intercourse.

VII. Divorce in absence

- This is such kind of divorce which can be pronounced by the husband even in the absence of wife. But it is necessary that husband must pronounce the name of his wife. Such is a valid divorce and is called divorce in absence.

VIII. Ila

- Ila is such divorce where a woman can file a case in the court in order to get divorce from her husband where he is of unsound minded, or has become impotent to have sexual intercourse from four months, or he swears of God that he will not have sexual intercourse with his wife.

IX. Zihar

- If a husband compares his wife with his mother or any other female who are his blood relatives, in this case the wife has a right to refuse to have sexual intercourse with him until he does not seek forgiveness. The wife has the right to take judicial divorce which is known as Zihar

5) Who can pronounce divorce?

Following are the persons who can pronounce the divorce.

1. A person of sound mind
2. A person who has attained the age of majority

6) Who cannot pronounce divorce?

Following are the person who can pronounce the divorce

1. A person who is minor
2. A person who is unsound of mind

7) Divorce under compulsion

Divorce under compulsion by sunni and shia law.

c) Under Sunni law

- According to the Sunni law divorce is valid if it has been pronounced under compulsion

d) Under Shia law

- According to the Shia law divorce is not valid if it has been pronounced under compulsion or in intoxication

8) Conclusion

- To conclude I can say that, under the Islamic law a man has a power to divorce his wife at any time with her consent or without her consent and without any reason, the divorce is the a mode of dissolution of the marriage. There are different modes of divorce such as divorce, khula, death of any spouse as well as annulment of irregular marriage. Furthermore there are a lot of kinds of divorces are mentioned in the Islamic law.

Q # 08: Discuss salient features of the Muslim Family Law Ordinance 1961.

1) Introduction

- Law, whether divine or manmade, is always for the well-being of the human beings. The Muslim family laws ordinance 1961 came into force on 15th July 1961. It applies to all Citizens of the Pakistan who are living in this country. A lot of changes have been made and imposed upon Muslims of the whole Pakistan. Some of the changes made under this act are opposite to the Muslim's law.

2) Definitions

i. Arbitration Council

- Arbitration council means a body which is consisted of the Chairman and representative of each of the parties to a matter under the Ordinance

ii. Chairman

- Chairman is a person who is authorized by the government and responsible to resolve the disputes of the people of union council.

3) Application of this ordinance

- The Muslim Family Ordinance 1961 applies to all Muslims citizens of the Pakistan wherever they live. It is not applicable to muslims of other countries. And it is applied only on Muslims of the country because non-muslims have their own laws in this country.

4) Changes brought in Muslim family law ordinance

Following are the changes are made in MFLO are as under.

iii. Succession

- Before promulgation of the Muslim family laws ordinance 1961, the grandson/granddaughter had no shares in the property which was left by the grandfather. But now under the provision of sec 4 of the ordinance, grandson/granddaughter have been entitled to get the shares from the properties of their deceased grandfather.

iv. Registration of marriage

- Under the provision of this ordinance, it was decided that every marriage under Muslim Law shall be registered. For the purpose of registration of marriage under this Ordinance, the Union Council shall grant license to one or more persons known as Nikah Registrars. But one registrar will be hired for one ward only.

➤ **Record of Nikah Nama**

- The record the nikah nama will be maintained by the Nikah registrar and it will be kept in union councils further more the copies of nikahnama shall be handed over to the parties. too and fee of these copies also will be charged as prescribed.

➤ **Fee of Nikah Nama**

- Under the provision of this ordinance, parties shall pay fees for registration of marriage as prescribed.

v.Polygamy

- Under the provision of sec 6 of Muslim Family Law ordinance a married man cannot contract another marriage without the written permission of his existing wife as well permission from arbitration council.

➤ **Marriage without permission**

- Under the provision of this ordinance if a man who contracts another marriage without the permission of the Arbitration Council or his wife, shall immediately pay the entire amount of dower or shall be punished to simple imprisonment for the term of one month.

vi.Divorce

- Under the provision of sec. 7 of this ordinance any person who wants to divorce her wife and pronounces the words of divorce, is under an obligation to give a written notice to the chairman of his intention as well as to provide a copy of divorce to his wife. And it is stated in this sec that the divorce shall not effective until completion of ninety days.

➤ **In case wife's pregnancy**

- Under the provision of section 7 of this ordinance if the wife is pregnant at the time of pronouncement of divorce, in this case it shall not be effect until the period of pregnancy comes to an end.

vii.Dissolution of marriage by agreement

- Under the provision of section 7 of this ordinance, a woman has been delegated the right of divorce and she can exercise this right at any time and she can dissolve the marriage other than talaq by mutual agreement.

viii.Maintenance

- Under the provision of this ordinance, If any husband fails to maintain his wife or wives or any of the wives, in this situation wife will submit an application to the chairman in order to seek any legal remedy and Chairman shall constitute an Arbitration Council to determine the matter, and such council will decide that how much amount will be paid by the husband as maintenance.

ix. Dower

- Under the provision of this ordinance, if no detail is given about the payment of dower in the nikahnama or the marriage contract, in this case the amount of the dower shall be supposed to be payable on demand.

x. Power to make rules

- Under the provision of this ordinance, the Government is authorized to make rules in order to force the rules of this ordinance; it is provided that a breach of any of the rules shall be punishable with simple imprisonment which can extend to one month, or with fine of two hundred rupees, or with both.

➤ Official Gazette

- Under this provision it is prescribed that the rules made under this section shall be published in the official Gazette and shall have effect if enacted in this Ordinance.

5) Conclusion

To conclude i can say that the Muslims family law ordinance has brought changes in the basic Islamic personal law of Muslims. It is unislamic and against the article 20 of the constitution of Pakistan. But some of the changes made are good and beneficial to positively run the business of the society.

Q 09: Define dower and discuss its importance in Islamic law? Describe its various kinds.

1) Introduction

- Under the Muslim Personal Law, dower means money which the wife is entitled to receive from her husband in consideration of the marriage. Dower is an obligation which imposed upon the husband in favor of his wife. The dower can be taken before the marriage, after the marriage or even at the time of marriage. The major object of the dower is to provide financial support to wife after the dissolution of her marriage so that she may not become helpless after the death of the husband or termination of marriage by divorce.

2) Definitions

- Under Islamic law, dower is an amount which is payable by the husband to her wife whether before the marriage, after the marriage or at the time of marriage.

3) Importance of dower

- The main object of the amount of dower is protection of the wife even after death of her husband or after dissolution of the marriage. It is a financial support of a widow or divorced wife. Furthermore, amount of dower is a check on the powers of a husband to pronounce the divorce to her wife.

4) Kinds of dower

Following are the kinds of dower.

I. Specified dower

- Specified dower is such dower which is fixed even before the marriage or at the time of marriage or even after marriage. Under Sunni law, specified dower must not be less than the value of 10 dirhams. The wife is entitled to receive this amount even if the specified dower is less. But under the Shia law, there is no fixed amount of dower

A. Prompt dower

- Prompt dower is such dower which is payable on demand and it is paid immediately on the event of marriage by the husband. And wife can refuse to live with her husband even he has paid the amount of dower.

B. Deferred dower

- Deferred dower is such dower which is payable on the dissolution of the marriage even by the death of either of either partner, or by divorce. If the marriage was dissolved by divorce, in this case the wife is entitled to receive the amount of whole unpaid dower immediately.

II. Unspecified dower

- Unspecified dower is such dower which is not fixed even before the marriage or at the time of marriage or even after marriage. In this case the wife is entitled to receive a proper dower that is fixed by the courts based on Islamic rules

A. Proper dower

- The amount for proper dower is fixed keeping in view the wife's social status or her qualification.

B. Fixation of proper dower

- During the fixation of the amount of dower, following factors are taken into consideration.

1. Qualification of the wife
2. Social position of the wife or her father
3. Local customs of the wife's family
4. Social position of the husband

5) Minimum amount of dower

- Under the Islamic law, According to Fiqah e Hanfi, the dower of wife should not less than 10 dirhams, and according to Fiqah e Malik, it should not less than 3 3 dirhams. But Under shia law there is no minimum dower is fixed

6) Maximum amount of dower:

- Under the Islamic law, the maximum amount of dower has not been fixed here. But under Shia law amount of dower can't be exceeded to 500 dirhams

7) Remission of dower

- Under the Islamic law, with her consent a wife has a right to remit all or any portion of dower but acceptance by the husband is not needed in this regard.

8) Recovery of dower

- Under the Islamic law, by the rules of law, a woman is entitled to file a civil case in order to get the amount of dower from her husband who has not paid dower so far. There is no objection on her if she files a case against her husband.

9) When wife gets entitled of dower

Wife gets entitled to receive the dower due the following grounds.

1. On dissolution of marriage by divorce
2. On death of her husband
3. On valid retirement

10) Differences between Shia and Sunni Law on Dower

Following are the differences between sunni law and shia law on dower.

i. As to minimum amount

- Under sunni law, minimum amount of dower is 10 dirhams
- Under Shia law, no minimum amount is fixed

ii. As to maximum amount

- Under sunni law, no maximum amount of dower is fixed
- Under Shia law, maximum amount of dower is 500 dirhams

iii. As to payment

- Under sunni law, dower shall be payable at any time before or after dissolution of marriage
- Under Shia law, dower only shall be payable if marriage is dissolved

iv. As to agreement not to pay dower

- v. Under sunni law, agreement between the parties not to pay the dower is not valid
- vi. Under Shia law, agreement between the parties not to pay the dower is valid

11) Conclusion

- To conclude I can say that under Islamic law, the purpose of dower is protection of the wife after dissolution of marriage or after death of her husband. A wife can file the case in order to get dower if it is unpaid because dower is the right of wife who is entitled to receive this amount from her husband

Q 10: What are the prompt and deferred dowers and what remedies are available to the wife if dower is not paid by husband.

1) Introduction

- If a husband does not pay the mount of dower, multiple remedies are exist in the law and a wife can take legal action in order to recover the dower. Under the Muslim Personal Law, dower means money which the wife is entitled to receive from her husband in consideration of the marriage. Dower is an obligation which imposed upon the husband in favor of his wife. The major object of the dower is to provide financial support to wife after the dissolution of her marriage so that she may not become helpless after the death of the husband or termination of marriage by divorce.

2) Definition of unpaid dower

- Under Islamic law, dower is an amount which is payable by the husband to her wife whether before the marriage, after the marriage or at the time of marriage.

3) Importance of dower

- The main object of the amount of dower is protection of the wife even after death of her husband or after dissolution of the marriage. It is a financial support of a widow or divorced wife. Furthermore, amount of dower is a check on the powers of a husband to pronounce the divorce to her wife.

4) Remedies for unpaid dower

Following are the remedies available to the wife in dower are not paid by her husband

I. Refuse to cohabit

- Under Islamic Law, the wife is entitled to refuse herself to have sexual intercourse until the prompt dower is paid. A wife and after her death, her legal heirs can file suit for recovery of dower.

II. Legal action against husband

- Under Islamic law, the wife is entitled to take judicial action through the court of law for recovery of the unpaid Dower against her husband.

III. Legal action against heirs of husband

- Under Islamic law, if the husband dies, the widow is entitled to take judicial action through the court of law for recovery of the unpaid Dower against heirs of her husband.
- **Note:** Heirs will not be personally liable but they will be liable to pay the dower from the properties of deceased.

IV. Right of retention of property (Holding)

- Under the Islamic law, a widow is entitled to retain the properties of her deceased husband in lieu of unpaid dower. And this right is available to both a widow and a divorced woman. But possession should have been attained during the lifetime of the husband or with the consent of the legal heirs after the death of the husband.

V. Right of possession of property

- Under the Islamic law, a widow is entitled to possess the properties of her deceased husband in lieu of unpaid dower. And this right is available to both a widow and a divorced woman.

➤ Property is non-transferable.

- Under the Islamic law, she cannot gift or transfer the properties possessed in lieu of unpaid Dower because the widow is not the owner and the transferee will get no good title

➤ Initiation of suit

A woman can file a case for recovery of unpaid dower.

1. Within three years from the date when the demand was made
2. From the date when the marriage was dissolved

Note: The time starts from the time when the wife/widow receives notice of the divorce or news of the death of her husband.

5) Minimum amount of dower

- Under the Islamic law, According to Fiqah e Hanfi, the dower of wife should not less than 10 dirhams, and according to Fiqah e Malik, it should not less than 3 3 dirhams. But Under shia law there is no minimum dower is fixed

6) Maximum amount of dower:

- Under the Islamic law, the maximum amount of dower has not been fixed here. But under Shia law amount of dower can't be exceeded to 500 dirhams

7) Remission of dower

- Under the Islamic law, with her consent a wife has a right to remit all or any portion of dower but acceptance by the husband is not needed in this regard.

8) Recovery of dower

- Under the Islamic law, by the rules of law, a woman is entitled to file a civil case in order to get the amount of dower from her husband who has not paid dower so far. There is no objection on her if she files a case against her husband.

9) When wife gets entitled of dower

Wife gets entitled to receive the dower due the following grounds.

4. On dissolution of marriage by divorce
5. On death of her husband
6. On valid retirement

10) Differences between Shia and Sunni Law on Dower

Following are the differences between sunni law and shia law on dower.

vii. As to minimum amount

- Under sunni law, minimum amount of dower is 10 dirhams
- Under Shia law, no minimum amount is fixed

viii. As to maximum amount

- Under sunni law, no maximum amount of dower is fixed
- Under Shia law, maximum amount of dower is 500 dirhams

ix. As to payment

- Under sunni law, dower shall be payable at any time before or after dissolution of marriage
- Under Shia law, dower only shall be payable if marriage is dissolved

x. As to agreement not to pay dower

- Under sunni law, agreement between the parties not to pay the dower is not valid
- Under Shia law, agreement between the parties not to pay the dower is valid

11) Conclusion

- To conclude I can say that under Islamic law, the purpose of dower is protection of the wife after dissolution of marriage or after death of her husband. A wife can file the case in order to get dower if it is unpaid because dower is the right of wife who is entitled to receive this amount from her husband

Q # 11: Define waqf. What are its objects and essentials of valid waqf?

1) Introduction

- A donation made by a Muslim to a religious, educational, or charitable cause. Waqf is an important concept in Islam. Where a Muslim donates his all property or any part of it, for religious purpose as an act of worship. Every Muslim of sound mind can donate his property by way of waqf. It may be made verbally or in writing. After donating the property as waqf the profit of the property cannot be acquired by the owner but the charity.

2) Definitions of waqf

- Waqf is a permanent dedication by a person supporting Islam by giving any moveable or immovable property for religious purpose which is recognized by the Muslim law as pious, and such property itself cannot be sold is called waqf.

3) Meaning of waqf

- The word waqf is an Arabic word which means “detention, stoppage, or tying up”

4) Parties of the Waqf

Following are the parties of waqf. Details are as under:

VI. Waqif

- Waqif is a person who donates his property for religious purpose is called waqif.

VII. Mutawalli

- Mutawalli is the person who manages the property of waqf and responsible for the distribution of the property.

VIII. Beneficiary

- Beneficiary is a person in whose favor the property is donated

5) Essentials of Valid Waqf

Following are the essentials of valid waqf.

i. Permanent donation

- Under the Islamic law, permanent donation is an essential element of waqf and donation of the property should be permanent in nature, and should be in the name of God. If it is a temporary donation, in this case it is not a valid waqf.

ii. Donation by a competent Muslim

- Under the Islamic law, Property must be donated by only a Muslim person who has attained the age of majority and is of sound mind. If it is donated by a minor, in this case it is not a valid waqf.

iii. Transferable property

- Under the Islamic law, Property must be transferable to others such as transfer of buildings, money, jewelry etc. These are those things which are having physical objects and are transferable.

iv. Religious purpose

- Under the Islamic law, religious purpose is also an essential of a valid waqf, property must be donated only for the religious purposes and acts and those acts which have been recognized by Islam as religious or pious acts.

v. Unconditional

- Under the Islamic law, property must be donated for religious purposes unconditionally. If there is a condition for waqf, in this case it is not a valid waqf.

6) Objects of waqf

Following are the objects of waqf which are recognized by the Islamic rules of law and are purely based on piety and charity. Waqf can be granted to:

- ✓ For construction of Eidgahs where Namaz e Eid is offered
- ✓ For maintenance of mosques and burning lamps in them
- ✓ For construction of hospitals and dispensaries
- ✓ For construction of Bridges
- ✓ Mosques and the Imams to conduct worships
- ✓ Schools and teachers who are teaching Islamic studies
- ✓ Among poor to feed them
- ✓ Keeping Tazias in the month of Muharram
- ✓ Celebrating the death anniversaries of settlor or his family

7) Kinds of waqf

Following are the kinds of waqf.

I. Contingent waqf.

- Contingent waqf is such waqf which is dependent upon the possible occurrence of a future happening, the happening of which is not guaranteed that it may happen or not. It is called contingent waqf.

II. Conditional waqf

- Conditional waqf is such waqf where a condition is imposed that when the property will be mismanaged, it will be divided amongst beneficiaries. It is called conditional waqf.

III. Private waqf

- Private waqf is such waqf which is made for completion of religious duties of a particular individual or a family. It is called private waqf.

IV. Public waqf

- Private waqf is such waqf which is made for completion of religious duties of general public. It is called public waqf.

V. Quasi waqf

- Quasi waqf is such waqf which is partly made for the benefits of particular individuals, and partly made for the benefits of general public. It is called quasi waqf which is partly private and partly public waqf.

8) Revocation of waqf

- Under the Islamic rules of law, the property which is donated as waqf by will, the waqif has a right to revoke the act of waqt at any time before his death.

9) Conclusion

- Waqf is the donation of the property to someone for completion of religious duties for a long term and such kind of donation is permissible in Islam. It is an act of worship and waqif can donate his property by his own consent during his life time and by will after his death. There are a lot of objects of waqf and multiple kinds of waqf. The person who is donating his property to waqf , must be major, muslim, or is of sound mind.

Q 12: Define will? Define who can make a will? Define essentials and limitations upon will.

1) Introduction

- Under the Islamic rules of law, will mean the legal declaration of the intention of a person towards his property, which he wants to be handed over to whom after his death. It is a one-sided document and takes effect after the death of the testator. Due to any reason this document can be cancelled or altered by the testator at any time as he has power to dispose of his property.

2) Meaning of will

- A will means is disposition of the property which takes effect after the death of the testator.

3) Definition of Will

- Will is a legal document in which a person shows his intention that who should receive possession of his property after his death such type of a person's choice in a particular situation is called will

4) Parties of will

Following are the parties of a will.

i. Testator

- Testator is a person who makes a will is known as testator

ii. Legatee

- Legatee is a person in whose favor the will is made is known as legatee.

iii. Executor

- Executor is a person who executes the will in favor of legatee is known as executor

5) Essentials of a valid will

Following are the essentials of a valid will.

i. Existence of property

- It is a valid will if the property is exist at the time of death of testator

ii. Existence of intention to give

- It is a valid will if the testator has an intention to give the property to other.

iii. Existence of physical object

- It is a valid will if the thing is exist at the time of transfer and must have physical object such as car, building, money etc.

iv.Ownership of testator

- It is a valid will if the testator is owner of the property and has a complete control over property by excluding all others.

v.Does not effect heirs

- It is a valid will if it does not affect the legal shares of heirs. if it effects the heir it is not a valid will.

vi.Not in favor of legal heir

- It is a valid will if it has not been made in favor of legal heirs of the testator.

vii.1/3 of total property

- It is a valid will if the property is less than from 1/3 of the total property of the testator.

6) Limitations on will

Following are the limitations which are imposed on will by Islamic rules of law.

a) In case of legal heirs

- Any testator cannot make a will in favor of his legal heirs, if he makes a will in favor of his legal heirs; it is not a valid will.

b) In case of unborn baby

- Any testator cannot make a will in favor of unborn baby who is in the womb of her mother, if he makes a will in favor of unborn baby; it is not a valid will.

c) In case of any condition

- Any testator cannot make a conditional will in favor of others, if he makes a conditional (mashroot) will in favor of others; it is not a valid will.

d) As to property

- Any testator cannot make a will more than 1/3 of his property, if he makes a will more than 1/3 of his property; it is not a valid will.

7) Who can make will

Following are the person who can make will. Details are as under.

a) Sound mind

- Under the Islamic rules of law, each and every person who is of sound mind and owner of a certain property can make a will related to his property in order to appoint someone to collect his property after his death.

b) Major

- Under the Islamic rules of law, each and every person who is major and owner of a certain property can make a will related to his property in order to appoint someone to collect his property after his death.

c) Deaf, Dumb or Blind

- Under the Islamic rules of law, each and every person who is deaf, dumb or blind and owner of a certain property can make a will related to his property in order to appoint someone to collect his property after his death.

d) Ordinary insane person

- Under the Islamic rules of law, each and every person who is ordinary insane and owner of a certain property can make a will related to his property during an interval in which he is of sound mind in order to appoint someone to collect his property after his death.

8) Who cannot make a will

- Under the succession act 1925, no one can make a will when he is in such a state of mind, whether arising from illness or from intoxication or from any other situation that he does not know about the goodness or badness of his deed. Minor and insane also cannot make will.

9) Revocation of will

Will is revocable, and it can be revoked at any time by testator even before his death. Following are the ways of revocation.

I.Express

- Testator can revoke the will at any time either in express terms or orally or in writing is called express revocation.

II.Implied

- Testator can revoke the will at any time without any express terms either orally or in writing is called implied revocation

10) Conclusion

- To conclude I can say that a will is the disposition of property which takes effect at the time of the death of the testator. it does not operate before the death of testator and testator in his life can revoke the will at any time due to any reason or even without any reason. It has a lot of kinds such as conditional will, unconditional etc.

Q 13: What is gift and its ingredients? Under what circumstances a donor can revoke a gift?

1) Introduction

- Gift is a transfer of a property and is defined in under the Islamic rules of law. This transfer is such transfer in which no consideration is involved and basic element of the gift is an absence of consideration. You can transfer moveable or immovable property through a gift deed. Like a sale deed, a gift deed contains details of the property, the transferor and recipient. A gift can also be canceled.

2) Definition of gift

- Gift is transfer of any moveable or immovable property made voluntarily and without consideration by one person to another person is called gift

3) Parties of Gift

Following are the two parties of the gift. Details are as under.

a) Donor

- Donor is a person who donates his property as a gift to other

b) Donee

- Donee is a person to whom property is donated by donor

4) Essential conditions of a valid gift

Following are the essentials of a gift.

i.Number of parties

- Presence of the two parties is necessary for validity of gift deed where one party is called donor and other is called donee.

ii. Subject matter of gift

- The subject matter of the gift should be movable or immovable property.

iii. Existence of thing

- The thing should be exist at the time when it will be giving to the other party.

iv. No Consideration

- The gift should be given without consideration if gift is being given for any amount, in this case it will not be a valid gift

v. Voluntarily

- The provision of a gift should be voluntarily if the donor has gifted something under an undue influence in this case, it will not be a valid gift

vi. Acceptance

- The gift must be accepted during the life time of donor if the gift is being accepted after the death of the donor in this case it will not be a valid gift

vii. Delivery of gift

- Delivery of the possession of the gift is necessary by the donor to the donee,

5) Revocation of gift

Under Islamic rules of law the gift can be revoked due to many reasons. Following are the some reasons where donor can revoke the gift even after delivery of possession of the property.

- When the gift is given under undue influence
- When the gift is given by the misrepresentation
- When the gift is taken fraudulently
- When the thing given is lost or destroyed
- When the donor has received something in the exchange of a gift
- When the donee is dead
- When the gift is made by a husband to his wife or by a wife to her husband

6) Persons in whose favor gift can be made

Following are the persons in whose favor a gift can be made and there is not legal restriction on it.

1. Legal heirs
2. Insane persons
3. Any other persons
4. Artificial persons
5. Natural persons

7) Persons in whose favor gift cannot be made

Following are the persons in whose favor a gift can be made.

1. Unborn baby
2. Alien enemy
3. Dead persons

8) Persons who can make gift

Following are the persons who can make the gift and there is not legal restriction on it.

a) Must be a Muslim

- A Muslim person can make a gift and there is no legal restriction on him in this regard

b) Must be major

- A major Muslim can make a gift and there is no legal restriction on him in this regard.

c) Must be of sound mind

- A major Muslim person of sound mind can make a gift and there is no legal restriction on him in this regard.

9) Person who cannot make gift

Following are the persons who cannot make a gift and.

a) Non-Muslim

- A non-Muslim cannot make a gift deed, if he makes a gift deed; it is not a valid gift.

b) Minor

- A minor cannot make a gift deed, if he makes a gift deed; it is not a valid gift.

c) Insane

- An insane cannot make a gift deed, if he makes a gift deed; it is not a valid gift.

d) Bankrupt

- A bankrupt cannot make a gift deed, if he makes a gift deed; it is not a valid gift.

10) Conclusion

- To conclude I can say that, gift is a form transfer of property without any consideration by one person to another person. The procedure of gift under transfer of property and under Islamic law is different. Any person who is the legal owner of a property can alone make a gift of his property. Basically, a gift is the transfer of something without consideration but such transfer should be voluntarily.

Q 14: State matters to be considered by a court in appointment of guardian of minor?

1) Introduction

- According to The Guardians and Wards Act, 1890; a minor is a person who has not attained the age of 18. The right of guardianship of the minor primarily belongs to the father but in his absence, this right belongs to the court. "Guardian" means a person who is caring the minor and his property and "ward" means a minor who is being cared. The court has authority to appoint the guardian of a minor or removing another as a guardian.

2) Definition of guardian

- Guardian is a person who is legally appointed by the court of law to care of minors who are unable to manage their affairs such as child or mentally disturbed minors etc.

3) Matters to be considered for appointment of guardian

Following are the matters which need to be considered for appointment of a guardian of a minor

i. Welfare of minor

- Under this act, during the appointment of a guardian, the court is under an obligation to consider the welfare of minor.

ii. Wishes of the minor

- Under this act, during the appointment of a guardian, the court is under an obligation to consider the wishes of minor that with whom he wants to live

iii. Wishes of the deceased parents

- Under this act, during the appointment of a guardian, the court is under an obligation to consider the wishes of deceased parents and preference will be given to him who was wished by the deceased to become guardian of their child.

iv. Religion of minor

- Under this act, during the appointment of a guardian, the court is under an obligation to consider the religion of minor because children of Muslim father shall follow the religion of his father so that Muslim guardian to be appointed by court.

v. Age of minor

- Under this act, during the appointment of a guardian, the court is under an obligation to consider the age of minor, minors will be cared by guardians until they attained the age of majority which is 18 for male and 17 for female under the Islamic law

vi. Sex of minor

- Under this act, during the appointment of a guardian, the court is under an obligation to consider the sex of minor, female minors will not be given under the guardianship of a male

vii. Character and capacity of proposed guardian

- Under this act, during the appointment of a guardian, the court is under an obligation to consider the character and capacity of the guardian whether he is being capable to take care of minor and his property or not and must has good character because character directly effects morality.

viii. Relationship of guardian with minor

- Under this act, during the appointment of a guardian, the court is under an obligation to consider the relationship of the guardian with minor, if minor is a girl, mother or other female will be the guardian and if the minor is a boy, father and other male will be the guardian

ix. Wish of minor for appointment

- Under this act, during the appointment of a guardian, the court is under an obligation to consider the wish of minor for appointment of guardian, if the minor can express his preference, in this case court will give importance to his expression but after obligatory determination.

4) Rights and duties of guardian

Following are the rights and duties of a legal guardian and he can make multiple decisions of the behalf of the child such as where to live, in which school the child will be sent as well as other decisions related to the welfare of the child.

1. Welfare of the minor is the major duty of the guardian
2. Provision of food and health care to the minor
3. Provision the protection to the minor and his property
4. Provision of clothing to the minor
5. Provision shelter to the minor
6. Provision physical protection to the minor
7. Supervision of assets of the minor
8. Provision of education and provision to support in sports activities

5) Who can apply for guardianship

Following persons can apply for the appointment of the guardian of a minor.

1. Mother of the minor
2. Father of the minor
3. Paternal relatives of minor
4. Maternal relative of minor
5. Other relatives of minor
6. Friend of the minor
7. Person who wished to be appointed as guardian
8. Superior authority of the local government where minor lives or where his property exists

6) How guardianship comes to an end?

There are several reasons due to them the guardianship comes to an end.

1. With the death of child
2. With the death of guardian
3. With the resignation of guardian
4. With the removal of guardian by the court
5. With the unfitness of guardian whether mentally or physically
6. With the appointment of new guardian on the personal request of minor
7. When minor attains the age of majority such as 18 years in multiple states
8. With the marriage of minor in case of female minor
9. After delivering the property to the minor
10. After abusive use of his powers upon the property of minor
11. Upon failure to perform his duties
12. Bankruptcy of the guardian

7) Remuneration of guardian

- Under this act, the guardian is entitled to get the salary from the property of minor and court fixes his salary as court thinks fit for the same.

8) Conclusion

- To conclude I can say that the appointment of guardianship is purely based on the welfare of the minor and it is universally recognized rule of law and court performs the function of appointment of the guarding by considering multiple factors such as by considering the age of minor, sex of minor, religion of minor, character and capacity of minor etc.

Q # 15: What are the general principles of inheritance?

1) Introduction

- Under the Islamic rules of law the concept of inheritance is meant where a legal heir of the deceased person is entitled to receive the property of deceased which he has left behind him either by will or by operation of law. After the death of a Muslim his properties are used for the payment of funeral expenses, returning of debts and the legacies, after these payments the remaining property is called heritable property"

2) Definition of guardian

- The term inheritance is referred, when someone lawfully receives property upon the death of his relative as his legal heir even without a will

3) Importance of inheritance in Islam

Following Hadith shows the importance of inheritance in the Islam.

- Hazrat Anas (R.A) related that the Prophet (P.B.U.H) said:" If anyone deprives an heir of his inheritance, Allah will deprive him of his inheritance in Paradise on the Day of Restoration." (Suna Ibn Majah)

4) Objects of inheritance

Following are the objects of the inheritance under Islamic law. When a Muslim dies there are four duties which need to be performed by heirs.

i. Funeral and burial expenses

- It is the main object of the inheritance is that expenses of funeral and burial to be paid from the property of the deceased

ii. Clearance of debts

- It is the second object of the inheritance is that all debts of the deceased to be paid from the property of the deceased

iii. Determination of will

- It is third and important object of the inheritance is that a will to be determined if it was made by the deceased during his life time (which can only be a maximum of one third of the property).

iv. Distribution of remainder property

- It is fourth and last object of the inheritance is that remainder of the property of the deceased to be distributed among the relatives of the deceased according to Shariah Law

5) Principles of inheritance

Whenever a Muslim dies, all his property will be inherited by his legal heirs. Subsequently, on the death of every such legal heir, following are some principles of inheritance.

i. Birth right

- Newly born child is not entitled to get right of inheritance on his birth. He cannot get this right until the death of his ancestor. After the death of ancestor, he can become a legal heir and is entitled to get a share in property of deceased.

ii. Doctrine of Representation

- Under this doctrine, if during the lifetime of an ancestor, his legal heir dies but leaves latter heirs behind him; in this case such heir will get entitled to receive the share of the property of deceased as he is representing his immediate generation.

iii. Per capita distribution

- Method of per capita distribution of property is used under the Sunni law, according to this method; the property of deceased person is equally distributed among the heirs. That's why; the shares of each person depend on the number of heirs.

iv. Per strip distribution

- Method of per strip distribution of property is used under the Shia law, according to this method, the property of deceased person is not equally distributed among the heirs. That's why; the shares of each person are not equal.

v. Female's right of inheritance

- Under the Muslim law, there is no difference between the inherited rights of men and women on the death of their ancestor. However, there is a general rule that the amount of share of female heir is half of the male heir. The justification of this rule that the female shall receive dower and maintenance from her husband after her marriage.

vi. Rights of a childless widow and widow

- Under the Shia law, a Muslim widow who does not have any children shall be entitled to inherit one – fourth share of property of deceased husband. But, a widow who has children is entitled to one – eighth of the deceased husband's property.

Note: if a Muslim man who get married during a period of his illness and dies without having sexual intercourse, in such case the widow shall not be entitled to inherit on the property of deceased husband.

vii. Child's right of inheritance in womb

- Under the Muslim Law, a child in the womb can only be entitled to the share in property of deceased if he is born alive. But if he is born dead in this case his right will be abolished with him and it will be presumed that this right never existed.

viii. Step children's right of inheritance

- Under the Islamic law, the step children are not entitled to get the right of inheritance after the death of their deceased step parents.

Example: If a Muslim who marries with a widow and a widow has a son from her previous husband, in this case son of a widow is a step son for her husband

ix. Escheat

- Under the Islamic rules of law, if a person dies without leaving any heirs behind him in this case the property of such person will go under the control of existing government and state will become the legal heir of deceased property.

6) Sharer of inheritance

Following are the sharers of inheritance

1. Husband,
2. Wife,
3. Daughter,
4. Son
5. Father,
6. Father of father
7. Mother,
8. Mother of mother
9. Full sister
10. Consanguine sister
11. Uterine sister
12. Uterine brother.

7) Conclusion

- To conclude I can say that Islamic rules of law provided rules for inheritance and principles which helps distribution and usage of the property of a deceased person after his death. Also tells us about the sharers that who may be share such property or who may be not. And throws light on the objects of distribution of such property according to rules and regulations of law.