كتاب النكاح

NIKĀH – MARRIAGE

النكاح ينعقد بالإيجاب والقبول، بلفظين يعبر بهما عن الماضي أو يعبر بأحدهما عن الماضي والآخر عن المستقبل، مثل أن يقول زوجي فيقول زوجتك

The marriage [contract] is concluded with [an] offer and acceptance, by [using] two statements which express the past [tense],787 or one of the two [statements] expresses the past [tense] and the other [expresses] the future [tense], for example, one says, “Marry [her to] me,”788 and [the other] says, “I have married [her to] you.”

ولا ينعقد نكاح المسلمين إلا بحضور شاهدين حرين بالذين عاقلين مسلمين أو رجل وأمرأتين، عدلا كانوا أو غير عدول، أو عددين في قدح

The marriage of Muslims is not concluded except in the presence of two male witnesses [who are] free, major, sane Muslims, or one man and two women, be they upright or not, or [whether] they have been punished [a hadd punishment] for qadhf (wrongful imputation of unlawful sexual intercourse).

787 When the man says, “I have married you,” and the woman replies, “I have accepted it,” that concludes the marriage.
788 This is an order, and an order, in Arabic, is considered a part of the future tense.
If a Muslim male marries a woman of the People of the Book living under Muslim governance (dhimmīyyah) with the witnessing [made] by two of the People of the Book living under Muslim governance (dhimmis), it is permitted, according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muhammad, may Allah have mercy on him, said that [the marriage] is not permitted unless one makes two male Muslim witnesses.

Prohibited Categories of Women

It is not lawful for a man to marry his:
1. Mother,
2. His paternal and maternal grandmothers,
3. His daughter,
4. The daughter of his child789 howsoever low,
5. His sister.

789 Granddaughter.
6. The daughters of his sister,790
7. His paternal aunt,
8. His maternal aunt,
9. The daughters of his brother,791
10. The mother of his wife, with whose daughter he has had sexual intercourse or not had sexual intercourse;792
11. The daughter of his wife with whom he has had sexual intercourse – be the daughter under his guardianship or under the guardianship of someone else;
12. The wife of his father,
13. [The wives] of his grandfathers,
14. The wife of his son,
15. [The wives] of his grandsons,
16. His foster mother [who breastfed him], nor
17. His foster sister.

ولا يجمع بين الأخوات بنكاح ولا بملك مثنين وثناء، ولا يجمع بين المرأة وعمتها أو أخالتها ولا ابنتها ولا أختها ولا ابنة أخيها، ولا يجمع بين امرأتين لو كانت كل واحدة منهما رجلا لرجع له أن ينزو ج بالآخر

One is not to combine two sisters by marriage, nor in sexual intercourse by lawful ownership.793
One is not to combine a woman with her paternal aunt, maternal aunt, the daughter of her sister or the daughter of her brother.
One is not to combine two women in such a way that if either of the two was a man, it would not be permitted for him to marry the other.794

790 Nieces from female siblings.
791 Nieces from male siblings.
792 The daughter in this sense refers to his wife as well any of the daughters of that woman with whom he may have lawfully consummated marriage.
793 Just as this prohibition applies to two sisters in the same marriage, so does it to two sisters lawfully owned as slaves (milh yamin).
794 This is a hypothetical issue explaining the prohibition of being married to two women at the same time when if either of the two was a man, then it would have been forbidden for them to be married to each other, as in the case of blood siblings, foster siblings, consanguine and uterine relatives, etc.
There is no objection for someone to combine a woman with the daughter of a husband she had before.\footnote{8074a, a woman, was married to B, who had a daughter, C, from a previous wife, Z. B dies, leaving C in the care of A. A marries D. D may also marry C because there is no legal objection to this marriage.}

Whoever commits unlawful sexual intercourse (zina) with a woman, her mother and her daughter are forbidden to him [in marriage].

When a man divorces his wife [with] a final divorce (talāq ba‘īn),\footnote{This is similar to, but not the same as, a decree absolute (final judgement declaring a marriage dissolved) in civil law.} he is not permitted to marry her sister until her waiting period (iddah) elapses.

It is not permitted for a master to marry his [own] slave-woman, nor for a free woman [to marry] her [own] slave.\footnote{This also includes a revocable divorce (talāq raj‘ī). A revocable divorce in Islam is similar to, but not the same as, a decree nisi (provisional or interlocutory judgement granting a conditional divorce) in civil law.}

Marriage to Non-Muslim Women

Marriage to women of the People of the Book (kitābīyāt) is allowed,\footnote{If they set them free, they are able to propose marriage to them in both cases. Ed.}

but marriage to Mandaeans is permitted\footnote{Zoroastrians or Parsees.} to idol-worshipers is not permitted.

Marriage to Sabians and they recognise a marriage the stars and they hire them is not permitted.

It is permitted for state of ihram.

Virgins (Bikr) and Consummated Thieves

The marriage of a man to a woman, even though she was given to Abū Hanīfah, may be consummated or a previously-married woman.

\footnote{They may enter into marriage with a person in ihram, but they are subject to restrictions imposed by.}
but marriage to Magian women is not permitted, nor is marriage permitted to idol-worshipping women.

Marriage to Sabian women is permitted if they believe in a prophet and they recognize a [divinely revealed] book. If, however, they worship the stars and they have no [divinely revealed] book, then marriage to them is not permitted.

It is permitted for men and women in *ihram* to marry whilst in the state of *ihram*.

Virgins (*Bikr*) and Previously-Married Women who had Consummated Their Marriages (*Thayyib*)

The marriage of a free, major, sane woman is concluded with her consent, even though a guardian does not conclude it [for her], according to Abū Hanīfah, may Allah have mercy on him, be she a virgin (*bikr*) or a previously-married woman who had consummated her marriage.

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79 Zoroastrians or Parsees. Ed.
800 The term Sabian is applied to two groups: first, followers of one of the prophets, and second, a group that are devoted to the stars. Ed.
801 They may enter into a marriage with each other or with someone who is not a person in *ihram*, but they may not consummate the marriage by sexual intercourse due to restrictions imposed by the *ihram*.
(thayyib), but they,\textsuperscript{802} may Allah have mercy on them, said that it is not concluded [in either case] except with the permission of a guardian.

It is not permitted for the guardian to compel a sane, major virgin [to marry]. When the guardian seeks her permission [for marriage], and she remains silent, giggles or cries without [making] a sound, then that is [deemed] permission from her, but if she refuses, then he should not give her in marriage.

When someone seeks permission from a previously-married woman who had consummated her marriage, then she must give her consent by speaking.

When her virginity is lost due to jumping, menstruation, a wound or due to a long period of waiting, then she is [still] under the ruling of being a virgin.

If her virginity is lost due to unlawful sexual intercourse (zina), then she is just like that [a virgin], according to Abū Ḥanīfah, may Allah have mercy on him, but they,\textsuperscript{803} may Allah have mercy on them, said that she comes under the ruling of being a virgin.

When a husband gives you and you refuse [the proposal] then there is no oath according to Abū Ḥanīfah, may Allah have mercy on him.

The marriage contract (qādub) and šadaqah (charitable donation) are not subject to this.

It is not concluded [the marriage].\textsuperscript{804}

The marriage of a previously-married woman.
under the ruling of the previously-married woman who had consummated her marriage.

و إذا قال الزوج للبكر: بلغك النكاح فسكتت، وقالت: بل رددت، فالقول قولها ولا يمين عليها، ولا يستحلف في النكاح عند أبي حنيفة رحمه الله تعالى، وقالا رحمهما الله تعالى: يستحلف فيه.

When a husband says to a virgin, “The [proposal of] marriage reached you and you remained silent,” and she replies, “No, on the contrary, I rejected [the proposal],” then the [decisive] statement is her statement and there is no oath [to take] from her. An oath is not taken about marriage, according to Abū Ḥanifah, may Allah have mercy on him, but they,804 may Allah have mercy on them, said that an oath is taken about it.

و يعقد النكاح بلفظ النكاح والتزويج والتمليك والهبة والصدقة

The marriage contract (nikāḥ) is concluded with the words: nikāḥ (marriage contract), tazwīj (marriage), tamliḵ (ownership), hibah (gift) and šadaqah (charity).

ولأ يعقد بلفظ الإجارة والإعارة والإباحة

It is not concluded with the words: ījārah (lease), īrāh (loan) or ibāhah (permissibility).

و يجوز نكاح الصغير والصغيرة إذا زوجهما الوالي، بكرا كانت الصغيرة أو ثنيا

The marriage of a minor boy and [of] a minor girl is permitted when the guardian gives them in marriage, be the minor girl a virgin or a previously-married woman who had consummated her marriage.

804 Abū Yūsuf and Muhammad.
Guardian (Wali)

The guardian [in marriage] is [of the] consanguine relatives (ašabah).\textsuperscript{805}

إِنْ زَوْجَهُمَا الْأَبُ أوِ الْجَدُ فلاَ خَيَارٌ هُمَا بَعْدُ البُلُوغِ، وَإِنْ زَوْجَهُمَا غَيْرُ الأَبِ والْجَدِ فَلْكُلْ وَاحِدٌ مِنْهُمَا الْخَيَارُ: إِنْ شَاءَ أَقَامَ عَلَى النَّكَحِ، وَإِنْ شَاءَ فَسَخَّر

If the father, or grandfather, marries them off, then there is no option for them after attaining the age of majority, but if someone other than the father or the grandfather marries them off, then each one of the two has an option:
1. If he/she wants, he/she may remain in the marriage, or
2. If he/she wants, he/she may repudiate [it].

وَلَا وَلَائِيَةٌ لِلْمُعْدِيِّ، وَلَا لَصِيْغِرٍ، وَلَا لمِجْنُونٍ، وَلَا لِكَافِرٍ عَلَى مُسْلِمَةٍ

There is no [right of] guardianship for a slave, minor, the insane nor for the non-Muslim (kāfir) over a Muslim woman.\textsuperscript{806}

وَقَالَ أُبُو حَنِيفَةُ رَحْمَةَ اللَّهِ عَلَيْهِ: يَجْزِي لِغَيْرِ العَصِبَاتِ مِنَ الأَقْرَارِ النَّزُوْجَ، مَثْلَ الْأَخْتِ، وَالأَمِ، وَالْحَالَةِ

Abū Ḥanīfah, may Allah have mercy on him, said that it is permitted for people other than male relatives to give away in marriage, such as a sister, mother and maternal aunt.\textsuperscript{807}

وَمِنْ لَا لَوْيَةٍ إِلَّا إِذَا زَوْجَهَا مُوَلَّاهُ الَّذِي أَعْتَقَهَا جَاز

805 Priorities of guardianship are given as those in priority of inheritance.
806 The guardians of a Muslim woman cannot be any of these categories of people, irrespective of close consanguine relationship with her.
807 In such an issue, the absence of male relatives (ašabā') is a condition.
Whichever [previously enslaved] woman has no guardian, if the master who set her free gives her away in marriage, [then] that is allowed.

وإذا غاب الولي الأقرب غيبة منقطعة جاز من هو أبعد منه أن يزوجه

When the most closely-related guardian is absent in disconnected absence, it is permitted for whomever is more remote than him [and next in proximity] as a relation, to give her away in marriage.

والغيبة المقطعة: أن يكون في بلد لا تصل إليه القوافل في السنة إلا مرة واحدة

Disconnected absence (ghaybah munqaṭṭah) is when one is in a city which convoys do not reach except [only] once a year.

Suitability (Kafā'ah)

والكافئة في النكاح معتبرة، فإذا تزوجت المرأة بغير كفء فلا أولياء أن يفرقوا بينهما

Suitability in marriage is to be reckoned with. Thus, if a woman marries someone without equal status [to her], the guardians may seek separation between the two.

والكافئة تعتبر في النسب والدين والمال، وهو: أن يكون مالكاً للمهر وال النفقة، و ت تعتبر في الصنائع

Suitability is taken into account [with regards to] lineage, religion and wealth – and that is, that he possess the dowry (mahr) and financial maintenance (nafaqah); and it is also taken into account [with regards to] skills.808

808 The nobility of the occupation, sources of financial income, employment, etc. are to be reckoned in the issue of suitability in marriage.
When a woman marries and she reduces [something] from the customary dowry [a woman of her standing would receive] (mahr al-mithl), then the guardians may oppose her, according to Abu Hanifah, may Allah have mercy on him, until the customary dowry [a woman of her standing would receive] (mahr al-mithl) is given to her complete, or [the husband] is separated from her.

If a father gives his minor daughter in marriage and he reduces [something] from the customary dowry [a woman of her standing would receive] (mahr al-mithl), or he marries off his minor son and [that son] increases [the amount] in the dowry of his wife, then that is permitted for both of them. That is not allowed for anyone other than the father and the grandfather.

The marriage contract is valid when the dowry is mentioned in it, and it is [also] valid even if the dowry is not mentioned in it.

**Dowry (Mahr)**

The minimum [amount] of dowry is ten dirhams. So, if someone specifies less than that, it is not valid.

Whoever specifies less than that, it is considered less than the amount due [with her], then the dowry is not valid.

If he marries her or he marries her [if she is entitled to receive] if he had a widow]. If, however, he gives her, or [adopts] a gift of consolation attire [a woman of her standing would receive] if she is entitled to receive it.

1. A shirt,
2. A head-covering,
3. A large outer garment.

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809. Mentioning few mentioned below ten.
810. Consumption.
811. Seclusion in this presence of anyone else, or ritually, from sex.
specifies less than ten [dirhams], she has ten [dirhams].

ومن سمى مهرا عشرة فما زاد فعليه المسمي إن دخل بها أو مات عنها، فإن طلقها قبل الدخول والخلوة فلها نصف المسمي

Whoever specifies the dowry as ten [dirhams] or more, then whatever has been mentioned is due upon him if he consummates the marriage or if he dies leaving her [as his widow]. If, however, he divorces her prior to the consummation of the marriage, or [before] seclusion [with her], then she is entitled to a half of what was mentioned [as dowry].

وإن تزوجها ولم يسم لها مهر أو تزوجها على أن لا مهر لها فلها مهر مثلها إن دخل بها أو مات عنها، وإن طلقها قبل الدخول بها والخلوة فلها المنتجة وهي ثلاثة أثواب من كسوة مثلها، وهي: درع وخباز وملحفة

If he marries her without specifying the [amount of] dowry for her, or he marries her on [the condition] that there is no dowry for her, then she is entitled to the customary dowry [a woman of her standing would receive] if he had consummated the marriage or died leaving her [as his widow]. If, however, he divorces her prior to having sexual intercourse with her, or [adopting] seclusion [with her], then she is entitled to a gift of consolation (mut'ah), and that is three garments according to the attire [a woman of her standing would wear], and they are:

1. A shirt,
2. A head-covering, and
3. A large outer wrapper.

809 Mentioning fewer than ten dirhams is invalid, and so, any number that is mentioned below ten means 'ten'.
810 Consummation of marriage is by sexual intercourse.
811 Seclusion in this context refers to the husband and wife being together without the presence of anyone else and that neither of the two are prevented, whether physically or ritually, from sexual intercourse with the other.
If a Muslim marries her for wine or swine, the marriage contract is permitted, but she is entitled to the customary dowry [a woman of her standing would receive].

If he marries her without specifying any dowry, and then both of them agree upon fixing the dowry, that is hers if he consummates the marriage or dies leaving her [as his widow]. If, however, he divorces her prior to sexual intercourse or [adopting] seclusion with her, then she is entitled [only] to a gift of consolation (mut'ah).

If someone increases the [amount of] dowry after the conclusion [of the marriage contract], the increment is binding upon him if he consummates the marriage or dies leaving her [as his widow]. The increment lapses due to divorce prior to sexual intercourse.

If she reduces some of the dowry, the reduction is valid.

When the husband is secluded with his wife and there is nothing to prevent sexual intercourse, her full dowry [and the like] is hers, and if he divorces her, then it is not a valid divorce; it is only a seclusion.

If either of the two
1. Ill,
2. Fasting during
3. In ihram for hajj
4. She is menstruating
then it is not a valid divorce; it is only a seclusion.

A gift of consolation (mut'ah) except if someone divorces the woman specifying the [amount of] dowry.

When a man whose month has not reached his wife, and there is no fault according to Abü Ḥanīfa.
prevent sexual intercourse, and then he divorces her, she is entitled to her full dowry [and the waiting period (‘iddah) is due upon her].

If either of the two are:
1. ill,
2. Fasting during Ramadan,
3. In ihram for hajj or ‘umrah, or
4. She is menstruating,
then it is not a valid seclusion.\textsuperscript{812} If he were to divorce her, then a half of the dowry is required.

When a man whose genitals are amputated (majbūb) secludes himself with his wife, and then divorces her, she is entitled to the full dowry, according to Abū Ḥanīfah, may Allah have mercy on him.

A gift of consolation (mut’tah) is recommended for every divorcée (muṭallaqah), except for one type of divorcée, and that is she whom someone divorces prior to consummation [of the marriage] without specifying the [amount of] her dowry.\textsuperscript{813}

\textsuperscript{812} These are obstacles in the way of performing sexual intercourse, and therefore, such a seclusion has no validity.

\textsuperscript{813} A gift of consolation is obligatory for her, unless the divorce is pronounced according to this issue or at the instance of the wife.
وإذا زوج الرجل ابنته على أن يزوجه الرجل أخته أو بنته ليكون أحد العقود عوضًا عن الآخر فالعقدان جائزان، ولكن واحدة منها مهر مثلها

When a man marries off his daughter on [the condition] that the [other] man will marry his sister or his daughter to him, so that one of the contracts [of marriage] becomes a consideration for the other [contract], then both contracts are valid, and each of the two [brides] is entitled to the customary dowry [a woman of her standing would receive].

وإن تزوج حرب امرأة على خدمته سنة أو على تعليم القرآن جاز فلا مهر مثلها

It is permitted if a free man marries a woman on the condition of his service [to her] for a year, or on the condition of teaching the Qur'an [to her], and she is [still] entitled to the customary dowry [a woman of her standing would receive].

وإن تزوج عبد امرأة حرية بإذن مولاه على خدمته سنة جاز، ولها خدمته

It is valid if a slave, with the permission of his master, marries a free woman on the condition of his service [to her] for a year, and thus, she is entitled to that service [from him].

وإذا اجتمع في المجونة أبوها وأبناها فالولي في نكاحها ابنها عند أبي حنيفة وأبي يوسف رحمهما الله تعالى، وقال محمد رجم الله تعالى: أبوها

When, in [the case of an] insane woman, her father and her son are both present, then the guardian for her marriage contract is her son,

814 If the slave is sold at an agreed form of a debt.

The marriage contract except with the permission of her father. When the husband marries the slave, dowry is a debt upon her.
according to Abū Ḥanīfah and Abū Yūsuf, may Allah have mercy on them, but Muhammad, may Allah have mercy on him, said that [the guardian is] her father.

ولا يجوز نكاح العبد والأمة إلا بإذن مولاهما

The marriage contract of a slave or a slave-woman is not allowed except with the permission of her master.

وإذا تزوج العبد بإذن مولاه فالمهر دين في رقبته يفاع فيه

When a slave marries with the permission of his master, then the dowry is a debt upon him for which he [may be] sold.814

وإذا زوج المولى أمته فليس عليه أن يبئسها بيتا للزوج، ولكنها تخدم المولى، ويفق للزوج: متي ظفتربها وطنبتها

When a master gives away his slave-woman in marriage, he is not liable to lodge her in a house for the husband and she shall continue to serve her master. It is said to the husband, “Whenever you find [an opportunity] with her, you may have sexual intercourse with her.”

وإذا تزوج امرأة على ألف درهم على أن لا يخرجها من البلد، أو على أن لا يتزوج عليها امرأة، فإن وقفا بالشرط فلها المسمى، وإن تزوج عليها أو أخرجها من البلد فلها مهر مثلها

If someone marries a woman for a thousand dirhams on the condition that he will not take her out of the city, or on the condition that he will not marry another woman [during their marriage], and then, if he fulfils the condition, she is entitled to the specified [dowry]. [But] if he does marry [during their marriage], or [if he] does take her out of the city, then she is entitled to the customary dowry [a woman of her standing would receive].

814 If the slave is sold at any time after that, the dowry is a liability upon him in the form of a debt.
وإن تزوجها على حيوان غير موصوف صحت النسبة، وله الوسط منه، والزوج خير: إن شاء أعطاهها ذلك، وإن شاء أعطاهها قيمته.

If someone marries her for an unspecified animal, the nomination [of the unspecified animal] is valid and she is entitled to an average [animal] within that [category], and the husband has an option:
1. If he wants, he may give her that, or
2. If he wants, he may give her its value.

ولو تزوجها على ثوب غير موصوف فلها مهر مثلها.

If he marries her for an unspecified garment, then she is entitled to the customary dowry [a woman of her standing would receive].

ونكاح المتعة و المؤقت باطل.

Temporary marriage (mutʿah) and marriage of a set duration (mawqūfat) are void.

وتزويج العبد والأمة بغير إذن مولاهما موقوف: فإن آجازه الموالي جاز، وإن رده بطل.

The marrying off of a slave and slave-woman without the permission of their master is suspended:
1. If the master permits it, it is valid, and
2. If he refuses it, it is void.

815 If, for example, a goat is mentioned without qualification, and the breed, colour, age, value, etc., are not specified.
816 This occurs when a man marries a woman saying to her that he has married her for, say, ten days, and he uses the word 'mutʿah' or any of its variants, with respect to the marriage. In this kind of marriage, witnesses are not present.
817 This takes place when a man marries a woman for a fixed duration of time, say ten days or a month, and he uses the word 'nikāḥ' or any of its variants, with respect to the marriage. In this kind of marriage, witnesses are present.
818 It depends upon the condition of the female minor.
819 This is in the event of the female minor.
وإن تأذن الوسط أعلاناً

Likewise, if a man marries off a woman or a man, without their consent [the marriage is suspended]. 818

ويجوز لابن العم أن يزوج بنت عمه من نفسه

It is permitted for the son of the paternal uncle to marry the [minor] daughter of his paternal uncle to himself. 819

وإذا أذنت المرأة للرجل أن يزوجها من نفسه فقد بحضرت

When a woman authorises a man to marry her to himself, and he concludes [it] in the presence of two male witnesses, it is valid.

وإذا ضمن الوالي المهر للمرأة صح ضمانه، وللمرأة الخيار في مطالبة زوجها أو وليها

When the guardian takes responsibility of the dowry for the woman, his [taking] responsibility is valid, and the woman has the option of demanding [the dowry] from her husband or [from] her guardian. 820

وإذا فرق القاضي بين الزوجين في النكاح الفاسد قبل الدخول فلا مهر لها، وكذلك بعد الخلوة

When the judge orders the separation of the husband and the wife in an invalid marriage prior to consummation, and likewise, after seclusion, then she is not entitled to any dowry.

818 It depends upon the consent of that particular man or woman, as the case may be.
819 This is valid only when the son of the paternal uncle becomes the guardian of that female minor.
820 This is in the event of the non-payment of the dowry by the husband.
It is permitted to marry a woman of the People of the Book whom he has had sexual intercourse with, provided that she is a free woman.\(^{825}\)

It is not permitted to marry a woman of the People of the Book whom he has had sexual intercourse with, provided that she is not a free woman.\(^{826}\)

The free man is allowed to marry a woman of the People of the Book, provided that he is a free man.\(^{827}\)

The slave is not allowed to marry a woman of the People of the Book.

If the free man divorces his [first] wife, it is not permitted for him to marry her again [within the waiting period]. He may not marry another woman.

Moroz Tzvuyagh umma Mulsima kant or kaniala

Miscellaneous Issues Pertaining to Marriage

821 The waiting period (‘iddah) applies in the event of divorce or widowhood.
822 The customary dowry [a woman of her standing would receive] is determined according to the dowries of women relatives of the bride from the father’s side.
823 They could be from a different financial background where the dowries which they receive may not match the financial status of her father’s family.
824 These are the categories of comparison in determining the dowry of the bride.