Family LAW -2 Model Answers 2021

Family law (KLE Society's Law College)

FAMILY LAW II (MOHAMMEDAN LAW)
MODEL ANSWERS
ACCORDING TO KSLU PARTEN FOR THE YEAR 2021

Subject teacher: Yasmeen tabassum
(Vice principal)

Q1. Explain the origin & development of Islamic law.

Islamic religion developed completely only after the death of Prophet Mohammed, but the social & political changes at various stages brought about considerable changes. The present Muslim law is therefore the outcome of several political administrative developments in Arabian society.

The historical development of Muslim law may be divided into 5 periods.

The first period from 622-632.
The second period from 632-661.
The third period 661-900.
The fourth period from 900-1924.
The fifth period from 1924till date.

The first period from 622-632:

The first stage in the development of Muslim law begins on the 622 AD & ends with the death of prophet in 632 AD. This is called the legislative period. Prophet started to get the divine messages from God (Allah) from the 609 AD, since then prophet began to get divine messages, & these divine messages were being communicated to the people of Mecca from time to time, & those people did not believe in the messages of Allah given to them & also disbelieved everything hat he said about Allah to them, the first task of prophet Mohammed was to make them believe in the messages & the existence of the only God (Allah). The result of that, most of the revelations was of religious or spiritual in nature & it did not contain any positive law.

In 622 AD prophet Mohammed went to Medina where the messages of God were already revealed at Mecca were very easily accepted & followed. In the revelations at Medina, prophet generally laid the principles to regulate the conduct of the people i.e. the positive law they had been revelations solving each & every problem of the society this continued till the death of prophet most of the law making revelations were made between 622 & 632 AD.

Laying down rules of the positive law were collected & contained in the holy book called Quran.

The second period from 632-661:

This period was called the period of first four caliphs of Islam. Prophet during his time had been an absolute authority on law & religion. He was very spiritual as well as administrative head of the Muslim state. After his death the question was about his successor. Majority of them favored election & accordingly elections were held in which Abu Bakar was elected, hence Abu Bakar became the first caliph & heded the community of Muslims, he was very popular among the people even during the life of prophet. Abu Bakr died in 634, & after him Omar was elected as the second Caliph, Omar was the chief for 10 years & was assassinated in 644 AD. After him Osman was the third caliph after elections, he headed the community for 12 years but he was also assassinated by the opponents & Ali became the fourth Caliph. Ali too was killed in 661 AD. The four caliphs are known as the rightly guided caliphs they are also called as Khulfi-i-Rashidin because they have the privilege to be very close companions of prophet.

After the death of prophet the divine messages were in a scattered form, some of them were only in the memories of the people. Distinguishable feature of this period is that all the divine messages were collected arranged subject wise & written to give a final shape. This collection of divine messages is called Quran the Holy book of Muslims, the first compilation was done by Zaid & during the third caliphs time i.e. Osman he asked Zaid to once again revise the holy book & the earlier version of Quran was destroyed. The only authentic version of Quran available to us is the Osmans compilation. Another feature of this period is that the traditions of prophet were strictly followed. In this stage the only source of law was the Quran & the traditions of prophet.

The third period (661-900AD) : Ali was appointed the 4^{th} caliph & was the last of the rightly guided caliphs , after death of Ali Hussains son was made the caliph , but Hassan being very pious & like saint did not want to involve himself into administration he voluntarily resigned , after him the Muavia became the next caliph of the Muslim world, from him started the Umaiyad dynasty . During his time two events took place, one is the seat of caliphate was shifted from Medina to Damascus & secondly the office of caliph which had been elevated was made hereditary. Muavias son Yezid was made the next caliph. Although Hassan son of Ali was not involved in administration was poisoned to death, subsequently Husain was also killed at Karbala, during the rule of the Umaiyad's caliphate became a regular kinship & the kings were interested in capturing & expanding the empire

than development of law. In 750 AD the Umaiyads were captured by the Abbasids who were the descendents of the prophet uncle Abbas & made they capital as Bagdad. These too did not contribute much towards law. Further the exposition of law was taken by the learned scholars of at Mecca &Medina & Kufa, the study of law by individual scholars brought lots of conflicting opinions. Each scholar began to claim his interpretation to be correct one. The academic differences gave birth to various sects among the sunnies , similarly the shias were divided into various sects , during this period only authoritative traditions were taken to be as law .where law was not avaluable in the text of Quran or the traditions' a theoretical expansion of law was undertaken by the jurists (ijma) & the analogical deductions (Quias) . Both the methods were found to be superb juristic approaches to finding of the law for the society. New concepts in the juristic sciences such as equity, reasoning, public welfare etc... Were also introduced during this period.

Fourth period (900-1924) : in this period the Abbasids ruled for 5 centuries & the sunnie were overthrown by the Mongols in 1258 AD for some for some time the sunnie clan remained without any caliph in 1261 AD Abdul Khasim was made the caliph at Cairo . The feature of this period was that the caliphs did not have any administrative power. In the beginning of the 16th century Salem I was invited to head the community. Therefore the caliphate was passed to Ottomans & Constantinople became the Dar-ul-Kalifa. Subsequently the sultanate of Turkey was abolished by Mustafa kamal Ataturk in 1922 & the caliphate was abolished forever in the year 1924 AD. From the point of view of development of Muslim law, this period is not significant at all because at this stage further exposition of law had stopped. As a result of this it was such that what was already laid down as rule of development of doctrine of Taqlid (imitation) under this doctrine the opinions of the great jurists were followed by the scholars of this period without anything new to it . Some popular Fatwa's were formulated they were opinions of the scholars.

The fifth period 1924 to present days:

With the abolition of the Caliphate in 1924, began the modern period of Islamic law. This continued even after 1924 there was no caliph as a religious head to examine & execute the traditional law of Islam. The Islamic law was separated from the religion. The Muslim law was viewed judicially. Muslim law was largely influenced by the modern Islamic Countries like Turkey, Tunisia, and Egypt etc … to codify the law in such manner that the inherent character of Shariath being preserved, the law is formulated according with the requirements of the present society. Another significant feature is that all aspects of human conduct were

regulated by the traditional Islamic law. Before the establishment of the British rule in India the Mughals applied Muslim Law as the law of the land, to all aspects. After the British they changed all the system by enacting a number of statutes.

Q. No.2 Explain the schools and sub-schools of Muslim law.

The two sects of muslin law are Sunni and Shia. The Prophet Muhammad was the universally head of Islamic Common Wealth. He was absolute authority on law as well as chief administrator of the whole body of Muslims. After his death the immediate problem was to find out his successor. The conflicting opinions over the selection of prophet's successor led to the division of two sects i.e., Sunnis and the shias. Therefore, Islam was dividing with political questions only but subsequently it resulted in the separation of legal principles as well. These two sects formed two major schools of Muslim law. Later the Sunnis further split into several sub sects each of these sects representing a distinct school of Sunni law. There was a similar split also among the shias. The chart below gives a clear picture of different schools of Muslim law.

1. <u>SUNNI Schools: schools which are formed under Sunni sect are as follows;</u>
- Hanafi,
- Maliki,
- Shafie,
- Hanbali.
2. <u>SHIA schools: schools which are formed under Shia sect are as follows;</u>
- Ithna asharia or imamia – further classification is as akhbaris and usuli.
- Ismailia's – further divided into khoja, bohara.
- Zaydias
3. MOTAZILA sect.

This section of Muslim society pleaded for election as a method of finding out the successor of prophet, because the prophet himself had suggested election. The prophet's suggestions or sayings are called his traditions ie., sunnat. They relied on the practices of the prophet. According an election was held in which Abu Bakr was elected as the first Caliph. This group of Muslims with its leader Abu Bakr formed the Sunni sect of Islam. They assumed the name Ahle-sunnat-wal-Jamat which means people of the tradition and assembly. They are popularly known as Sunnis.

SHIA SECT: - Yet they were a group of Muslims that did not agree to the principles of election head ship of the prophet rather than his administrative control. They intention was that the prophet's successor should be a spiritual leader of the community as prophet himself was. They argued that this quality comes through the nobility of blood .Therefore; a person who is related to prophet through blood or belongs to his family should be the most regarded as the most competent person to succeed him. Therefore, Ali who was the son – in – law of the prophet was nominated as the first Imam by this group themselves from the majority and constituted a separate sect called Shia . Therefore, we see that split which divides the Muslims into two sects – Shia and Sunni was due to the difference of opinion among the Muslims as to how to find the successor of the prophet.

These two groups formed the two major schools of Muslim law. Later, the Sunnis further split into several sub – sects in themselves, each sect representing a distinct school of Sunni law. There was a similar split in the shias

THE HANAFI SCHOOL: - this school of the Sunni Muslims is named after its founder Abu-Hanifa and is the most popular school of Muslim law. Abu Hanifa was an eminent scholar of his time and was widely known for his technical legal thoughts. The home of this school was Iraq later.

TH E MALILKI SCHOOL (713 – 795 AD):- this school was established by Malik-ibn-Anas of Medina. He was a great scholar and is regarded to be an authority on the tradition. According to Malikis as far as possible, the new rules should be obtained exclusively from the traditions. If it is not possible then only Oriyas and Ijma may be taken into consideration. But this school recognizes Ijma of only such source who lived in Medina.

THE SHAFI SCHOOL (767 – 820 AD):- the founder of this school is Idris-Ash Shafi he was an eminent scholar and Islamic jurisprudence. He was a pupil of Malik- ibn-anas, and was related to the Holy prophet. He developed his doctrine at Baghdad and Cairo. This school of thought also relied upon the traditions of prophet. His reliance on traditions was critical and much more than Maliki's.

THE HANBALI SCHOOL (780 – 855 AD):- the fourth and the last school of the Sunni sect were established by Ibn-Hanbal. His peculiar feature was that he rigidly adhered to the traditions of the prophet. It is therefore, said that Hanbal was a traditionalist rather than a jurist. He relied so much upon the traditions that other

sources of law i.e., Ijma and Oriyas were neglected by him. He perfected the doctrine of Usul.

SHIA SCHOOLS: - the shia school has its origin to Imam Jafar-as-sadik he is the 6th Imam of the imams . The shias do not accept to the traditions of prophet . As known Ali was the 1st Imam by the shia community he was accepted temporal and spiritual head of the community . After the death of Ali his two sons Hassan and Hussain became the second and the third Imam. After Hussain's death his son zain-ul-abdeen succeeded as the 4thimam. Upto this stage the shia community remained united but afterwards there has been divisions and sub-divisions of this sect .

THE ITHNA ASHARIA SCHOOL – this school is also called as imamia school. Majority of shias are ithna asharia . The followers of this school believe that from Ali there had been twelve imams who possessed spiritual powers . Everything that comes from the imam is taken to be a law . It is believed that the 12th imam who disappeared when he was still a child , would reappear in future . The characteristic feature of this school is that this is the only school in Muslim world which recognizes MUTA or temporary marriage. This school is further divided into two sub-sects.

1) Akhbari and 2) usuliakhbaris. They are very orthodox because they follow rigidly the traditions of imams. Usulis on the other hand interpret the texts of Quran with reference to practical problems of day to day life. The ithnaa sharias are found in Iran, Iraq, Lebnan, Pakistan and India. Shari-ul-islam is an authoritative book of this school.

Ismailia school: - Jafarsadiq disinherited his eldest son Ismail. Thye majority of shias therefore, did not accept him as their imam. But there were some shias although in minority. They believed that from him (Ismail) descended a series of concealed imams whose secret conversations were constantly on the watch for a chance of striking at some weak point in the large ill commented empire of orthodox Islam. The Ismailia's therefore, hold that imams subsequent to Ismail are still alive but they have concealed their exercise. In India they consist of two main groups – Khojas and bhoras. Khojas are originally Hindus. Bhoras are also ismailias they separated from the other groups during the Fatimid regime .

2 YACHS SCHOOL: - the founder of this school is zayed one of the sons of the 4 imamas. The zaydis were the first to separate from the general body of shiamuslims. One of the peculiar features of this school is that its doctrines

incorporate some of the Sunnis principles as well. The followers of this school are not found in India they are mostly in Yemen.

Q.No. 3 What is nikah? Explain the essentials of Muslim marriage.

Under Muslim law marriage is a civil contract for legalization of the intercourse and for legitimization of children. According to Hedaya, "marriage (nikah) implies a particular contract used for the purpose of legalizing children.

Justice Mahmood: - "marriage among Mohammadan is not a sacrament (sanskar) but purely a civil contract. " On the basis of the definition it may be said that in the eyes of law a Muslim marriage is a civil contract.

Taking into account the Islamic view, nikah is a Sunnat advocated and practiced by Prophet Muhammad.

Legal status of Marriage can be;

Valid (sahih)

Voidable (fasid)

Void (batil).

For the enforceability of marriage under Indian laws, its validity is very important. A marriage is valid (Sahih) if it recognized by the court as lawful. Following conditions must be fulfilled for a Muslim marriage to be declared as VALID.

1) The parties to the marriage should be competent.
2) The consent of the parties or of their guardian must be of free.
3) The required formalities must be duly completed.
4) There must not be any prohibition or impediment in contracting the marriage.

1) PARTIES TO MARRIAGE MUST BE COMPETENT: - at the time of marriage, both the parties i.e., boy and girl must be competent to enter into the contract of marriage. The parties are competent to marriage if they are;

a) of the age of puberty (14-15yrs)

b) of sound mind

c) should belong to islam religion

Age of puberty is an age at which a person is supposed to acquire sexual competency. The competency depends on the physical features of boys and girls. Accordingly age of puberty with respect to a boy and girl keeping in view the physical features, the court have presumed that the age of puberty is acquired on completion of 15 years.

In Atika begum v/s Mohd. Ibrahim case:

The Privy Council laid down a clear law about the age of puberty as a Muslim girl becomes major on the happening of either of the two events.

1) Completion of 15 years
2) On her attainment of a state of puberty at an earlier period.

The same rule may be applied in respect of the age of the boy .Therefore, it may be said that in the absence of any evidence to the contrary, a Muslim has presumed to have attained puberty at the age of 15 yrs.

The requirement of the age of puberty is essential not only because of competency for consummation but also because it is considered to be the age at which the parties can give their own consent for the marriage. After attaining 15 yrs, a person becomes mature enough to give consent for his or her marriage no consent of the guardian is necessary to validate the marriage.

Minor's marriage: - under Muslim law a person who has not attained the age of [puberty (15 yrs)] is a minor. As such he/she has got no capacity to give consent for marriage. If on behalf of the minor, his/her guardian give the consent the marriage is lawful. A minor's marriage is therefore, valid only with the consent of the guardian. A minor's marriage without the consent of a guardian is void.

Under Muslim law following persons are recognized as guardians for contracting the marriage of a minor

1) Father
2) Parental grand father
3) Brother or other male members of the father's family
4) Mother
5) Maternal uncle , aunt or other maternal relatives

SHIA LAW: - the only guardians for marriage are father and the parental Grandfather how high so ever. A marriage contracted by any other guardian must be expressed conformed by the minor or attaining puberty.

2). CONSENT OF THE PARTIES TO THE MARRIAGE OR THE GUARDIAN MUST BE FREE:

Offer and acceptance form an integral part of a Muslim marriage. Offer comes from the bridegroom's side and acceptance is made by the bride.

If the offer and acceptance is influenced by any sort of coercion, undue influence, fraud, mistake or misrepresentation then such consent is not free. Parties whose consent is not free cannot enter into valid marriage.

In case of minor's marriage, consent of the guardian should also be free.

3). THE REQUIRED FORMALITIES MUST BE DULY COMPLETED:

In nikah, apart from offer and acceptance and free consent the other procedure is fixing of MAHR or DOWER.

Mahr is the amount of money or money's worth which forms the consideration for that marriage. It is fixed by the bridegroom to the bride at the time of the marriage. It becomes the sole and whole property of the bride.

It can be paid immediately on the date of marriage or can be paid later after the marriage but before the dissolution of the marriage.

4). THERE MUST NOT BE ANY PROHIBITION OR IMPEDIMENT IN CONTRACTING THE MARRIAGE:

The marital parties should not come under the prohibited or restricted relationships under Islamic law.

Restricted relationships can be rectified to some extent later when such restrictions are removed.

Eg: marrying 5^{th} wife; marriage during idddat period.

Prohibited relationships are those relationships which are completely prohibited and in case of marriage, the whole marriage becomes VOID. This cannot be rectified.

Eg: marrying one's own sister, brother, father, mother, maternal uncle.

Conclusion:

Therefore for a valid Muslim marriage, these are some of the essential elements which have to be present. If the marriage goes against these conditions, then it is called as VIOD marriage.

Q No 4. What is talak? Explain in detail the different modes of talak?

Talak is an Arabic word it means 'to release ', under the Muslim law Talak means repudiation of marriage by the husband. Talak is peculiar because the Muslim right has an unrestricted right to divorce his wife without giving any reason , Muslim law does not require any excuse for talak .The Muslim concept of divorce is that when it becomes impossible for the spouse to live together they must separate peacefully .The law gives to the husband the sole authority to dissolve the marriage by way of pronouncing talak , because in a society dominated by males , the conjugal happiness depends on the efforts of the husband .Whenever the husband finds the marriage cannot be continued happily then he is empowered to dissolve the marriage . There are various modes of pronouncing talak , in every form of pronouncing Talak , the following essential elements should be present , they are , capacity ,free consent ,and words to be expressed and certain formalities are involved .

Talaks may be either conditional and contingent talak, they may either be absolute ie unconditional or subject to a condition . An uncertain future event is called contingency , where a talak is without a condition it takes effect immediately . A conditional and a contingent talak becomes effective only upon the fulfilment of a condition or happening of the future event .The conditional talak and a contingent talak is recognised only under the sunnie law and not under the shia law .Under the Muslim law the conditional and contingent talak is valid but the conditions must not be unislamic .If the condition is against the principles of Islam , the condition is void and talak cannot take place .

The various modes of pronouncement of talak , they are of two types ,

Thlak –ul- Sunnat and Talak –ul- Biddat .Talak –ul –Sunnat is again classified into two ie Talak –Ahasan (most proper) and Talak Hassan (proper) .

Talak –ul – Biddat comes into effect immediately .

1. Talak-ul-Sunnat : this type of talak is said to be the most approved form of talak this is also called as revocable talak, it may be pronounced either in the Ahasan form pr in the Hasan form .This type of talak is called as the most approved form because it is based on the prophets tradition in this type of talak they is always possibility of compromise and reconciliation between the husband and wife . This talak is also called as Talak –ul- raje.Only this kind of talak was in practice during the life time of prophet . This mode of talak is recognised both by the Sunnis and the Shias .
   The two type of ths kind of talaq are; Talaq Ahasan andTalaq Hasan.

Talak Ahasan : This ia the most proper form of repudiation of marriage .The reason is 2 fold ; Firstly there is possibility of revoking the pronouncement before the expiry of Iddat period. Secondly the evil word of talak has to be uttered only once . In this mode of talak they is a single declaration during the period of purity followed by no revocation by the husband for 3 successive period of purity .In this form following formalities are required ; Firstly the husband has to make a single pronouncement of talak during the tuhr of the wife . Secondly after this single pronouncement , the wife is to observe Iddat of three monthly course . If the wife is pregnant she has to maintain Iddat till the delivery of the child . During the period of Iddat there should be no revocation of talak by husband .Cohabitation during such period is considered as an implied act of revocation of talak , if the cohabitation takes place even once then the talak is revoked and the presumption of fact is that the husband reconciled with wife .

Talak Hasan (proper): This talak is also regarded to be the proper and approved form of talaq .In this form too, there is a provision for revocation .But it is not the best mode because the evil word talaq is pronounced three times in a successive tuhurs . The formalities are of three in number they are ; Firstly, the husband has to make a single declaration of talaq in a period of tuhur . Secondly, in the next tuhur there is another single pronouncement for the second time . Thirdly , if no revocation is made after the first or second declaration then lastly the husband is to make the third pronouncement in the third period of purity . As soon as the third declaration is made , talaq becomes irrevocable and the marriage dissolves and the wife has to observe the required Iddat .

In Ghulam Mohyuddin V/S Khizer , in the year 1929 the Lahore HC ,held that the talaqnama was merely a record of first pronouncement and the talaq was revocable . The court further held that for an effective and final talaq , the three pronouncement must actually be made in three tuhurs , only a mention of third

declaration is not sufficient .In this case the husband wrote a talaknama in which he said that he pronounced first talaq and third talaq on 15th Sep and , 15th Nov and he had communicated this to his wife on 15th Sep.

2. Talaq-ul –Biddat (irrevocable) or Talaq-ul-Bain , it is disapproved mode of talaq or divorce . Apecular feature of this talaq is that it becomes effective as soon as the words are pronounced and there is no possibility of reconciliation of the parties .

Under the Shia Law the , an irrevocable talaq is not recognised .It is evident that in the irrevocable Talaq the emphasis is upon the husbands intention of irrevocable Talaq . He may use any formula which makes it clear that the husband intends to dissolve the marriage irrevocable .

Besides Talaq the Muslim husband can repudiate his marriage by two other modes , ie Ila and Zihar , Ila and Zihar are the constructive divorce by a husband . The husband does not expressively repudiate the marriage but the conduct of the husband is of such nature that it is concluded that he intends to dissolve the marriage .In Ila the husband the husband takes an oath not to have sexual intercourse with his wife ,if this is followed for a period of four months , after the expiry of four months the marriage dissolves irrevocably.

Zihar , is also a constructive divorce .In this mode the husband compares his wife to his mother or sister , after such comparison the husband does not cohabit with his wife of four months , on the expiry of four months' , Zihar is complete but the marriage as such does not dissolves .After completion of Zihar the wife may approach the court for a judicial divorce and also may go to the court for restution of conjugal rights .Where the husband wnats to revoke Zihar by resuming cohabitation within the said period , the wife cannot seek divorce

Q NO 5 what are the grounds on which a Muslim wife can claim divorce from her husband under "The dissolution of Muslim Marriage Act , 1939" ?

This act may be regarded as a landmark in respect of Matrimonial relief to a Muslim wife . The wife's right of divorce , which was denied to her due to misinterpretation and misconception of Islamic Law by the courts, was resorted to her under the Act . Silent features of the Dissolution of Muslim Marriage Act 1939.

Section 2 of the Dissolution of Muslim Marriage Act 1939 , provides that a women married under the Muslim Law shall be entitled to obtain a decree for the

dissolution of her marriage on any one or more of the grounds , the benefits of this section may be given to a wife whether her marriage was solmonised before or after the commencement of the Act . The specified grounds for dissolution of marriage under this Act are as follows :

1. Husband missing for a period of 4 yrs .
2. Husband's failure to maintain his wife for a period of 2 yrs .
3. Imprisonment of the husband for a period of 7 yrs .
4. Husband's failure to perform marital obligations for 3yrs .
5. Husband's Impotency .
6. Husband's insanity , Leprosy or Venereal deceases .
7. Option of puberty by wife .
8. Cruelty of wife by the husband .
9. And any other ground which is recognised as valid for the dissolution of marriage under the Muslim Law .

Husband missing for a period of 4 yrs : According to sec 2(i) of the Act if the husband is missing and his whereabouts are not known for a period of 4 or more years , the wife may file a petition for the dissolution of her marriage u/sec 3 of the act the wife is entitled to give complete details of her relatives , the court after fully getting satisfied that nobody of his relatives know the whereabouts of the missing husband for four or more months the court could pass a decree for dissolution of marriage and if the husband appears before the expiry or 6 months and is prepared to perform his conjugal rights then the court may set aside the order passed and the marriage is not dissolved .

Husband's failure to maintain his wife for two years : According to sec 2(ii) of the Act provides that if the husband has neglected or failed to maintain his wife for two or more years, the wife is entitled to obtain a decree for the dissolution of marriage . It is a legal obligation of every husband to maintain his wife .If he fails to do so the wife may seek

Imprisonment of the husband for 7 years : Sec 2 (iii) read with the provision (a) , lays down that a wife is entitled to get her marriage dissolved by an order of the court of law if her husband is imprisoned for a period of 7 yrs or more .The wife's right to judicial divorce on this ground begins from the date on which the sentence has become final . Therefore , the decree can be passed in favour only after the expiry of the date for appeal by the husband or after the appeal by the husband has been dismissed by the final court .

Husband's failure to perform marital obligations for the period of three years : Sec 2(iv) of the Act provides that the wife is entitled to dissolution of her marriage if her husband fails to perform his marital obligations for a period of three years without any reasonable excuse . They are several matrimonial obligations of a husband under Muslim Law . But for the purpose of this clause the husbands failure to perform only those conjugal obligations may be taken into account which are not included in any of the clauses of sec 2 of this Act .if the husband fails to exercise the marital obligations without justification for at least three years , the wife is entitled to get a decree for dissolution of marriage . But if here is reasonable ground for the husband for not exercising the matrimonial obligations ,e.g. like wife's illness or any other reason then the wife cannot dissolve the marriage under this clause .

Husbands impotency : Under sec 2(v) of the Act the wife may sue for dissolution of marriage on the grounds of husbands impotency .For a wife to prove this she has to convince the court on two facts . firstly , that the husband was an important at the time of marriage , secondly , that he continues to be important till the filing of the suit .The wife can get decree only if the two facts are fully established .before passing order the court may give the husband one year's time to prove his potency and file an application for it , if the husband fails to do so the court shall pass the decree of divorce .

Husband's insanity ,leprosy or venereal deceases : Sec 2(vi) of the Act entitles the wife married under the Muslim Law ,to obtain a divorce on the grounds that her husband is insane or is suffering from leprosy or venereal deceases .The husbands insanity must be for two or more years immediately presenting the presentation of the suit .But the Act does not specify whether unsoundness of mind should be curable or incurable .But it is submitted that the insanity of the husband should be incurable .

Leprosy , the act has not specified the form nor its duration .It could take stand in favour of the wife for seeking divorce .

Venereal decease must be permanent one i.e. incurable ,if the wife is entitled to get infected by the husband she is entitled to seek divorce.

Option of puberty of wife : This ground for the dissolution of marriage is not based on any fault of the husband it is an independent provision under which a marriage is voidable at the option of his wife .Under sec 2(vii) a wife may dissolve her marriage if her marriage was contracted by her father, or any other guardian during her minority .

Cruelty by her husband : Sec 2(viii) provides that a wife can sue for divorce if her husband treats her with cruelty .This act has now enlarged the scope of cruelty by husband cruelty under this act also includes mental torture .

Any other ground which is recognised as valid for the dissolution of the marriage under Muslim Law : Under sec (ix) the a residuary clause under which a wife may seek dissolution of her marriage on any ground which could not be included in this section , but is recognised under the Muslim Personal Law .the wife could invoke this ground for seeking divorce under this clause .

Q No 6 Explain the effect of Apostasy of Muslim on her /his Marriage and Succession rights.

Apostasy means renouncing or giving up one's religion. Before 1939 if either of the party to a marriage renounces Islam, the marriage dissolves immediately whether the renunciation of Islam was done by the husband or by wife. But after the passing of dissolution of Muslim Marriage Act 1939 law on this point has been modified by sec 4 of this Act. The present law relating to the effects of apostasy by husband or wife.

Apostasy by husband : If a Muslim husband renounces Islam the Marriage dissolves immediately . Sec 4 of the Dissolution Of Muslim Marriage Act 1939 , does not apply to the apostasy of husband . As a result the Apostasy by husband is still governed by the old law under which renunciation of Islam by husband operates as immediate dissolution of the marriage .When a Muslim husband converts to other religion his wife ceases to be the Muslim wife of such husband .As such the wife is not governed by the Muslim Law and is free to marry any other person immediately without maintaining the period of Iddat .

Apostasy by wife : If a Muslim wife renounces Islam , the Marriage is not dissolved but , she continues to be a wife Married to her husband under Muslim Law . If she wants to , she may obtain a decree from the court for dissolution of her marriage on any of the grounds specified in sec 2 of the Act .

Exception : The provision given in the (2) of the sec 2 does not apply if the wife was not a Muslim by birth. That is to say , where the wife was converted to Islam at the time of her marriage , and such converted Muslim wife renounces Islam and again embraces her original religion , then the marriage dissolves

immediately .Therefore an apostasy by a converted Muslim wife results in immediate dissolution of her Marriage .

Q No 7 Explain acknowledgement of paternity under Muslim Law.

Acknowledgement of paternity by a person means that he has accepted by himself that he is the father of the child. When the paternity of the child is uncertain because of the marriage of its parents , and his legitimacy could not be established at the time of the child's conception or birth , the husband may by a declaration acknowledge and accept that he is the father of the child . But when a child is illegitimate either because it is born of adultery or because marriage of his parents is prohibited under law, the acknowledgement cannot make the child legitimate.

The scope of this doctrine of acknowledgement of paternity is therefore limited .Therefore , if a child has been to prove to be illegitimate child as legitimate , is not recognised . Therefore if a child has been proved to be declared illegitimate by a person acknowledging his paternity , cannot make the child legitimate , such acknowledged child may be a son or a daughter .

It was in a leading case of Muhammad Allahadad V/S Muhammed Ismail , on acknowledgement on paternity , the full bench decision of the Allahabad HC is regarded as an authority on the subject and has subsequently been followed by the Privy Council and other courts in India .

In this case the court observed that "where the paternity of a child , that is his legitimate descent from his father cannot be proved by establishing a marriage between his parents at the time of his conception or birth , the Mohammedan Law recognise acknowledgement as a method whereby such marriage and legitimate descent can be established as a matter of substantive law for the purpose of inheritance .

A person may expressly declare that he is father a child or the acknowledgement may be inferred from his conduct . A clear proof of declaration of paternity is not necessary .If a person treats the child as his legitimate issue , the acknowledgement of paternity may be inferred from his conduct . however it must be noted that for implied acknowledgement , clear intention to confer the status of legitimacy must be inferred from the conduct of the acknowledgement .

Following conditions are necessary for a valid acknowledgement ;

1. The child acknowledge must not be an offspring of an illicit relation or intercourse .ie a lawful marriage between the child's mother and the acknowledger must have been possible under Muslim Law when the child was conceived or took birth .If such marriage was not possible there can be no acknowledgement .
2. The paternity must be uncertain before acknowledgement .
3. There must be a difference in age of the acknowledger and the child which confirms to a father the child relationship .According to the law the acknowledger must be at least be 12and a half year elder to the person acknowledged .
4. The acknowledgement of paternity by a person must not only be an acceptance of the child as his son or daughter , it should also be to the effect that he has accepted the child as his legitimate child for all purpose including inheritance .
5. Under the Muslim law there is a provision that the acknowledged the acknowledged the child has an option to repudiate the acknowledgement upon attaining the age of discretion and understanding .

   A valid acknowledgement of paternity once made cannot be revoked by the acknowledger . A complete and valid acknowledgement is therefore irrevocable and any subsequent retraction or denial by the acknowledger cannot affect the legitimacy of the child acknowledged .

   Legal effects of a valid acknowledgement of paternity are ;

   1. The child so acknowledged becomes the legitimate issue of the acknowledger and its paternity is established .
   2. As a legitimate issue , the child is entitled to inherit the properties of the acknowledger , its mother and its other relations .
   3. Acknowledgement of a child's paternity also establishes a lawful marriage between the child's mother and the acknowledger . the child's mother gets the status of the wife of the acknowledger and she too is entitled to inherit the properties of her husband .

Q No 8 Explain the law relating to guardianship of a property of a minor .

The law relating to guardianship under Muslim law , they are certain persons in the order of preference , recognised as legal guardians of the minor's property ,they are , father ,executor appointed by the father in the will or parental grandfather , and executor appointed by the paternal grandfather through the will . The

guardianship of a minor's property belongs primarily to the father who is a natural guardian .After his death it belongs to the executer appointed by the father under the will . such an executer , under the authority of the fathers will act as a legal guardian of minors property . Where there is no will appointing any person as an executor then after the death of the father the paternal grandfather is the guardian of the property of the minor , and after the death of the grandfather then his executor , if he has not appointed any executor then for the property of the minor the court appoints a guardian under the Court of Wards Act 1890 .

Thus under the mohammedan law the only relatives entitled to act as guardians of a minors property , are the father and the paternal grandfather . The mother or other relative of the minor have no right of they own act as guardians of the minor's property .

Q No 9 Define dower , explain the kinds of dower.

Ans: Before the advent of Islam a marriage was generally contracted by purchasing the girl from the guardian . A man who wanted to marry would approach the guardian and pay him some money or property to him and use to him , and use to take the girl with him as his wife , the girl was called 'Sadhiqa', called as female friend .Such marriages was almost the sale of a girl by guardian , the money of compensation given by the husband to the guardian was the compensation of the girl or the price of the girl known as 'Maher.

This type of marriage was called Bal Marriage . The other type of marriage was called as Beena Marriage .

Definition of Maher , Maher or dower is a sum that becomes payable by the husband to the wife on marriage either by agreement between the parties or by operation of law .

Maher is defined by various jurists in various ways , According to Ameer Ali ; dower is consideration which absolutely belongs to the wife .

According to Mullah ; dower is some of money or other property which the wife is entitled to receive from the husband in consideration of marriage .Here the word consideration is not used in the sense in which the word has to be used in the Indian Contract Act . But it is an obligation imposed upon the husband as a mark of respect to the wife .

According to the fatwai- i-Quazi Khan ;Maher is so necessary to the marriage that if it were not mentioned at the time of marriage or in the contract , the law will presume it by the virtue of the contract itself .

OBJECT OF DOWER :

1. To impose an obligation on the husband as a mark of respect of the wife .
2. To place a check on the use of divorce on the part of the husband .
3. To provide for her subsistence 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 .

   Maher can be fixed either in cash or in kind .

   Dower can be classified into two categories ,

   1. Specific dower or Mahr –i-Musamma .
   2. Customary dower or Mhr-i- Masil .

Specific dower : When the amount of the dower is specific in marriage it is called as specific dower .Dower may be paid or settled by the parties to the marriage either before the marriage or at the time of marriage or even before the marriage .

If a marriage of a minor or a lunatic boy is contracted by a guardian , such guardian can fix the amount of dower .Such dower fixed by the guardian is binding on the minor boy he cannot on attaining the age of puberty take the plea that he was not a party to it .The husband may settle any amount he likes by way of dower upon his wife , though it may leave nothing to his heirs after the payment of the amount. But cannot in any case fix less than 10 dirham's ,according to the Hanafi law but according to the Shia law it is 3 diharms , those Muslim men who are not capacitated to pay dower to his wife .In such cases Prophet has directed them to teach Quran to his wife in lieu of dower . At present they is no limit the maximum amount of dower .

Specific dower may be divided into 2 , Prompt and differed dower .

Prompt dower : It is payable immediately after marriage on demand . According to Amer Ali a wife can refuse to enter into the conjugical Domicile of the husband until the payment of the prompt dower .In such case the husband is bound to maintain his wife although she is residing apart from him .

Prompt dower does not become deferred after consummation of marriage and the wife has the absolute right to sue for recovery of prompt dower even after consummation .It is only on the payment dower that the husband becomes entitled to enforce the conjugal rights .Rights of restitution arises only after the dower is payed .

Deferred dower: This type of dower is payed only on the dissolution of marriage either on death or divorce .

II . Customary dower or proper dower : When the amount of dower is not fixed in the marriage contract or even if the marriage has been contracted on the condition that she should not claim any dower , the wife is entitled to proper dower .

Determinitation of proper dower ; Proper dower is regulated with references to the following factors .

1. Personal qualification of wife , her age , beauty , fortune , understanding and virtue .
2. Social position of her father's family .
3. Dower given to her female paternal relations .
4. Economic conditions of her husband , and
5. Circumstances of time .

Q No 10 "Marriage under Mohammedan law is a civil contract" critically examine the statement .

Ans: Under the Muslim law marriage is a civil contract for legislation of the intercourse and for legitimization of the children .

According to Hedaya ,marriage implies a particular contract used for the purpose of legalising of the children .It may be legally stated that in the eyes of law a Muslim marriage is a civil contract . The object of the marriage –contract is , firstly to provide legal validity to the relationship of husband and wife , secondly to legalise the children .

Without valid contract of marriage the relation of man and a women is unlawful , marriage also legalise also the children born out of the marriage , children born out of such union are legitimate children .

Legally Muslim marriage is a contract . Therefore it is legal nature is contractual . Although the elements of contract are also found in the Hindu marriage yet Hindu marriage is a sacrament in nature , because it involves some religious ceremonies . Justice Mahmood defined Muslim Marriages as a civil contract because no religious formalities are necessary to complete Muslim Marriage .But this may be considered only the legal aspects of Muslim Marriage .Beside Muslim marriage being a civil contract , the marriage in Islam is also a socio and religious institution .

Legally , a Muslim marriage is considered as a contract because the elements which constitute a marriage and the manner in which it is completed is almost similar to that of civil contract . The contractual nature of Muslim Marriage could be well understood by the following facts ;

1. Like contract the parties to the marriage must also be competent .
2. As in contract the marriage is not competent without offer, acceptance, consideration , and free consent of the parties of their guardians .
3. Like a civil contract , the terms of marriage contract within legal limits , may be settled by the parties themselves .
4. Just as there are rules for regulating the rights and duties of the parties upon the breach of a contract .

   Therefore the concept of Muslim Marriage is same as that of a civil contract .But only on the bases of the essential elements of a contract it is not correct to conclude that Muslim marriages are purely civil contract in the eyes of law . In its form or appearance it may look as a pure contract but it is not so in its essence .

   A Muslim Marriage is valid if it is recognised by the courts as lawful . Following conditions must be fulfilled in a valid contract ;

   1. The parties to the marriage i.e. husband and wife , must be competent .
   2. The consent of the parties , or their guardians , must be of free consent .
   3. The required formalities are duly completed , and
   4. There must not be any prohibition or implement in contracting the marriage .

At the time of marriage , both the parties i.e. the boy and the girl must be competent to get into the terms of contract of marriage . The parties are competent , if they have attained the age of puberty , of sound mind and both the parties should be Muslims .

Q No 11 Explain the classification of guardian ship under Islamic law.

A minor is suppose to have no capacity to protect is his / her own interest , Law therefore recognises that come adult person must save guard the minor as person or property and do everything on his /her behalf as such a minor person is legally incompetent .

A person who is authorise under the law to protect the person or property of a minor is called a guardian.

Under Muslim law the age of majority is regulated by two system , the first classical Muslim law and the second statutory law under the Muslim law guardian re required for purpose of marriage for protecting the minor person and for protecting the minors property.

Classification of guardians

Under the Muslim law following kinds of guardians are recognised

1 .Natural or legal guardian.

2. Testamentary guardian.

3. Guardian appointed by court or statutory guardian.

4 .De facto guardian.

Natural or legal guardian is the person who has legal right to control and supervise the activities of child , Under Muslim law father is regarded as natural guardian of his child . Under all schools of Muslim law. The father right to act as guardian of the minor is a independent right and is given to him under substantive law of Islam , Natural guardian is also called de-jure or legal guardian , but in absence of father , father's executor may also act as legal guardian in his absence paternal grandfather or executor of paternal grandfather can act as a legal guardian , Under Muslim law in absence of any of this nobody is recognised as natural or legal guardian of the minor.

Under shia law in absence of father only paternal grandfather may act as natural , legal guardian of the child. Under this school the executor of either person has no right to act as legal guardian of the child

Testamentary guardian: Testamentary guardian is a person who is appointed as guardian of a minor under a will only father or in his absence paternal grandfather has the right to appoint testamentary guardian , a Non Muslim and a female may be also appointed as testamentary guardian .

Shia law , Under shia law a non Muslim cannot be appointed as testamentary guardian

Guardian appointed by Court: In absence of a natural guardian and testamentary guardian the court is empowered to appoint a guardian for protection of the minor's person and property , the appointment of guardian's by court is governed by the guardians and ward act 1890 which is applicable to all Indians irrespective of the religion , such guardian appointed by the court are called statutory guardians. Except the guardians for marriage the guardian for a Muslim minor person and his property a guardian may be appointed by the court of law .

Defacto Guardian:

He is neither a testamentary or a legal guardian or a statutory guardian but has assumed himself the custody an care of the child, Defacto guardian is a person having not authority for the guardian ship but under the circumstances has taken the responsibility to act as a guardian of the minor

Q No 12 What is talaq? Explain the different kind of talaq under Muslim law?

The concept of Islam in Islam is where it is impossible for the spouses to live together they must separate peacefully .The law gives to the husband an authority to terminate the marriage by pronouncing talaq because in the society dominated by males the conjugal happiness is due to husband. Whenever a husband finds that marriage cannot be continued because of himself or due to the misconduct of the wife he is dissolved the marriage.

Talaq is an Arabic word ,which means to release. under Muslim law Talaq means reputation of marriage by the husband .It is very peculiar, because the husband has an unrestricted right to divorce his wife without giving any reason. But unfortunately the unrestricted right of Talaq has been misunderstood, the Islamic guidelines have been ignored by the society and the units of law.

Conditions for a valid Talaq :-

1) Capacity

2) Free consent.
3) Formalities
4) Express words

1)Capacity :- every Muslim necessary husband of sound mind is competent to pronounce Talaq .

There is no reason necessary to be given for his pronouncement of talaq .If husband has attained the age of puberty and sound mind he can pronounce talaq against his wife.

A minor or a un sound husband cannot pronounce cannot pronounce talaq

Talaq pronounce by such person is considered invalid

2) Free Consent ; The consent of the husband must be free in pronouncing talaq except under hanafi law , Under force, coercion, undue influence, fraud, voluntary in toxication.

Under Shia law ,Talaq pronounced under fraud , voluntary intoxication, coercion, undue influence is considered void and effective.

3) Formality – No specific formality or use of any particular word is required to constitute any valid talaq.

Any desire which clearly indicates to break the marriage is sufficient to dissolve the marriage through talaq.

Talaq under Sunni law may not be made before two witnesses.

Under shia law, Talaq must be orally said except where in case husband is unable to speak.

Shia has to pronounce talaq before two competent witness .

Shia requires the use of specific Arabic words in any specific formula in pronouncement of talaq .

4) Express Talaq – Clear intention indicating husband to dissolve marriage , the proof regarding husband motives is not necessary wife's present is not necessary , if he has more than one wife he must specify the name of the wife whom he intends to divorce .

Kinds of talaq:

There are two kinds of talaq

1. Talaq-ul-sunnat or revocable talaq.

a) TalaqAhasan.

b) TalaqHasan

2) Talaq-ul-bidaat or ir-revocable talaq.

1)Talaq-ul-sunnat or revocable talaq.

This type of talaq is regarded to be approved form of talaq , it is based on prophet's tradition. As a matter of fact prophet always consider talaq as evil . Prophet recommended this type of talaq because the evil consequences do not take effect immediately .This type of talaq was also called Talaq-ul-razi. This kind of talaq was practiced by both the schools of law. marriage. Because there is possibility of revoking the pronouncement before the completion of Iddat period.

Secondly, the evil word to be uttered only once .

b)Talaq Hasan :This is not the best mode because talaq ,the evil word must be pronounced 3times in a successive Thur(purity period).There are three conditions to be fulfilled they are ,firstly husband has to make single declaration in period of tahur ,

secondly, in the next tahur is another pronouncement .Thirdly if there is no

revocation made after the first and second declaration .The third pronouncement made by the husband in thur of wife ,as soon as this declaration is made talaq becomes revocable. It is important to note that the feature of talaq Hassan is revocable before the third pronouncement .

2)Talaq-ul-bidaat: Or Talaq – ul – Bain .

This is a disapproved mode of divorce .

Feature of this talaq is that , It comes into effect once it is pronounced.

There is no possibility of reconciliation between the parties. this type of talaq was not recommended during the time of prophet and he condemned it.

This was introduced during the second half of Islamic era, and this was founded by the okayed .Since then this mode of talaq has been in practiced among the sunni muslims. Besides two type of talaq the husband can repudiate the marriage in two other modes ,firstly by Illa, adeZihar.

Illa: Hear the conduct of marriage is of such a nature ,it is concluded that he intends to dissolve muslim.Inilla husband does not cohabits with wife ,and followed of no consunationfpr the period of 4mts,after this duration the marriage dissolvesa automatically.

Zihar:It is a constructive divorce ,here the husband compares his wife with a women with his prohibited relation eg:mother sister etc.upon this objection the husband would stay away from cohabiting with wife till expiry of 4months.The wife after expiry of 4 mts she may go to the court for judicial divorce. Secondly she may go to court for an order for restitution of conjugal rights. If the husband wants to revork zihar ,he can do so by resuiming cohabition within the said period,the wife cannot seek judicial divorce.But cohabitation is a sin under such circumstances wife can ask the husband to perform penance.

Divorce by mutual consent (khula).

According to law, Khula means divorce by wife with the consent of the husband on payment of something to him. Before Islam the wife had no right to take any action for dissolution of her marriage .But in Islam, she is permitted to ask her husband to release her after taking some compensation.

Essentials of Khula: It may be noted that Kula is a divorce by common consent ,but the wife has to pay make some consideration to husband because she takes the initiative for dissolution of marriage .The essentials of Khula are ,

1) Competence of the parties ,the husband and the wife must be of sound mind and have attained the age of puberty.

2) Free consent, The offer and the acceptance of khula must be made with free consent of the parties .But under the Hanifa law a Khula under compulsion or in the state of intoxication is also valid.

3) Formalities, here there is offer from the side of wife to release her from matrimonial ties , the offer is made to the husband .And the same must be acknowledged by the husband ,until the offer is accepted the divorce is not complete.

4) Consideration: For her release she has to pay something to the husband as compensation.

Q No 13. Define wakf. How the private wakf be established?

Wakf means detention according to law wakf means detention of property so that its produce & income is always available for religious & charitable purposes. Wakf has derived its origin from the traditions of the prophet, during the period Omar constituted a wakf of his land, since then the practice of wakf is continued for several centuries & it has become an important part of the religious life & social economy of Muslim society .In Islam it is believed that after constitution of wakf its property is owned by the Almighty (God) & it reaches beyond the human activity .After this transfer i.e. after giving ownership to God no person has the authority to transfer the property . In this manner the ownership of property in a wakf is vested in God. Where as its benefits or produce is given regularly for charitable or religious activities. The property becomes detained & non transferable.

Section 2(1) of Musalman Wakf Validating Act 1913 defines Wakf; it means wakf is permanent dedication of property by a person professing musalman faith, for any purpose recognized by Muslim law as religious, pious or charitable.

Abu Yusuf & Imam Muhammad define Wakf as, it is a permanent dedication of a specific thing in the implied ownership of God when the appropriators' right is extinguished, it becomes the property of God for the advantage of his creature.

The person who constitutes the wakf of his properties is called the founder of wakf or Wakif. The wakif must be a competent person at the time of dedicating the property in wakf, for being competent wakf a person must possess the capacity, as well as the right to constitute the wakf.

The object of wakf must be religious, pious & charitable purpose.

Under Muslim law, wakf must not be un-Islamic, if the object is un-Islamic, the wakf is void. Wakf may be created under 3 modes, dedicating the property immediately or inter-voivoce, by dedicating the property by will i.e. testamentary wakf & by immemorial users.

Wakf may be either public private. When the beneficiaries are from the members from the founder's family or his descendents the wakf is private, a private wakf is also called as family wakf. Through the family wakf, the founder may make provisions for the maintenance of his children and descendents of coming

generations. The origin of such wakf was tracked back to the traditions of prophet. There are several other traditions in which the prophet allowed the creation family wakf. According to him the support of one's family is & children was the first duty & necessity of every Muslim. The philosophy of Islam has been that provision for maintenance of one's own parents & children must be made obligatory so that they must be made obligatory so that they may not be burdened on the society. If the children get into wrong habits, when they have nothing for themselves they would become the liability of the society. In order to prevent such unpleasant situations, a Muslim is allowed to make adequate arrangements for the maintenance of his children & descendents through the medium of trust. According to Muslim law making provisions for the maintenance, comfort, & dignity of one's own children is an act equal to that of charity.

The nature of family wakf is been observed by the Supreme Court of India that in a wakf al aulad, the ultimate result is reserved to God but the beneficiaries & the Income of the property is used for the maintenance & support of the founder & the descendents, in case if the wakf becomes extinct the wakf becomes a public wakf & the property is vested in the God. However the courts in India have recognized family Wakf subjected to certain limitations. But the judicial limitations regarding the nature & extent of the charity referred in such wakf have created certain doubts as regards its applicability. The Musalman Wakf Validating Act 1913 was enacted to remove these doubts. This legislation clearly lays down the provisions of Muslim law on this point.

The law relating to Wakf alal-aulad under two separate heads law prior to the Act of 1913 & law after this enactment. Before 1913, the law relating to family wakfs was very strict. A family wakf in which they was no provision also for some charity or benefits to the poor was never regarded as valid wakf .According to the Anglo Indian courts it laid down that for a valid Wakf –alal-aulad it is necessary that together with the maintenance & support of the family, they should also be some religious & charitable work from the income of the wakf property. Application of the whole of the property only for the benefit of founder's children & descendents was not possible in the name of the family-wakf. Before 1913, the law relating to wakf –alal-aulad this can be summarized as follows.

The above mentioned conditions for a validly of family-wakf s was laid down by Anglo Indian Courts in Abdul Fata Mohammed case, is a very good example of the family-wakf where gift to charity is illusionary because of its remoteness. This is a

leading case on the law relating to wakf –alal-aulad before commencement of wakf validating Act 1913.

The family –wakf is now been governed under the Wakf Validating Act 1913. This enactment has removed the strict conditions regarding for the validity of the family wakf. Under this legislation it is now lawful for a Muslim to constitute a family wakf for the benefit of his children or family

Without any concurrent & substantial gift to charity. The relevant provisions regarding family wakf are given under Sec 3 & 4 of the Act.

Q No 14 Explain the difference between the sunnie law & Shia law regarding marriage.

Nikah means to tie up together, as against uncertain relationship of the wife & the husband in the pre Islamic society , Islam introduced Nikah (marriage) , in which the husband & the wife are to bond together for an infinite period . Nikah or marriage ensures stability in the matrimonial relationship. The prophet declared that the husband must pay something to the wife as not her prize but as a mark of respect towards her. Islam restricts limitless polygamy & no Muslim is entitled to marry with more than 4 wives at a time.

Under the Muslim law marriages are a civil contract for legalization of children.

According to Hedaya, Marriage (Nikah) implies a particular contract used for the purpose of legalizing the children.

Justice Mohammed had defined marriage in the following ways, according to him marriages in Muslims is not a sacrament but a pure contract. In the eyes of law a mohammaden marriage is a pure civil contract the object is to provide legality to the union between the spouses , otherwise the unionism between the parties will be illegal & children born out of such unionism is deemed to be illegitimate .

The nature of the marriage is that it is a contract in the eyes of law, & not a sacrament .Besides being a civil contract the marriage in Islam is also a social & a religious institution. A Muslim marriage is considered to be a contract because the element which constitutes a marriage & the manner in which it is completed is almost similar to that of a civil contract.

According to the sunnie law marriages may be classified into three,

1. Valid or sahih marriage.

2. Void or Batil marriage.
3. Irregular or Fasid marriage.

Under the Shia law irregular marriages are not recognized. A marriage according to Shia law may be classified into three categories.

The common practice is to regard valid void & irregular marriages as three two types of marriages. As a matter of fact the only kind of Muslim marriage which is accepted to be perfectly lawful & correct is the valid marriage (sahih). A marriage which has been contracted in violation of any of the essential legal conditions is no marriage at all. Therefore it does not constitutes any separate category as a void marriage, similarly a marriage in which there is any irregularity , is an incompetent marriage which becomes perfectly valid as soon as the irregularity is removed . Initially every marriage is contracted to be valid marriage, unless there is any fundamental defect in it, the marriage becomes void.

However the temporary marriage (muta) is a significant feature of Shia marriage, recognized by Ithna Ashara sect of Shias.

Q No 15 Explain the law relating to guardianship of property under Mohammad law.

A minor is a person who has no capacity to protect his or her own interest. Law therefore requires that some adult person must safeguard the minors' person or property & do everything on his or her own behalf because such a minor person is legally incompetent. A person, who is authorized under the law to protect the person or property of a minor, is called as a guardian. Under Muslim law guardians are required for the purpose of marriage, for protecting a minor person & for protecting the minors' property.

The powers & functions of the guardians of minors' person & property are different. Under the personal law the following persons are recognized as legal guardian of the minor's property,

1. Father
2. Executer appointed by the father in his will
3. Paternal Grand father
4. Executor appointed by the executor of the Grand Father**.**

The guardianship of a minor's property belongs to the father who is a natural guardian, after his death it belongs to the executor appointed by the father under

a will. Such a executor under the authority of the fathers will, acts as a legal guardian of the minors property executor-guardian is also called as a testamentary guardian because he is appointed under the fathers will. Where there is no will appointing any person as an executer then after his father's death then the paternal grandfather is entitled to be the guardian of minors' property as a legal guardian. After the death of the paternal grandfather his executer if any acts as a guardian of the minor's property. In absence of all these than the court appoints a guardian of a minors property under the Guardian & Wards Act 1890. Under the Muslim law the only relative who could act as the guardians of the minors' property is the father & the grandfather.

No others could act as the guardian of the minor's property. Mother, Uncles & aunts could not as guardian to the property of the Minor unless they have been appointed through the will.

In the year 1994 the SC of India passed a decision, In Mehaboob Sahib V/S Syed Ismail, in this case the SC held that, although the mother is the nearest relationship of her child, she is not regarded as the guardian of the child, also she is not regarded as the guardian of the minor Childs property.

Earlier to the decision of the SC in the year 1994, in the year 1979, In Gurubax Singh V/S begum Rafiya , the validity of sale of agriculture land by a minor Muslim entered into by his mother was in question . The Madhya Pradesh HC held that, the agreement cannot be enforced because it was made by a minor & his mother was not entitled to enter into the terms of transaction on behalf of the guardian. Further the court held that the mother cannot be a legal guardian to the property of the minor.

Powers of guardians for property of the minors , the guardian of the property of a ward is bound to deal with it very carefully as a man of ordinary prudence , subject to the Guardianship & wards Act 1890 , he may perform &do all reasonable & proper acts for the realization protection of the minors property .

The legal guardian to deal with the properties of the minor depends on the nature of the property i.e. whether the property is movable or immovable. It also depends on the nature of the transfer of the property by such guardian i.e. whether it is a sale, mortgagee or lease etc in Muslim la the transfer of movable property is very wider compared to that of the immovable property, which is very limited.

According to the Muslim personal law & the provisions of the Guardianship & wards Act 1890, the court in India has a specific rules relating to guardians power over the minors immovable properties. They are defined limits to the legal guardian's powers of the disposition of the properties; in case of sale, mortgage, and lease of the property of the minor. A legal guardian has no authority to sell the immovable property of his ward. But only in certain exceptional cases he has the authority to sell the property. The guardian's power to sell is very limited. The minor's property can be sold only if there is absolute necessary or is manifestly advantageous.

The legal guardian's right to mortgage the minor's properties is the same as that of the sale.

In case of lease also the minor's property is subjected to conditions, it must be for the advantage of the minor or is otherwise urgently required. The legal guardian is entitled to lease out the property only if it is beneficial to the ward.

Under the Muslim law the guardian is entitled to sell, mortgage, and pawn etc the movable property of his ward, provided it is urgent in the need of the minor.

The testamentary guardian has the same power as that of the legal guardian, as for the property of the minor is concerned the testamentary guardian has the same powers as that of the father or the grandfather. As the matter of fact the testamentary guardian are supposed to be the substitutes of the natural guardian.

Q No 16 Define is domicile & explain the different types of domicile under Indian Succession Act 1924.

The term domicile is not defined in the act. The domicile of a person is the place where he has his true, fixed, permanent home therefore, essential to constitute domicile.

a. Residence.
b. Intention of making it a home of the party.
   The domicile must be acquired by residence, but residence at the place does not necessarily make it a place of domicile, in as much as mere resistance without any intention of making it a permanent home would not be sufficient. Domicile is the country in which is taken to be a man's permanent home, for the purpose of determining the civil status.
   The importance of domicile in law is that, while the distribution of the immovable property & movable properties are reckoned the consideration

of applicability of the law, for movable properties is the law of the place of domicile of the deceased is taken into considered & in case of immovable properties it is the law of the land where it is found or situated. This is the rule adopted according to sec 5 of the Indian Succession Act 1925.

There are three different kinds of domicile;

1. Domicile of origin or by birth. Sec 6
2. Domicile by choice , Sec 9
3. Domicile by operation of law , Sec 14

Domicile of origin sec 6: domicile of origin is a legal tie which binds a person at his birth to a given system of law. It is a settled principal that no man can be a without a domicile & the law attributes to every child as soon as it is born. The domicile the person the child acquires at the time of his birth is known as the domicile of his origin or by birth .The domicile of the child depends on whether such child is born legitimate or illegitimate or posthumous.

The domicile of legitimate child is in the country in which his father was domiciled at the time of his birth .E.g. at the time of the birth of A the father was domiciled in England, hence A's domicile is in England, whatever the country he is born.

Illegitimate Child, domicile of the illegitimate child is that of the country in which his mother was domiciled at the time of his birth. Therefore a mother domiciled in UK, & gives birth to an illegitimate child in Japan, such illegitimate child born acquires domicile of UK & not Japan.

Posthumous Child, under sec 7 if Indian succession Act 1925 the domicile of a posthumous child is in a country in which his father is domiciled at the time of his father's death.

Domicile of choice sec 9, of Indian Succession Act 1925 , domicile by choice is the domicile which a person of full age & sound mind acquires by voluntary choice. A person acquires a domicile of choice when he resides in a country with the intention permanently or indefinitely. Domicile of choice can be acquired by two modes, by fixed habitation & by abiding the law & procedures of the country which the person would like to acquire domicile.

Domicile by operation of law, sec 14, domicile by operation of law is also called as the, domicile of the dependents it means a domicile on whom the domicile is dependent, & such domicile changes with the domicile of some other persons. The three categories of persons, whose domicile is

ascertained in this manner under the Indian succession Act, are minors, married women, & insane persons.

Minor, cannot acquire new domicile, but his domicile follows the domicile of his parents from whom he derived his domicile of origin.

A married woman, in Indian acquires the domicile of her husband & as long as she is married to him, it follows the domicile of her husband, & she changes her domicile with that of her domicile. A married woman is deemed incapable to have an independent domicile of her own. But wife's domicile does not follow the domicile of her husband, when they have separated by the sentience of the competent court & if the husband is undergoing of transportation.

Insane person, like a minor cannot acquire the domicile of another person under whose care he is. If the lunatic is a minor his domicile will change with that of his parents.

Q No 17 . When a person can seek intervention of a court to protect the Property of the deceased?

If any person dies leaving property movable or immovable any person claiming right by succession or to any person may make an application to the district court of the district where any part of the property is found or situated for relief after actual procession has been taken by another person or forcible means of seizing possession is apprehended. Any relative, friend or near friend or the court of ward in cases within they cognizance, may in the event of any minor or any disqualified or absent person being entitled by succession to such property . An application to the district judge may be made within 6 months of the death of the person whose property is claimed by right in succession.

The procedure to be followed is under sec193, 194, & 201 of the act .When the application for protection of the property is made before the Dist judge, the judge may examine on oath & may make further inquiry as to they is sufficient grounds for believing that the party in procession or taking forcible means for seizing possession has no lawful title. & that the applicant is really entitled for the property & is likely prejudice & the only remedy left is filing of suit. The provision of this section must be strictly followed otherwise the court does not have the jurisdiction to apply this provision. If there is sufficient ground for believing, that the judge summons the party complained of, & gives notice of vacant or disturbed procession, by publication, & after expiry of reasonable time, determines summarily the right to possession & delivers procession accordingly.

The district judge also has the power to take inventory of effects & seal or otherwise secure the same upon being applied for the purpose without delay , whether the judge has concluded the inquiry necessary for summoning the party complained of or not .

Q No 18 Discuss the powers and functions of the executor & administrator.

probate means the copy of a will certified under the seal of a competent court with a grant of administration to the estate of the testator as according to sec 2 of Indian Succession Act 1925, it is a document issued under the seal of the court under the signature of th proper official, certifying the original will was proved on a certain date, & to that is attached a certified copy of the will both together from the probate. A probate is only conclusive as to the appointment of the will. It does not confer upon the executor any title to property.

The letter of administration is a grant granted to the administrator who derives his title from the court for administering the unadministering property of the deceased intestate anybody could make an application to the dist court for protection of the property of the deceased intestate. Sec 222 provides that a probate can only be granted to an executer appointed but the will. The appointment may be expressed or spelt out by necessary implications.

Section 223 relates to whom the probate cannot be granted. Probate cannot be granted to a minor, a person of unsoundness mind, or to any association of individuals.

The effects of the grant is considered under sec 271 & 273 probate of a will establishes the will from the death of the testator , & renders valid all intermediate acts of the executor as such .

The powers of the executor & the administrator is dealt under sec 305 to 315 , he has the same power to sue in respect of all causes of action that survive he deceased , & may exercise the same power for the recovery of the debts as the deceased had when living .under sec 305 . All rights of actions of or against the deceased, survive to or against the executor or administrator except the course of action for deformation, assault as defined under the IPC, personal injuries not causing death of the person & the case where after the death of the party, the relief sought could not be enjoyed or granting of it would be nugatory.

Section 307 the executor or the administrator has the powers o dispose of the property of the deceased in such manner as he thinks fit.

Section 308 , an executor of the administrator may incur expenditure to on any act necessary for the proper care & management of the estate , or with sanction of the High Court or any religious , charitable 7 other objects & on the improvement of the estate .

The duties of the executor & the administrator are delth under sec 316 to 330.

According to the provisions of the act he has to provide funds for the performance of the funeral of the deceased suitable for the condition if there is suitable condition.

He must within six months of the grants of probate or letter of administration, or within such further time as the court may appoint, except the inventory containing a full & true estimate of all the property in procession & all the credits & debts owing to him in the capacity as an executor & administrator.

Must also within one year of the grant, or such further time as the court may allow, exebhit the accounts of the estate showing an account of the estate showing the assets which has come to his hands & the manner in which they have been disposed.

Q No 19 Explain the provisions of the Family Court Act 1984.

The state government after consultation with the high Court & under the notification of the official gazette may establish for every area in the state comprising in the city or the state or whose population may exceed one million establish a Family Court. The state government may establish Family Courts as many as it deems fit under section 3 of this act.

The appointment of the judges, may be done by the state government with the concurrence of the High Court appoint one or more persons to be the judge or judges of the Family Court. The governments also under the provision of this act can create an association of social Welfare Agencies subjected to conditions as may be specified in High Court , follow procedure as it may deem fit , & at any stage of the proceeding it appears that the family court there is a reasonable possibility of a settlement between the parties , the family court may adjourn the proceedings for such period as it thinks fit to enable attempt to be made to effect such a settlement .The family courts are deemed to be civil court & have all the powers of the civil court under section 10 of the act. The provisions of this act also entertains incamera proceedings under sec 11of this act. In every proceeding or any proceedings of the maters before the court the services of medical experts who are preferable women are required, for the purpose of assisting the family court in discharging the functions as specified by the act. The family court may receive as

evidence, statement, documents, information or matters that may in its opinion, assist it to deal effectually with a dispute whether the or not it would be otherwise relevant or admissible under the Indian Evidence Act 1872 under sec 14 of the act. In a suit or proceedings before the family court it shall not be necessary to record the evidence of witnesses, but the judge as the examination of each witnesses proceeds shall record, or cause to be recorded, a memorandum of substances of what the witnesses deposes, & such memorandum shall be signed by the witness & the judge & shall from part of the record. The evidence of any person where the evidence is of a formal character , may be given by the affidavit & may subject to all just exceptions , may be read in evidence, at the family court .The aggrieved parties could file an appeal before the High Courts. Under section 19 of the Act appeal shall lie to the High Court of the land , any appeal shall preferred before the expiry of 30 days from the date of passing of orders for the Family Court .

Q.No 20 Explain the general rules of inheritance under Sunni Law .

Succession to the properties of the deceased person may either be testamentary or intestate , testamentary succession is called a legacy and it takes place under a will . Intestate succession is called inheritance under which the legal heirs of the deceased will succeed to his properties from in well defined shares fixed under the law , upon the death of a Muslim .Upon the death of a Muslim , his properties are in first instance , utilised for the funeral expenses , govtal dues and his unpaid debts .In the second instance the remaining property is succeeded by the legatees , if any under the law of the Wills after making these payments , the residue or the remaining properties are heritable properties .This heritable properties is given to the legal heirs of the deceased so that they may inherit they respective shares .The quantum of the property to be inherited by each legal heir and also the terms and conditions under which they get they respective shares , is governed by the Muslim law of inheritance .

The general rules of inheritance of the Sunnie Law are ;

The legal heirs of a Sunnie Muslim are classified into following categories , they are ;

1. Principal Classes .
2. Subsidiary classes

Principal classes : they are thee class of heirs which may be termed as the principal class of legal heirs .

a) Sharers or the Quranic heirs : Sharers are those heirs who are entitled to get a prescribed share from the heritable property .The shares and they respective shares and they respective shares in the property of the deceased are given in Quran .The sharers are therefore called as Quaranic sharers or heirs . In the distribution of the property sharers get preference over other class of heirs , therefore respective shares are allotted to the each sharer . It may be noted that sharers are those heirs whose share respectively given in the Quran , and therefore they shares cannot altered by the humans.
b) Residuary or the Agnatic heirs : Residuary heirs are those heirs who inherit only the residue of the property after the allotment of the respective shares to the sharers . The residue as no defined share of they own .After giving the property to the sharers in they fixed shares , if they remains some property , the remaining property is available to the residuary .If they are no sharers then the whole property is inherited by the residuary . Residuary heirs are also called agnatic heirs because they inherit through male relations .
c) Distant kindred or the Uterine Heirs : All those who are related to the porposthus through blood but could not be included as heirs in the class of hirers or reliquaries are called distant kindred . If the propos thus is has neither sharers nor reliquaries then the properties are inherited by the distant kindred . The distant kindred cannot inherit in presence of any Sharers or the Residuary .The heirs included in this class are also termed as Uterine Heirs .

Subsidiary Classes : Besides the principal classes of heirs , they are four more categories of legal heirs .The heirs include in any of the following classes are called subsisary heirs and will inherit only in exceptional cases .

a. Sucessors by contract .
b. Acknowledged kinsmen .
c. Universal legatee .
d. The State (by escheat)

Q.No. 21 Explain the concept of the family courts Act, 1984.

Introduction:

A **family court** is a court convened to decide matters and make orders in relation to family law, such as custody of children. In common-law jurisdictions "family courts" are statutory creations primarily dealing with equitable matters devolved from a court of inherent jurisdiction, such as a superior court. The Family courts were first established in the United States in 1910, when they were called domestic relations courts although the idea itself is much older.

Family courts hear all cases that relate to familial and domestic relationships although each state has a different system utilized to address family law cases, each state strives to provide families with the best possible outcome in family law cases. Family courts can also issue decisions regarding divorce cases.

The Family Courts Act 1984 was enacted on 14 September 1984 to provide for the family courts with a view to promoting conciliation in and secure speedy settlement of disputes relating to marriage and family affairs. According to Section 2 (d) of the act, "Family Court" means a family court established under section 3. Section 3 describes the establishment of Family Courts and says that the State Government after consultation with the High Court and by notification shall establish a Family Court for every area of the state consisting of a city or town whose population exceeds ten Lakhs and for other areas in the state as it may deem necessary. Family courts are subordinate to the High Court, which has power to transfer the case from one family court to the other.

Legal Jurisdiction of Family Law Courts:

The matters which are dealt in the Family Court in India are matrimonial relief which includes nullity of marriage, judicial separation, divorce, restitution of conjugal rights, declaration as to the validity of marriage and matrimonial status of the person, property of the spouses or any of them and declaration as to the legitimacy of any person, guardianship of a person or custody of any minor, maintenance including the proceeding under the Cr. P.C.

Apart from these, an order of injunction in certain circumstances arising in a matrimonial relationship, declaring legitimacy of any person, Suits or proceedings between parties regarding dispute about the property also get covered.

Functions of family courts:

The Family Courts are free to evolve their own rules of procedure, and once a Family Court does so, the rules so framed over ride the rules of procedure contemplated under the Code of Civil Procedure. In fact, the Code of Civil Procedure was amended in order to fulfill the purpose behind setting up of the Family Courts. Special emphasis is put on settling the disputes by mediation and conciliation. This ensures that the matter is solved by an agreement between both the parties and reduces the chances of any further conflict. The aim is to give priority to mutual agreement over the usual process of adjudication. In short, the aim of these courts is to form a congenial atmosphere where family disputes are resolved amicably. The cases are kept away from the trappings of a formal legal system.

The Act stipulates that a party is not entitled to be represented by a lawyer without the express permission of the Court. However, invariably the court grants this permission and usually it is a lawyer which represents the parties. The most unique aspect regarding the proceedings before the Family Court are that they are first referred to conciliation and only when the conciliation proceedings fail to resolve the issue successfully, the matter taken up for trial by the Court. The Conciliators are professionals who are appointed by the Court. Once a final order is passed, the aggrieved party has an option of filing an appeal before the High Court. Such appeal is to be heard by a bench consisting of two judges.

Advantages:

a) Family courts are empowered to formulate their own procedures but till then they have to follow the Civil Procedure Code.

b) Evidence need not be recorded.

c) Family Courts: Objectives and Functioning

d) Judgment can be concise with statement of the case, points for determining decision and reasons.

e) Appeal to the High Court can be filed within thirty days from the date of judgment, order or decree of the Family Court.

f) If the party desires, in camera proceedings can be conducted.

g) No party to a suit or proceeding under the Family Court shall be entitled to be represented by a legal practitioner but the court may requisition the services of a legal expert as amicus curiae.

Association of social welfare agencies:

The State Government may, in consultation with the High Court, provide, by rules, for the association, in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of,-(a) institutions or organizations engaged in social welfare or the representatives thereof;(b) persons professionally engaged in promoting the welfare of the family;(c) persons working the field of social welfare; and(d) any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act.

Counselors, officers and other employees of Family Courts

(1) The State Government shall, in consultation with the High Court, determine the number and categories of counselors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counselors, officers and other employees as it may think fit.(2) The terms and conditions of association of the counselors and the terms and conditions of service of the officers and other employees, referred to in sub-section (1), shall be such as may be specified by rules made by the State Government.

Conclusion:

The lack of uniformity regarding the rules laid down by different states also leads to confusion in the proper application of the Act. Though the Act was aimed at removing the gender bias in statutory legislation, the goal is yet to be achieved. The

frequent changing of marriage counsellors is causing hardship to women who has to explain her problems afresh to the new counsellors each time.

Q No 22 Who is an executer and administrator ? what are they powers and duties ?

The executer or administrator, as the case may be of a deceased person is his legal representative of all purposes , and all the property of the deceased person vest in him as such . Executor , derives his title from the will , and administrator derives his title from the Court . Executor is a person who is appointed by the testator through the will , to administer the unadministered work left back by the testator .

Administrator is a person who is appointed by the court to administer the unadministered work left back by the deceased intestate . If a person dies leaving property there must be , in law some legal representatives of the deceased who can legally deal with the property .

If a person has died leaving a will and appointed executor or upon the administration if the person has died intestate .

The bequest of the property by the testator vests in the legatee only when the consent of the executor is given . An executor or the administrator is not the owner of the deceased .

An executor has the property only under a trust to apply it to for payment of the testators debts or for such other purpose as he ought to fulfil in the course of his office as executors .

The executor derives his title from the will whereas an administrator derives his title from the court .

<u>Powers and duties of the executor and administrator ;</u>

The main powers and duties of the executors and administrators are :

1. Power to sue : The executor and the Administrator has the same power to sue in respect of all the cause of action that survives the deceased , and may exercise the same power for the recovery of debts as the deceased had when living .

All rights of action of or against the deceased survive to or against the executor or the administrator , except a cause of action for ; deformation , assault u/IPC , personal injuries not causing the death of a person .

2. Power to dispose of the property : An executor or an administrator can dispose of the property of the deceased in such a manner as he thinks fit . e.g. if the executor sells or mortgages' the part of property of specific legacy it is considered as valid .
3. Power to spend :An executor or administrator may incur expenditure on any act necessary for proper care and management of the estate .
4. When they are several executors and administrators , the absence of all or any directions to the contrary be exercised by any one of them who has to prove the will or take administration .
5. Upon the death of one or more of several executors or administrators in the absence of the direction to the contrary in the will or letter of administration powers of all may be exercised by the survivor or survivors .
6. Administrator of effects unadministered has with respect with such effect , the same powers as original executors or administrators .
7. A married women can also be a person as that of on ordinary administrator or executor .

Duties of the executors and administrators :

They have four important duties ; 1. They have to perform and provide for performing funds of funeral of a deceased .

2.He must within 6 months of the death of the deceased get grants of probate or letter of administration , or within such further time as the court may appoint exhibit an inventory containing a full and a true estimate of all the property in procession and all credits debts and owing to him in his capacity as an administrator or an administrator .

3. he must within one year o the grant , or such further time as the court may allow , exhibit an account of the estate , showing the assets which have come to his hands and the manner in which they have disposed of .

4. He has to collect with due diligence the property of the deceased and the debts due to him .

5. he can make disbursements as under ,

a. funeral expenses .

b. expenses of obtaining probate and letter of administration .

c. wages for the services of the deceased should be paid within three months .

d. other debts of the deceased should also be cleared off by the executor .

e. then legacies are to be paid .

Q No 23 Explain the different kinds of wills ?

A will is defined U/sec 2(h) of the act , as the legal declaration of the testator with respect to his property , which he desires to be carried into effect after his death.

According to the Hals burry's law of England , a will is defined as the legal declaration in the prescribed manner of the intention of the person making it , with regard to matters which he wishes to take effect upon or after his death.

They are four essentials of a will they are ;

a. Legal declaration .
b. The declaration should relate it to the property of the testator which he wants to dispose off .
c. The declaration as regards the disposal of the property of the testator must be intended to take effect after his death . If it is not to that effect than it is not termed to be as a will .
   They are two type of wills basically they are unprivileged wills and privileged wills , apart from these two wills they are 7 more types of wills .

   Unprivileged wills : An unprivileged wills are those wills which are made by persons other than soldiers , airmen and mariners , in execution of a privileged wills three conditions must be satisfied they are ,signature , intention behind the signature and attestation .
   Privileged wills : These wills are made by ;
   a. A soldier employed in an expedition or engaged in an actual warfare . or
   b. An airman employed in an expedition or engaged in an actual warfare .or
   c. Any mariner being at the sea .

   All other wills apart from these are called unprivileged wills .

   Nuptative or oral wills : An oral will or a nuptative will is one which has been declared by the person making it in the presence of the witnesses .The act does not provide for making of such wills , except in the case of soldiers , sailors , airman , etc.

   The burden of proof of establishing an oral will is normally heavy , and such a person has to prove the exact words of the testator .

Holographic wills : This is a will which is written in the testator's own hand , such a will is included in the definition of the unprivileged will under the act .The fact that the testator has written the will in his own handwriting would also go to show that he was fully aware and conscious of making such a will .

In officious will : An in officious will is a will which is not in the constant with the testators natural affection and moral duty , as where the testator bequests all of his property to a stranger , to the complete exclusion of his legal heirs .Such a will is no doubt a perfect will provided all the requirements of the will are present .

Mutual or reciprocal will : two persons are said to make mutual wills when they confer reciprocal benefits upon each other's words a mutual will is one of the two wills made by two persons by giving one another similar rights in each others properties . eg A makes a bequest of his property to B , and B makes a will in favour of a for one of his properties .

Joint wills : A joint will is made by the two testators , contained in a single document , duly executed by each testator and either disposing they separate or joint properties .The most common type of this will is will made by husband and wife .

Conditional or contingent- wills : A will may be made contigent upon the happening of the event so that the event when not taken place the will has no effect. Such wills will take effect only if there is completion of the condition or an event or the act .

Duplicate wills : A duplicate wills are those wills which are made in two or more copies .

Q No 24 Explain the need for the enactment of the Uniform Civil Code .

India is a Sovereign Socialist Democratic Republic .The State has no religion , it favours non and is foe to none .To achieve uniformity of laws it is necessary to replace the various personal laws with a Uniform Civil Code .

Art 44 of the Indian Constitution of India states that, that the state shall endeavour to secure for the Citizens a Uniform Civil Code thought the territory of India.

According to the architect of the Indian Constitution, the provision of the Uniform Civil Code should be included in the funder mental rights chapter and thus should be made justifiable .The need for a common civil code was recognised and accepted by the constitutional sub- committee unanimously. However it was not implemented d at the time because of apprehensions of minorities.

The need for uniformity in the matrimonial laws is essential to achieve a Uniform Civil Code eg introduction of Monogamy in the Hindus and Polygamy among the Muslims has created a discrimination of State Policy .Supporting Monogamy and emphasising the ability of the State to legislate with respect to it.

Such discrimination of the State Policy can be practiced in the other religion , can be easily be removed if the Uniform Civil Code is made . various jurists and authors , lay emphasis on having the Uniform Civil Code ,for concepts like Adoption , to safeguard the socially , economically and legally the children who are given adoption .Unless such a law applicable to all citizens irrespective of they religion is enacted , the future of millions of children abandoned and destitute is bleak .

The conversion laws , people converting from one religion to another is a contentious issue there is a need for enactment of Uniformity Of Civil Code in this area . The law commission of India has suggested the repeal of the Native Converts Marriage Dissolution Act was only applicable to the Hindus converting to Christianity , this act seems discriminatory . The Commission has recommended for the enactment of a Uniform Civil Code , to be made applicable to people of all religions converting to other religions .

Thought the country several liberals and women's groups have argued that a Uniform Civil Code would give the women more rights .In India many social evils exist , taking this in view the committee on the status of women in India ,in its report in the year 1971 in its report has recommended on this issue for the enactment of a Uniform Civil Code . For women who constitute almost half the population of India .A Uniform Civil Code will help in removing various social evils by bridging the gender inequality . If the uniform civil code is enforced it will , apart from removing the aforesaid remove the aforesaid social evils also provide them with equality and justice in courts of law irrespective of they religion in the matters pertaining to marriage , divorce , maintenance , custody of children ,inheritance rights adoption etc .

Q No 25 Explain the provision of maintainence of muslim divorced women under muslim women (protectionof rights on divorce) act 1986?

This act was the outcome of the controversy of the muslim community all over India after Shahbanu Begum case,. Besides other provisions this act was enacted to negotiate the law laid down in Shahbanu Begums case .

In so far as divorce muslim women s claim of maintenance beyond Iddat is concerned ,it extends to the whole of India and makes provision of maintenance of divorce muslim women during and after the period of Iddat and also enforcing her claim to un paid dower and other exclusive properties .

This is applicable to a women who had contracted marriage according to to the provision of muslim personal law and her marriage dissolves through any kinds of judicial extra judicial divorce recognised under muslim law .

Provision of muslim women act 1986. Sec3(1)(a)on wards maintenance is provided .

1) Maintenance during Iddat :The divorced women is entitled to a reasonable and fair amount of maintenance for herself during the period of Iddat from her former husband .But according to sec3(1)(b)if the women herself maintains the child born to her after or before divorce she is entitled to get fair amount from her former husband only till the child attains the age of 2yrs.

A divorced women s right to claim maintenance also for her child does not effect the right of these children to claim maintenance from the father. The magistrate may fix the amount having regard to the needs of the divorced women, the standard of life enjoyed by her during her marriage and the means of her former husband.

1) Maintenance after Iddat: The divorced women who remains un married after Iddat ,and is unable to maintain herself is entitled to get maintenance from her relatives who would inherit her properties after her death.

In absence of such relatives where they have no such means then ,ultimately the liability to maintain her is upon the wakf board of the state in which she resides .If children unable to maintain her then parents of such divorced women are entitled to maintain her. In the year 1996 SC of India ,

In secretary Tamilnadu wakf board V/S syed Fatima Nachi

Hear SC in this case held that where the circumstances suggest that relative if unable to maintain ,she is entitled to plead and prove in a proceeding ,the in ability to of these relations by directing her claim against her each relative successively in order to obtain native orders justificatory to the last resort ,and then finally to initiate proceeding against wakf board.

3) Dover and other exclusive properties of wife: U\sec 3(2)(3)and (4) of this Act1986 This act has made the enforcement of these claims effective, no limitation applies. The divorced women is entitled to get her unpaid dower. Besides dower she is also entitled to all such properties which were given to her before and after marriage.

4)Opinion of sec 125 Crpc: This Act does not totally bar the application of sec 125-128of Crpc .muslim women Act 1986 has now made the operation of sec 125-128 of Crpc optional in respect of muslim women.

What is domicil ?explain the different types of domicil.

The term domicil is not statutorily defined ,but domicil means ,the person where he has his true fixed permanent home and the establishment to which he intends to return.

There are two essential aspects as to domicil.

a)The factum of residence and

b) Animus menindiie the intention to stay in his residence that country permanently or indefinitely.

A person may acquire domicil by a residence ,but in a country merely having a residence a place does not necessarily make it a place of domicil. A mear residence without any intention of making it the permanent home will not be sufficient to acquire domicil. Therefore a person to acquire a domicil ,he should prove the factum of resident and animus menendiin the country of his residence. According to Halsbury an English author he defines domicil as the country in which a person has or is deemed by law to have his permanent home". Domicil is generally identified by a residence of a person but where a person has no home or more than one home the law requires him to have only one .The person whose domicil is in issue has a residence in more than one country it must be determined that ,which is his place of abode ,at the time of desciding his domicil .

This term was again defined in a decision passed by Lord cram worth in Wicker v/s Hume ,in this case Lord cram worth gave the definition of domicil. According to him it means, domicil we mean home ,the permanent home and if you don't understand you permanent home, I am afraid no illusion drawn by any author will help you to understand it. In federal countries generally domicil is of a state in particular and not a country as a whole .

Kinds of domicil: There are three kinds of domicil .

1)Domicil by origin(birth).

2)Domicil by choice.

3)Domicil by operation of law .

1)Domicil by origin : Domicil of origin of each and every legitimate person by birth is the country in which at the time of his birth his father was domiciled or if he is a posthumous child in the country in which at the time of the father's death. When the question of legitimacy arises then naturally it is the parents domicil that is considered and also the validity of marriage which is to be determined in accordance with the law of the country of the husband domicil. Domicil of birth or origin is lost when a person is sentenced to death or life for a criminal act.

2)Domicil by choice: domicil by choice is determined when a person of full age and sound mind acquires by voluntary choice. The factors required for acquiring new domicil is ,actual residence and an intention to stay permanently or indefinitely .

3) Domicil of operation of law or domicil of dependence: Domicil by operation of law i.e., of minors married women and insured person or a lunatic .It is theres whose domicil is dependent on the changes with the domicil of some other oersoneg minors domicil is his parents domicil ,married women's domicil is of her husband's domicil, lunatic or an insane persons domicil is his parents or guardians domicil.

It is these three category of persons whose domicil is ascertained under Indian succession Act.

Q No 26 Explain probate and letters of administration, what are the powers and duties of executor and administrator?

A probate is a licence given to the executor ,who derives his title from the will ,probate can be ascertained from the District court of the jurisdiction of the estate which is situated of the deceased,

Letter of administration is granted to the administrator he derives his title from the court ,when an executor is not appointed in the will by the testator then court appoints an administrator .The administrator and the executor can do all things which a deceased could have done during his lifetime .The executor and administrator ,administers the un administered work left by the testator and the deceased. The letter of administration may be granted to any person who according to the rules for distribution of the estate applicable in the case of such deceased ,would be entitled .If several persons have applied for letter of administration ,it shall

be in the discretion of the court to grant it to any one or more of them . the letter of administration may be granted when there is intestacy. Letter of administration is granted always to whole of the property not to a portion to avoid inconvenience. An executor who has been appointed by the testator for the administration of a particular fund is competent to take take probate for that limited portion of property.

Q27. Powers and Duties of executor and administrator

The main powers of executors and administrators are of three .

1)power to sue: the executor and administrator has the same power to sue in respect of all cause of action that survives the deceased ,and may exercise the same powers for recovery of debts as the deceased had while alive.

All rights of action of ,or against the deceased ,survive to or against the executor or administration ,except a cause of action for deformation ,assault as defined in the Indian penal code personal injury not causing death of a person and the case where after the death of the party ,the relief sought should not be enjoyed or the granting of it would be nugatory. All demands and all rights to prosecute on which the deceased might have sued or be sued ,survive his death and are transmitted to the executor or administrator. Thus the rights and also obligation of the deceased survive him. All rights to prosecute or define any action or special proceeding before any court or other public authority survive to or against the representative.

2)power to dispose of property: A executor or administrator has the power to dispose of the property of the deceased in such a manner as he thinks fit. The power of the executor to dispose of the property is subject to any instruction of the will unless grants him such powers .

3) power to spend :An executor or administrator may incur expenditure on any act necessary for the proper care and management of the estate, or with sanction of the High court on any religious, charitable and other object and on the improvement of the estate .

Where there are several executor or administrator the powers of all may in absence of any direction to the country be exercised by any one of them whom has proved the will or taken out administration .

Upon the death of one or more of several executors or administrators in absence of a direction to the contrary in the will or letter of administration powers of all may be exercised by the survivor or survivors .

The administrator of effects has the same powers as original executor or administrator.

An administrator during minority has all the powers of any ordinary administrator. When a grant of probate and letter of administration is made to a married women she has all the powers of an ordinary executor or administrator.

Duties of an executors and administrators:

1)He has to provide funds to the performance of the funeral of the deceased suitable to his condition if there is sufficient property.

2)He must within 6months of grant of probate or letter of administration or within such further time as the court may appoint exhibit an inventory containing a full and true estimate of all the property in possession and all the credits and debts owing to him in his capacity as a executor and administrator .And must within one year of grant ,or such further time as the court may allow, exhibit an account of the estate ,showing the accounts of the estate ,showing the assets which has come to his hands and the manner in which they have been disposed.

3)He can make disbursement as according to the instruction.

4)He has to collect with due diligence ,the property of the deceased and the debts due to him.

Q No 28. What are Priviledge wills mention the special rules for execution of priviledge wills?

Under Indian succession act 1925 all wills are classified into two iepriviledge and un privilege wills.

Privilege wills, in are those wills made by the soldiers employed in an expedition or engaged in warfare or An air man employed in an expedition or engaged in actual warfare or Any mariner being at sea. Provided he has completed 18 ys of age .All other wills are called unprivileged wills.eg A is at sea in a merchant –ship of which he is the purser. He is a mariner ,and being at sea, can make a privilege will.

A privilege will is executed under sec 66 of the act.

The privilege will is executed based on six rules.

1)The testator may write such will wholly in his own handwriting .In such a case it need not be signed him or attested by witness.

2)The will may be written ,wholly or in part ,by other person ,and signed by the testator . In such cases attestation by witness is not necessary.

3)Even if the will is written wholly or in part ,by another person ,but is not signed by the testator ,it is valid ,provided it was written under the testator's directions or if he recognised it as his will.

4) If the soldier ,airman or a mariner had given written instructions to prepare his will ,but died before it could be so prepared ,such written instructions are to be considered as a valid will made by him.

5) Even verbal instruction for preparing a will would amount to valid will made by such a person ,provided that ,

Every verbal instruction were given in presence of two witnesses ,

Such instructions have reduced to writing in his life time and

He has died before the formal will could be prepared and executed.

In such cases it is not necessary that the verbal instruction is reduced to writing in his presence or be read over to him.

Such a will can be made by the soldier ,airman or mariner by an oral declaration of its intention s before two witnesses present at the same time .However ,such an oral will automatically becomes null and void at the expiry of one month after such a person being still alive ,has ceased to be entitled to make a privilege will.

Privileged wills can be either in writing or orally.

WRITE SHORT NOTES ON THE FOLLOWING

1. **Bar to matrimonial relief.**

It is implied in every contract of marriage that husband would maintain his wife throughout his life . Wife's right to claim maintenance from her husband in an independent right .this right does not does not depend on any separate agreement for maintenance .The husband is bound to maintain her even if there is no agreement .the wife's right exists whether she is a Muslim or a non Muslim , rich or poor of sound health or invalid or , young or old however her right is subjected to certain conditions .

It is significant to note that a Muslim wife's right to maintenance is determined not only under her personal law but also under CrPC .The claim of a wife for the maintenance under this Act is an independent statutory right and not effected by her personal law.

But under CrPC the divorced wife is entitled to be maintained by her former husband beyond the period of Iddat provides that she remains unmarried .The provision of sec 127(3) of CrPC , provides that the order for maintenance in favour of the divorced wife shall stand cancelled , and such women shall not be entitled for maintenance under the following circumstances ;

1. Where the divorced women has remarried .
2. Where the women has received the whole sum due to her on divorce under any customary or personal law .
3. Where the women by herself has voluntarily surrendered her right to maintenance .

2. **Write a note on Ila.**

Besides Talaq the Muslim husband can repudiate his marriage by two other modes , ie Ila and Zihar , Ila and Zihar are the constructive divorce by a husband . The husband does not expressively repudiate the marriage but the conduct of the husband is of such nature that it is concluded that he intends to dissolve the marriage .In Ila the husband the husband takes an oath not to have sexual intercourse with his wife ,if this is followed for a period of four months , after the expiry of four months the marriage dissolves irrevocably but if the husband resumes cohabitation with the prescribed period of four months ila is cancelled and marriage is not dissolved .

According to the Shia law ; under Ithna Ashara school Ila does not operate as divorce without order of the court of Law . According to this school after the expiry of fourth month the wife is simply entitled for a judicial divorce .If there is no cohabitation even after the expiry of four months , the wife may file a suit for restitution of conjugal rights against the husband .If the husband does not cohabits with his wife ,the marriage is dissolved by the decree of court .If she does not obtain the decree of court the marriage does not dissolve .

3. **custody of Child .**

Guardianship of the minor's personality means care and welfare of the child including the liability to maintain it . It can be said that it means simply the custody of the child up to an a certain age under the Muslim Law custody of the minor is called Hizanat .Custody of the child simply means the physical procession of the child up to a certain age . The mother of a child is not a natural guardian under the Muslim law , but she has the custody of the child till a certain age . But father or the paternal grandfather has control over the person of the minor during the whole period of minority .

Mothers right of the custody of the child , under all the schools of mohammedan law , the general rule is that the mother is entitled or the custody or procession of her child up to a certain age .This rule is based on the presumption that on the account of her peculiar relationship with the child , she is the best person to give natural love and affection which a child requires during its infancy including its dependence for feeding .

Where the child is a son , the mother is entitled to his custody till he attains the age of 7yrs . When the child is a daughter the mother's right to custody continues till the daughter attains puberty or 15 yrs of age ,

Father is entitled to the custody of the child under 2 circumstances of the child's minority ;

Firstly in respect of the minor boy under the age of 7yrs and girls under the age of puberty or 15yrs of age the father is entitled to the custody of the child only when there is absence of the mother and any female relation the child . secondly ; in respect of a boy above the age of 7yrs and an unmarried as a natural guardian till the child becomes adult i.e. the child attains the age of 18 yrs .

4. **Powers and duties of the curator**.

When danger is apprehended and misappropriation of waste of property before the summery proceeding can be determined and that the delay in obtaining security from the party in possession is likely to expose the party out of procession to considerable risk ,the district judge may appoint one or more curators whose authority is to continue according the terms of their appointments, and in no case beyond the determination of summery proceeding and the confirmation or delivery of procession in consequences .The object of appointment is to provide protection of the deceased of the deceased in case of succession. If any person dies leaving property behind any person claiming a right by succession that to or to any portion thereof may make an application to the district court of the district.

Where any part of the property is found or situate, for relief either after actual procession has been taken by another person or when forcibly means of seizing procession is apprehended. relief can be sought by any true owner of the property . application has to be made within 6 months of the deceased whose property is be made by succession .

Powers and duties of the curator:

The powers and duties of the curator are dealth under sec 196,197 and 200.

1)The curator has the power to take procession of and manage the property and take security to prevent misappropriation or waste of the or operty.

2)He can recover debts and rents ,and all other payments due to the deceased ,these payments made to him are valid and have the effect of discharging the person making them.

3)He may file and defend suits relating to the property of which he is a curator.

4)He may file a defendant suit relating to the property of which he is a curator.

Duties of the curator:

1)He has to give security and the court may give him remuneration not exceeding 5% out of movable property and annual profit from immovable property.

2)He has to file monthly accounts in abstract and must on expiry of each period of 3months ,if his administration lasts so long ,and union giving up the procession of

the property file a delailed a/c of his administration to the satisfactionof District judge.

5. Option of puberty

Under the Muslim law a minor on attaining the age of puberty , has got the right to approve or disapprove his or her marriage which is contracted by guardians .who was neither father nor grandfather . This is called the right of exercising the right of Option of Puberty, marriages of minors contracted by such guardians are deemed to be voidable at the option of such minors. Any of such persons choose to repudiate the marriage by exercising the right of option of puberty then the marriage is dissolved with immediate effect. On the other hand the minor approves the marriage it is considered as a valid marriage since its very beginning. The exercise of this right is not compulsory, when the parties do not exercise such right then it is presumed that he or she has approved the marriage.

Under the Shia law a minor's a minors marriage is approved by the minor on attaining the age of puberty. According to the Shia law, unless the minor on attaining the age of puberty or majority ratifies the marriage it is no marriage at all in the eyes of law.

The rules of Option of Puberty, the option of puberty cannot be exercised by the husband if his marriage was contracted by father or his grandfather. Therefore they choice in their marriage is normally binding on the minor. Exception to this is that when the father or the grandfather has consented the marriage fraudulently or negligently, the minor has the right to repudiate the marriage on attaining puberty.

The wife can exercise option of puberty even if the marriage was contracted by her father or her grand father. Before 1939, a Muslim wife was not entitled to exercise option of puberty if the marriage was contracted by father or her grand father. This has been modified by the Dissolution of Muslim Marriage Act 1939. Section 2(vii) of this act provides the Muslim wife is entitled to obtain decree for dissolution of marriage, on the grounds that her marriage was contracted by her father or her guardians during her minority.

The option of puberty must be exercised by the wife immediately after the attainment of puberty if they is unreasonable delay in exercising the option of puberty, then her right is automatically lost.

When the communication takes place, the husband's option is lost because consummation is regarded as implied consent. The option of puberty of the wife is also lost after consummation provided it was not before attaining the age of puberty, or against her consent.

The marriage does not dissolve merely by exercising the option of puberty confirmation of the court is necessary for dissolution of marriage.

6.Privilege wills :

Under the Indian Succession Act 1925 wills are divided into two categories, privilege wills & unprivileged wills.

Section 65 of this act defines a privilege wills as , those which are made by a soldier , employed in an expedition , or engaged in an actual warfare or an air man , employed in an expedition or engaged in actual warfare or a mariner being at sea , provided he has completed 18 years of age .

The mode or execution of the privilege has been delth under sec 66 of the act. There are six rules for executing the privilege wills,

1. The testator may write such a will in his own handwriting in such a case, it need not be signed by him or attested by the witness.
2. The will may be written wholly or in part, by another person & signed by the testator. In such cases the attestation by the witness is not necessary.
3. Even if the will is written, wholly or in part, by another person but is not signed by another person, but is not signed by the testator it is valid provided under the directions of the testator, it is valid provided it was written under the directions or if he recognized it as his will.
4. If the soldier airman or mariner had given written instructions to prepare his will, but dies before it could so be prepared, such written instructions could be considered as a valid will.
5. Even verbal instructions for preparing a will would amount to a valid will made by such a person, provided that; the verbal instructions were given in two witnesses, such instructions had been reduced to writing in his life time, he had died before the formal will could be prepared & executed, lastly such will can be made by the soldier, airman, or mariner by an oral declaration of his intentions before two witnesses present at the same time. Such oral wills stands to be null & void if at the expiry of one month after such a person, being still alive & has not made a will.

7. Void bequest.

At times a will as a whole may be perfectly valid , in which certain clauses in the will may be considered invalid eg a testator cannot make beneficiary as a witness to a will ,here the whole of the will does not become in operative but only that clause in the will is termed to be as void .

They are several type of bequests that are termed as void they are ;

1. Bequest to an attesting witness.
2. Uncertain bequests .
3. Bequest to a non-existing persons .
4. Bequest to the persons not in existing at the death of the testator .
5. Bequest infringing the rules against the rule of perpetuity .
6. Bequest void u/sec 113,114 .
7. Bequest with direction for accumulation .
8. Bequest to religious and charitable users in certain cases .
9. Bequest upon impossible conditions .
10. Bequest upon illegal or immoral conditions .

All these bequests can be termed as void in the eyes of law .

8. Succession certificate.

Succession certificate is a certificate or a document granted under this act to the person who obtains it to represent the deceased for the collection of rents, dues to him or payable in his name. It is meant for the protection of the debtors, so that they have to know as to whom they can safely pay the debt due to the deceased person. The certificate does not establish the title of the grantee as the heir of the deceased, but only furnish him with an authority to collect the debts allow the debtors to make the payment to the grantee without incurring any risk. The succession certificate empowers the grantee to collect the debts & securities due to the deceased & mention in the certificate. A succession certificate can be granted under section 373 of the act, a succession certificate can be granted, if the judge decides the right belongs to the applicants, & if the applicants appeared to him to have a prime facie the best title. The succession certificate cannot be granted to any, with respect to any debts or security to which a right is required to be

established either by probate or letter or administration. Except in case of the Indian Christians or where there is a previous certificate or letter of administration already in force. The district judge provided the deceased ordinarily resided at the time of his death, or hand any part of his property within his jurisdiction or any inferior court, if invested by the state government with the powers of a District Court may grant a succession certificate.

The people entitled to apply for succession certificate are any persons having soundness of mind, and not being a minor, can apply to the court having jurisdiction, for a succession certificate provided he has an interest in the estate of the deceased. A succession certificate can be granted to a minor only if such minors make application through his guardians.

9. Grounds for dissolution of marriage under The Divorce Act 1869.

The object of the act of 1869 was to place the matrimonial law administered by the High Court, in the exercise of they original jurisdiction on the same footing administered by the court for divorce & matrimonial cases.

Section 10 of the legislation provides for the provision for dissolution of marriages, any marriage commenced or solemnized, before or after the commencement of the Indian Divorce Amendment Act 2001, may on the petition presented to the district court either by the husband or the wife be dissolved on the ground that since the solemnization of the marriage on the following grounds.

1. Committing of adultery
2. Has ceased to be Christian by conversion to another religion.
3. Has been of incurable of unsound mind for a continuous period of not less than two years immediately of presenting of the petition.
4. Has for the period of not less than two years immediately preceding the presentation of the petition, been suffering from virulent & incurable form of leprosy.
5. Has for a period of not less than two years immediately preceding the presentation of the petition, being suffering from venereal decease in communicable form.
6. Has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard.

7. Has willfully refused to consummate the marriage & the marriage has not therefore not consummated.
8. Has failed to comply with the restitution of conjugal rights for a period of two years or upwards after the passing of the decree.
9. Has deserted for a period of at least two years immediately preceding the petition.
10. Has treated the petitioner with such cruelty as to the cause a reasonable apprehension in the minds of the petitioner that it would be harmful or injurious for the petitioner to live together.

10.Maintenance during Iddat period:

Iddat means counting. Iddat period means the counting days.

During this period the muslim widow or a divorced women is required to live a pure and a simple life and she cannot marry.

The main object of Iddat is to ascertain paternity of possible conception by her former husband, after divorce or death if the woman remarries immediately and a child is born within normal course of time then there is every likelihood that the conception would be of her former husband and not by the present.

It would be difficult to establish as to who may be regarded as the father of the child .To overcome this difficulty Muslim law provides that where a marriage is dissolved the women cannot remarry before expiry of a specified period called Iddat. After this period the possible conception by the former husband would become apparent and visible. Marriage with the women who is observing iddat is irreguralar under Sunni law . Under the shia law such marriages are void.

Different period of iddat which the women is Muslim is legally undergo are

1. Under dissolution of marriage by divorce
    a. When valid marriage is dissolved by divorce , the duration of Iddat is three months only.
    b. If marriage is consummated she need not observe Iddat.
    c. If the women is pregnant at the time of divorce then the duration of Iddat end till the delivery of child or abortion.
2. Dissolution of marriage by death of husband, Here the duration of Iddat is four months and ten day . If she is pregnant at the time of husband's death , it will continue till the delivery of the child.

3. Death of husband during Husband.- In this case the women has to start a fresh Iddat of four months ten days from the date of husband's death. Under shia law generally Iddat is not necessary if the women has past the age of child bearing or not attend puberty or if her menstrual is irregular or absent Secondly under shia law the marriage with a women observing Iddat is void.

Maintainence of muslim women (protectionof rights on divorce) Act 1986:

This act was the outcome of the controversy of the muslim community all over India after Shahbanu Begum case,. Besides other provisions this act was enacted to negotiate the law laid down in Shahbanu Begums case .

In so far as divorce muslim women s claim of maintenance beyond Iddat is concerned, it extends to the whole of India and makes provision of maintenance of divorce muslim women during and after the period of Iddat and also enforcing her claim to un paid dower and other exclusive properties .

This is applicable to a women who had contracted marriage according to to the provision of muslim personal law and her marriage dissolves through any kinds of judicial extra judicial divorce recognised under muslim law .

Provision of muslim women act 1986. Sec3(1)(a)on wards maintenance is provided .

1) Maintenance during Iddat :The divorced women is entitled to a reasonable and fair amount of maintenance for herself during the period of Iddat from her former husband .But according to sec3(1)(b)if the women herself maintains the child born to her after or before divorce she is entitled to get fair amount from her former husband only till the child attains the age of 2yrs.

A divorced women s right to claim maintenance also for her child does not effect the right of these children to claim maintenance from the father. The magistrate may fix the amount having regard to the needs of the divorced women, the standard of life enjoyed by her during her marriage and the means of her former husband.

1) Maintenance after Iddat: The divorced women who remains un married after Iddat ,and is unable to maintain herself is entitled to get maintenance from her relatives who would inherit her properties after her death.

In absence of such relatives where they have no such means then, ultimately the liability to maintain her is upon the wakf board of the state in which she resides .If children unable to maintain her then parents of such divorced women are entitled to maintain her. In the year 1996 SC of India,

In secretary Tamilnadu wakf board V/S syed Fatima Nachi

Hear SC in this case held that where the circumstances suggest that relative if unable to maintain,she is entitled to plead and prove in a proceeding ,the in ability to of these relations by directing her claim against her each relative successively in order to obtain native orders justificatory to the last resort ,and then finally to initiate proceeding against wakf board.

3) Dover and other exclusive properties of wife: U\sec 3(2)(3)and (4) of this Act1986 This act has made the enforcement of these claims effective, no limitation applies. The divorced women is entitled to get her unpaid dower. Besides dower she is also entitled to all such properties which were given to her before and after marriage.

4)Opinion of sec 125 Crpc: This Act does not totally bar the application of sec 125-128of Crpc .muslim women Act 1986 has now made the operation of sec 125-128 of Crpc optional in respect of muslim women.

11. Mutawalli

Mutawalli is the manager of the wakf property ,he is a supervisor or takes over the management of Wakf .He is called Mutawalli .He also distributes the distributes the benefits of the property according to the direction of the Wakf .A Mutawalli has no beneficial interest in the property .

He is just a servant of god managing the property for the good of his creatures. A mutawalli has religious and moral obligation to take care of Wakf property, any mismanagement or negligence on his part may amount disrespect towards god. The office of a Mutawalli is equal to that of a trustee.

A Mutawalli can be appointed by the founder of the wakf property .

The executor of the founder, or by the Mutawalli on the dead bed ,mutawalli can be appointed by the court, and by congregation.

The mutawalli’s office is not hereditary.

The powers and functions and duties of Mutawalli

1) Mutawalli's primary duty is to preserve the property as his own.
2) A mutawalli is to manage it and spend it like the servant of god, his functions are similar as that of a trustee under Indian Trust Act 1882.Yet he is not a trustee in its sense.
3) He is to administer the property strictly according to objects and directions laid down by the founder.

   Powers of Mutawalli:
   1) He has n power to transfer his office to any other person.
   2) He cannot appoint any co- mutawalli to assist him .
   3) But if the founder has given the powers of transferring his office to, he can lawfully transfer his assignment to another person.
   4) Similarly by the authority from the founder a mutawalli can appoint a co-mutawalli .
   5) When the founder has already nominated and appointed such officials or servants ,than the Mutawalli has no [power to make any change in the appointment.
   6) The mutawalli has no power to make any changes in the salaries and allowances of the officials who have already been appointed by the founder.
      In respect of the wakf property the mutawalli has only possessory rights. If the mutawalli has been disposed by the founder or any other person he is entitled to maintain action in the court of law for getting back his procession back.

12. Quran:

The term "Quran" has its roots in the Arabic word 'Qurra' and refers to 'the reading' or 'what ought to be read'. The first revelation (Wahi) came to the Prophet in 609 A.D. They continued for about 23 years. These revelations were the messages of God made by Angel Gabriel. These revelations were given out then to the people through the preaching of the Prophet.

These delivered messages were remembered and some were reduced to writings on animal skin, palm leaves, etc. After the Prophet's death, theses were collected, assembled and then systematically presented under the authority of the third Caliph, Osman. The first version is said to have been in the custody of the Prophet's

wife and Osman' daughter, Umme Hafsa. There were other versions, too, but either they were not accepted or they were suppressed.

Quran is the primary sources of Muslim law. It is the holy book of muslims which has a very sacred place in the hearts of Islamic followers.

SALIENT FEATURES OF QURAN

1) Divine Origin: The religious book has a divine origin. It is believed that these were the words of God himself and the Prophet mere uttered these words. Thus, it is unchangeable and its authority is beyond reproach. The Quran is the Al-furqan, the one that shows the truth from falsehood and the right from the wrong.

2) First Source: It is the first and fundamental source of Muslim law and Islamic principles. It is ultimate source of laws.

3) Structure: It is in form of verses, each verse is called an 'Ayat'. There are 6237 ayats in 114 chapters, each called 'Sura'. The holy book is arranged topic wise with respective titles. The first chapter praises the almighty God. Other chapters include, surat-un-nisa (chapter relating to women), surat-ul-noor (rules relating to home-life) and surat-ul-talaq (the rules relating to divorce).

4) Mixture of religion, law and morality: It is believed that the verses relating to law were revealed at Medina while the ones relating to religion and mortality were revealed at Mecca. In some places in the book, all three can't be separated at all. Thus, the whole of Quran cannot be source of a law, instead we refer to the 200 odd law-making ayats scattered all over the book as the basic source of Muslim Law.

5) Different forms of legal rules: It has many categories, the ones that remove social evils like child infanticide, gambling etc, and the ones that create specifics so as to solve daily life legal problems as well as providing for the basis of juristic interpretations or inferences.

6) Unchangeable: The Quran can be in no way altered or changed, thus, even the courts of law have no authority to change the apparent meaning of the verses as it does not have an earthly origin.

7) Incompleteness: In the 200 odd verses of law in the Quran, only 80 or so deal with the personal law. Hence, we say that it is not a complete code of Muslim personal law; it only lays down the basic principles.

Further, on many an issue, the Quran is silent. With the spread of Islam, the necessity arose to explain and supplement the Quran so as to deal with the new problems of a growing Islamic society.

Therefore, Quran is regarded as the most important and primary source of Muslim law. It is a source which is unchangeable and unchallengeable.

13. Iddat.

Iddat is an Arabic word and its literal meaning is counting, counting here means counting the days of possible conception to ascertain whether a woman is pregnant of not .Under the Muslim law it is that period during which a women is prohibited from re- marrying after the dissolution of marriage. During this period the widow or a divorced wife is required to live a pure and a simple life and she cannot marry again .The object of Iddat is to ascertain the paternity of a possible conception by a former husband. After divorce or death of the husband, if the women re-marries immediately and a child is born within a normal course ,then there is every likelyhood that the conception could be of a former husband and not by the present . It would be difficult therefore to establish as to who may be regarded as the father of the child . To overcome this difficulty Muslim law provides that where a marriage is dissolved the women cannot re-marriage before before the expiry of a specific period called Iddat .

The period of Iddat begins from the date of the divorce or death of the husband and not from the date on which the women gets the information of her divorce or of death of her husband . If she gets the information after the expiry of the specified term , she need not observe Iddat .

Duration of period of Iddat ,

1. Where a valid marriage dissolves by the death of the husband , the duration of Iddat is 4 months and 10 days .If she is pregnant at the time of husband's death it continues till the delivery of the child , or 4months 10 days whichever is longer .
2. After the death of the husband , an Iddat of 4 months 10 days must be observed by the widow even if the marriage has not been consummated .

3. In case of dissolution of marriage by divorce the duration of Iddat is 3 months .

14. SHARIAT ACT 1937

This act makes provisions for the application of the personal law . This act extends to the whole of India . Indian Muslims regarding the applications of Muslim personal law .Therefore , this act was enacted by the contract legislature in 1937 . At present the application of Muslim personal law .Therefore , this act was enacted by the central legislature in 1937 . At present the application of Muslim personal law is generally regulated by this enactment .Provisions of this Act regarding the application of Muslim personal law are

1) Intestate succession ie., inheritance
2) Special property of the incidents of marriage
3) Marriage (including all incidents of marriage
4) Dissolution of marriage (including all kinds of divorce) .
5) Maintenance
6) Dower
7) Guardianship
8) Gift
9) Trust and trust properties

15. Wakf

v/s 2 (a) of this Act it provides that in a case where both the parties are Muslims the rule for decision shall be Muslim law , if the case involves the subject as mentioned above . S/2(b) it states that the cases involving adaption, will, legacies the court has no authority to apply Muslim law under this Act

because these subjects are not included under this section . But section 3 of the Shariat Act , provides that the courts may apply the rules of Muslim law in case of adaption , will and legacies provided a Muslim expressly declares that he wants to be governed by Muslim law also in respect of those matters in addition to the provisions of section 2 of this Act . The procedure for such declaration shall be laid down under section 3(2) and section 4 of this Act . Section 6 of the Shariat Act repeats certain provisions of those earlier enactments which gave authority to the courts to apply Muslim law before the commencement of Shariat Act . For example, section 26 of Bombay regulation Act 1827 , section 16 of the Madras civil court Act 1873 , section 3 of Oudh law Act . 1876 section 5 of Punjab law

Act , 1872 and central provinces laws Act 1875 have been repeated and are now not in force .

16. Acknowledge of paternity.

Muslim does not recognises the institution of adoption which is recognised by other system. In Muslim law an acknowledgement of legitimacy is a declaration of legitimacy and not legitimation. When paternity of the child is uncertain because the marriage of its parents could not be established at the time of Childs conception or birth the husband may by declaration , acknowledgement and accept that he is the father of the child.

But where a child is illegitimate either because it is born out of adultery or because of marriage of his parent is prohibited under Muslim law acknowledgement cannot make a child legitimate.

The doctrine of acknowledgement is limited.

Therefore if a child has been proved to be illegitimate, the declaration of a person, acknowledging his paternity cannot make a child legitimate.

The acknowledge child may be a son or a daughter.

17. Bai Tahera v/S Ali hussain.

Facts of the case are, Ali Hussain had married bai Tahira in 1956 and a son was born to them tahira was living in one of the flats of her husband .in 1962 Ali Hussain divorced his wife Bai Tahera and transferred the ownership of the flat to his divorced wife in lieu of dower and maintenance during Iddat .Bai Tahera remained unmarried .Some time later she found herself in financial crises and filed a petition for her maintenance under sec 125 0f crpc1973 .the megestrate ordered a monthly allowance .Ali Hussain challenged this order on the ground that since she has already received maintenance allowance during iddat and also the whole sum due to her under personal law in form of house ,and she was not entitled to get any further allowance under Crpc .The Bombay HC descided in favour of her husband .Bai Tahera then made an appeal in SC resorted the maintenance allowance granted by the magistrate and reserved the judgement of the Bombay HC. In this case the SC further stated that irrespective of the amount settled as Mahr, a reasonable amount is always due to muslim wife for her maintenance. The court further observed that wife ,s surrender of her right to dower does not in any way defeat her right u/sec 125 of Crpc if she be entitled to it otherwise and has not remarried. The appeal was according lyaiil wed and the Apex Court held that Bai Tahera was entitled to the maintenance allowance granted by the magistrate.

18. Divorce by mutual conscent (khula).

According to law ,Khula means divorce by wife with the consent of the husband on payment of something to him. Before Islam the wife had no right to take any action for dissolution of her marriage .But in Islam ,she is permitted to ask her husband to release her after taking some compensation .

Essentials of Khula: It may be noted that Kula is a divorce by common consent ,but the wife has to pay make some consideration to husband because she takes the initiative for dissolution of marriage .The essentials of Khula are ,

1)Competence of the parties ,the husband and the wife must be of sound mind and have attained the age of puberty.

2) Free consent, The offer and the acceptance of khula must be made with free consent of the parties .But under the Hanifa law a Khula under compulsion or in the state of intoxication is also valid.

3)Formalities, here there is offer from the side of wife to release her from matrimonial ties , the offer is made to the husband .And the same must be acknowledged by the husband ,until the offer is accepted the divorce is not complete.

4) Consideration: For her release she has to pay something to the husband as compensation.

19. Gift in contemplation of death (Donatio mortis causa).

A gift is said to be made in contemplation of death when a person is ill or expects to die shortly of his illness or delivers to another the possession of property ie movable to keep as gift in case the donor dies of that illness.Such gifts can be made of any movable property which the donor could dispose of by will.

Such gifts of the donor will not take effect ,if the donor recovers from illness during which it was made.

Requisites of gifts in contemplation of death:

1)The property must be movable.

2)The gift must be by a man in contemplation of death.

3)the gift must be such as to take effect only on the death of the donor .

4)There must be delivery of the subject of donation. the deceased must not only part with the procession but also with the dominion over the subject of the gift.

5)The gift must be made under such circumstances as to show that the thing is to revert to the donor in case he recovers.

20. Ambiguities :

There are two type of ambiguities, patent ambiguity and latent ambiguity.

Patent ambiguity: Sec 81 it lays down that where there is an ambiguity or deficiency on the face of a will, no eccentric evidence as to the intention of the testator can be admitted.

Eg ,"A bequeaths to B....rupees" or "my estate of .....".

Evidence is not admissible to show what sum or what estate the testator is intended to insert.

Latent ambiguity: where the words of the will are un ambiguous ,but is found by eccentric evidence , and eccentric evidence can be accepted by the court to clear the picture.eg A has left a will to his aunt Mary, there are two people of the same name in this case eccentric evidence is applied , according to this eccentric evidence the nearest related Mary to the deceased testator will take the bequest.sec 80 limits the admission of eccentric evidence in case of latent ambiguity.

21. Onerous Bequest:

This bequest is dealth under sec 122and 123 of this act.

According to sec 122 ,onerous bequest is said to be onerous when it imposes a liability or an obligation on the legatee .In such a case the legatee takes nothing by the bequest unless he accepts it fully.eg , A having shares in x, a prosperous company and also shares in Y, a joint stock company running in loss .In respect of which shares are expected to fall heavily , A, makes a bequest to B, all his shares of companies ,B refuses to accept the shares of Y company .in this eg B forfeits the shares of Y company.

According to this section the person availing the bequest cannot accept the good legacy and reject the burden sum legacy ,the beneficiary will have to accept both if he makes a choice the legacy will not take effect. The legatee is not allowed to elect.

He either takes whole of the legacy or takes nothing .He cannot reject the onerous part and cannot affirm the beneficial part .

According to sec123 if the will contains of two separate and independent bequest ,the legatee can take can take the beneficial one and refuse the other which is onerous.

22. Void Bequest:

However at times ,a will as a whole may be perfectly valid ,although there there are certain clauses in the will which cannot have any legal effect. For eg the testator is not allowed to make a bequest to an attesting witness .If he does so ,the entire will does not become void ,only that particular clause will effect.

The following 11 kinds of bequests are considered to be void:

1)Bequest to the attesting witness : A gift or bequest made to a person who has attested the testators will is void .
However under a will does not loses his legacy by attesting a codicil which conferms a will.

2)Uncertain Bequest : A bequest not expressive of any definite intention is void for uncertainity .

3) Bequest to a non –existing person : when a bequest is made to a person by a particular description and there is no person in existence at the time of testators death who answers the description ,the bequest is void . ifaperson is not in existence at the time of testators death , in order to to entitle to an unborn person to take the bequest he must come into existence when the when the bequest becomes payable .

4) Bequest to person not in existence at testator's death: Where a bequest is made to a person who is not in existence at the time of testators death ,subject to prior bequest ,the later bequest is void unless it comprises of the whole of the remaining interest of the testator in the thing which is bequested.

5) Bequest infringing the rule against perpetuity : Perpetuity has been defined as the creation of an in alienable and industuctible interest .In the secondary or artificial sense it denotes an interest which will not vest till a remote period.

The law will not favour a very long delay in the vesting of property after the testators death ,therefore a prescribes a maximum period during which the property can be kept in abeyance .Any bequest wherein it is possible that the un limited vesting of the legacy could take place beyond such period is , therefore declared to be void.

6) Bequest void under Ss113 and 114.
7) Bequest upon prior void bequest is also void: any rules under sec 113 and 114 any bequest in favour of a person is void in regard to such person, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.
8) Bequest with a direction for accumulation
9) Bequest to religious or charitable uses in certain cases.
10) Bequest upon an impossible condition.
11) Bequest upon an illegal or immoral condition.

SOLVE THE FOLLOWING PROBLEMS.

1. **A Mohammedan having four wives contracts fifth marriage. Is the marriage valid?**

Marriage according to the Muslim law is Nikah which means to tie up together, as against uncertain relationship of the wife & the husband in the pre Islamic society , Islam introduced Nikah (marriage) , in which the husband & the wife are to bond together for an infinite period . Nikah or marriage ensures stability in the matrimonial relationship. The prophet declared that the husband must pay something to the wife as not her prize but as a mark of respect towards her. Islam restricts limitless polygamy & no Muslim is entitled to marry with more than 4 wives at a time.

According to Hedaya, Marriage (Nikah) implies a particular contract used for the purpose of legalizing the children.

Justice Mohammed had defined marriage in the following ways, according to him marriages in Muslims is not a sacrament but a pure contract. In the eyes of law a mohammaden marriage is a pure civil contract the object is to provide legality to the union between the spouses , otherwise the unionism between

the parties will be illegal & children born out of such unionism is deemed to be illegitimate .

The nature of the marriage is that it is a contract in the eyes of law, & not a sacrament. Besides being a civil contract the marriage in Islam is also a social & a religious institution. A Muslim marriage is considered to be a contract because the element which constitutes a marriage & the manner in which it is completed is almost similar to that of a civil contract.

Under the Muslim law, a husband is allowed to marry four wives at a time polygamy of four wives is legally permissible in Islam. As a matter of fact the limited polygamy was permitted because of the social needs of that time. In the wars with the disbelievers, a large number of Muslim women would become widow. Such widow & children would get subjected to social evils to curb this practice of limited polygamy was permissible.

Muslim law permits limited polygamy of four wives. That is to say, a Muslim could marry legally with four wives, but is prohibited from marrying with a fifth wife. However marriage with fifth wife is irregular. After the death of the divorce of any of the four wives, this irregularity does not exist & he can lawfully marry only four wives at a time & not more than that. This concept is that of the sunnie law. The shia law , marriage with the fifth wife is void .

2.'X' executes through a registered will on his property to his sons. There after he met with an accident and on deathbed he want to change his will, thereby he wrote a new will on a white paper and died soon after. What is the effect of this will? Explain.

A will is defined under sec 2(h) of Indian Succession Act 1925; it defines a will as a legal declaration of the intention o the testator with respect to his property which he desires to be carried into effect after his death. The essentials of the will are that there should be legal declaration; such declaration of the property must be relating to property, the declaration as regards the disposal of the property of the testator must be intended to take effect after the death of the testator. The essence of the will is that it is revocable during the lifetime of the testator.

There are two tests to determine the document to be a will, firstly that the intention of the writer to convey by it, if considered as a will, the writer or the testator had the necessary intention or animus testendi.

In this case the testator who had already had executed the will prior to meeting with the accident & subsequently met fatal end & the will which the testator wrote & subsequently died fulfills all the tests of will & the presumption of fact lies that the will fulfills all the requisites of the will . Here in this case no doubt a will does not required to be registered but , the will is valid & it does take effect cause the testator has the intention or revoking the former will & is intended to execute a new will .

3. A Mohammedan creates a wakf . After few years he wants to revoke it can he do so .

Wakf is defined under sec/2(1) of the Musalaman Wakf Validating Act , 1913 defines wakf as , 'Wakf means a permanent dedication , by a person professing Mussalman faith , of any property , for any purpose recognised by the Mussalman law as religious , pious or charitable '.

In this case a mohammedan creating a wakf of his property cannot be revoked after a duration of time or period , because by making wakf of the property the person transfers the property in the ownership of God ,the Almighty ,while doing so the corpus of the property is detained and the usufruct is utilised continuously for its objects.

By transferring the ownership of God the dedication becomes permanent . Under the Muslim law perpetuity is an essential condition for every wakf .This is ensured through a legal friction that wakf property becomes the property of God. Wakf for a limited duration is not valid .

4. A testator draws a line across his will and writes on the back of it 'this will is revoked' Does it amount to revocation of will .

A will is liable to be revoked or altered by the maker of the will at any time when he is competent to dispose of his property by will u/ sec 62 of the act . This power he processes up to the hour of his death .Since the testator may at any movement cancel his will , no suit by other person for cancellation of the will can lie during his lifetime . where in a joint will by the husband or the wife , both the parties should be agreeable to revoke the will only then the will could which is joint could be revoked , otherwise such wills are not deemed to be revoked the clauses of such wills comes into effect immediately .

In this case where the testator draws a line across the will and writes on the back of it 'this will is revoked ', could not be said to be revoked , because such a writing should have been signed by the testator and attested by two witnesses .A similar question came up before the court in Cheese V/S lovejoy where the court held that the will cannot be said to be revoked under the such circumstances .

5.A having domiciled in India dies in France leaving Movable property in France , movable property in England and both movable and immovable property in India .State the law by which succession of his property is regulated

Domicile of a person is a place is the place where he has his true fixed permrnant home and establishment to which he intends returning , two things are essential for determining the domicile of an individual i.e. his residence and secondly intention of making it a home of the party . In this case where 'A' was domiciled in India and who has died if France , the law of succession to his properties i.e. movable and immovable properties applicable is ; towards his movable properties the law of the country of his domicile is applicable and for the immovable properties it the law of the country where the property is situated . Therefore in this case the law applicable for movable properties is the Indian law and for the immovable property also it is the Indian law by which it is regulated .Therefore for both the movable and immovable properties the law of India is made applicable.

6. A bequest is made to 'A' and 'B'. A dies before the testator. Examine the effect of the bequest.

Whenever a legacy is made jointly, to two o more persons the legatees will take the legacy jointly. And when one of the legatee dies before the testator, or predeceases the testator then the legacy will not lapse the existing legatee will take the whole of the property.

In this case where a bequest is made in favour of A&B , and when A dies during the life time of the testator B takes the whole of the property .i.e. the whole of the property goes to B , until unless any further instruction is found in the will .