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INSTITUTES

OF

MUSSALMAN LAW

A TREATISE

ON PERSONAL LAW ACCORDING TO THE HANAFITE SCHOOL

WITH REFERENCES TO ORIGINAL ARABIC SOURCES AND DECIDED CASES FROM 1795 TO 1906.

BY

NAWAB
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TO

THE HONOURABLE

SIR JOHN STANLEY, KT., K.C.,
Chief Justice, High Court of Judicature, North-West Provinces,
THIS WORK
IS,
BY HIS LORDSHIP'S PERMISSION,
Respectfully Dedicated.
PREFACE.

The works on Mussalman Law in the English language are too few in number to require an apology for the publication of a new book on the subject. But a brief account of the origin of "Institutes of Mussalman Law" may not be devoid of interest to the public. Those of my readers whose interests in law or politics travel beyond the boundaries of India may remember that more than thirty years ago the Règlement Judiciaire which sanctioned the establishment of Mixed Tribunals in Egypt for the purpose of dealing with questions arising in civil suits between the Egyptians and the subjects of the Powers, also provided for the publication of the laws relating to the personal status of the Egyptians.* Accordingly the Egyptian Government commissioned a Council of the leading Uleimas of the University Mosque of Al-Azhar, the greatest seat of Islamic learning, to prepare under the presidency of Kadri Pacha, a Judge of the Mixed Tribunal of Appeal at Alexandria, a Code of Mussalman Law. The result of their labours was a compendium of law based on Arabic works of indisputable authority and weight which, being translated into French by Kadri Pacha, under the name of

* Article 36 of the Règlement Judiciaire runs as follows:—" II (le Gouvernement Egyptien) publiera également les lois relatives au statut personnel des indigènes."
vi

"Droit Musulman du statut personnel, et des successions d'après le rite Hanafite," received the sanction of official recognition by the Mixed Tribunals in Egypt.*

Many years ago while passing through Alexandria on my way from Europe to India, I met Sir John (then Mr.) Scott, a Judge of the Mixed Tribunal of Appeal and subsequently a Judge of the Bombay High Court, who, in the course of an interesting interview, drew my attention to the excellent work of Kadri Pacha as the only attempt at codification of Mussalman law, which had the merit of receiving the hallmark of the sanction of a Mussalman Government. Later on, as Judge of the Bombay High Court, Mr. Justice Scott, whilst deploring the difficulties which the Indian Judiciary had to contend with in the administration of Mussalman Law, urged me to write a treatise on the lines of the Code of Kadri Pacha, adapted to the needs and requirements of my co-religionists in India. Circumstances, however, prevented me from carrying out immediately the suggestion of Sir John Scott. A few years ago, thinking myself in a better position to do so, I wrote to Lord Cromer enquiring whether Kadri Pacha's work was still treated as an authority on Mussalman Law. His Excellency, after consulting the legal advisers of the Egyptian Government, very kindly wrote to inform me that "the work in question was an undoubted authority on Moslem Law." Thereupon I began to work on the lines suggested by the late Sir John Scott. "Institutes of Mussalman Law" may, therefore, be regarded as a work which owes its inspiration to, and is mainly based on, the Droit Musulman of Kadri Pacha.

Before, however, I explain the plan followed by me in the following pages, I should like to give a short sketch of the history and position of Mussalman Law in British India.

When the East India Company undertook the administration of Bengal, Warren Hastings in 1772 established a number of Civil Courts, and directed that in all civil cases Mussalmans were to be governed by the laws of the Koran. Mussalman Law Officers well versed in Arabic were, consequently, appointed for the purpose of expounding the laws of Islam. This state of things continued until the abolition of these Officers in 1864. That far-sighted statesman also happily conceived the idea of having some of the standard Arabic books on Mussalman Law translated into English. Under his distinguished patronage the *Hidayah*, the *Serajiah* and the *Sharifiah* were for the first time made accessible to English readers. Subsequently, after nearly half a century, Mr. Neil Baillie compiled his "Digest of Mahomedan Law" from translations of extracts of the *Fatawa-i-Alamgiri*, the celebrated collection of law cases compiled under the auspices of Aurangzib and designated after the title of that great Emperor. These are still the standard works on Mussalman Law for the use of Indian Courts and English lawyers, but their scope and extent being of a limited character they have not adequately fulfilled the objects with which they were brought out. Thus, it is that through no inherent defect in the system, no lack or paucity of materials in the original Arabic, the laws of Islam, enveloped as they are, for the most part, in the ample folds of mediæval tomes written in the rich and exuberant language of Arabia, remain a hidden mystery to our Judiciary and Executive, as well as to the European student unacquainted with the tongue of the Prophet.
of Islam. A well-known Anglo-Indian writer comments on the situation as follows:

"No country is more interested than ours in facilitating a proper course of study of the Islamic Law. We have a very large Mahomedan population subject to our rule which is passionately attached to its personal law. We have guaranteed that all matters regarding marriage, inheritance, and caste, and other religious usages and institutions, affecting Mahomedans, shall be governed by the laws and usages of Mahomedans. It behoves us, therefore, as a nation to see that those who have to administer these laws have facilities afforded to them of studying the same. Something was no doubt done in the earlier days of our Government in India to discharge this imperative duty. But much remains to be accomplished before it can be justly said that we have done our duty. There are many important books on Mahomedan Law which are removed from the cognizance of our Courts because they are composed in a language which is unknown—to European officers at all events who preside over them. Surely, some efforts might be made to have the best of these translated by competent scholars."

This defect, however, is remedied by the fact that the time-honoured custom of interpreting and expounding Islamic Law by a direct research into the original sources contained in the voluminous treatises and commentaries in Arabic which obtained during the Mussalman rule in India, and which obtains to-day in Turkey, Egypt and Arabia, is still in some measure maintained in British India. When abstruse and intricate questions of Mussalman Law and Jurisprudence are involved in a case before an Indian Court, help is generally sought of the Maulavis versed in Arabic, and translations are made from the original Arabic
authorities for the particular occasion and some kind of solution is effected. But this mode of instructing the Bench and the Bar involves great hardship and entails much trouble and expense on the litigants. It is deplorable that the condition of things in India does not favour researches into Mussalman Law, or its study from the original Arabic sources by our students, and such of them as have devoted themselves specially in that behalf, are not, as a rule, called upon to occupy that position in life to which their learning and ability entitle them and where their special knowledge of the subject could be utilized for the benefit of the public. Such a situation, it is needless to say, is by no means satisfactory to the Mussalman community of India.

While the Personal Law of the Mussalmans was being thus administered by the Indian Courts, Lord Macaulay's Indian Law Commission were engaged from 1833 in formulating proposals for the reform of Judicial establishments, Judicial procedure and law of India, and fully after twenty years, their recommendations were submitted in March 1854 to Lord Romilly's Royal Commission, for examination and consideration. In December 1855, however, the Royal Commission submitted their report, in which among other things, they remarked as follows:

"If on any subject embraced in the new body of law it should be deemed necessary that for a particular class of persons or for a particular district or place there should be law different from the general law, and if there shall be no particular and cogent objection to the insertion of such special law into the proposed body of law, such special law, we think, ought to be provided in that way. But it is our opinion that no portion
either of the Mahomedan Law or of the Hindu Law ought to be enacted as such in any form by a British Legislature. Such Legislation, we think, might tend to obstruct rather than to promote the gradual progress of improvement in the state of the population. It is open to another objection too, which seems to us decisive. The Hindu Law and the Mahomedan Law derive their authority respectively from the Hindu and the Mahomedan religion. It follows that, as a British Legislature cannot make Mahomedan or Hindu religion, so neither can it make Mahomedan or Hindu Law. A Code of Mahomedan Law, or a digest of any part of that law, if it were enacted as such by the Legislative Council of India, would not be entitled to be regarded by Mahomedans as very law itself, but merely as an exposition of law, which possibly might be incorrect. We think it clear that it is not advisable to make any enactment which would stand on such a footing."

The labours of the Indian Law Commissioners resulted in the production of a series of most valuable codes. But the question of the extension of the process of codification to Hindu or Mussalman Law was never taken up seriously, and the opinion expressed by Lord Romilly's Commission remains unchallenged.

Notwithstanding the immense advantages of codification, the Government is handicapped by the consideration that any attempt to codify Mussalman Law may be received with serious misgivings by the general body of the Indian Mussalmans as an encroachment upon their religious liberty. How far it would be feasible in the future to bring about a general agreement among the Indian Mussalmans, with regard to the codification of their Personal Law, by the pressure of practical needs
or other causes which brought into existence the French Codes, the Italian Codes, and the German Codes,* it is indeed difficult to prognosticate.

The difficulties which beset the path of the Government in the accomplishment of such a task are correctly appreciated by Sir Courtenay Ilbert. In his admirable work on the Government of India he remarks:

" Those difficulties arise, not merely from tendency of codification to stereotype rules which, under the silent influence of social and political forces, are in process of change, but from the natural sensitiveness of Hindus and Mahomedans about legislative interference with matters closely touching their religious usages and observances, and from the impossibility in many cases of formulating rules in any shape which will meet with general acceptance . . . . The difficulty begins when a particular code is presented in a concrete form. Even in the case of such a small community as the Khojahs, who have contrived to combine adhesion to the Mahomedan creed with retention of certain Hindu customs, it has, up to this time, been found impossible to frame a set of rules of inheritance on which the leaders of the sect will agree. And any code not based on general agreement would either cause dangerous discontent or remain a dead letter."†

I now proceed to explain the scope, arrangement and method of the present work and to indicate its sources.

The rite of Abu Hanifah is the State religion of the Ottoman Empire, and the Mussalman Law as interpreted by him is the same all the world over wherever followers of the

great Imam are to be found, whether in Turkey, Egypt, Arabia or India. I have, therefore, based my work, as already stated above, mainly on Kadri Pacha's Mussalman Code, and the rules of law laid down in the different Articles have been carefully collated with the original Arabic copy supplied to me by the kindness and courtesy of Lord Cromer. Such Arabic commentaries and works on Mussalman Law as have become recognized and acknowledged authorities in India, by virtue of their authenticity, antiquity or the erudition of their authors, I have utilized for the purpose of this treatise. Of these works I have given a short history in the Bibliography. I have further endeavoured to trace the original sources of every rule of law laid down in the different Articles and have collected the corresponding original Arabic texts in the Appendix, Article by Article, in order to enable the reader to go direct to the original sources without much trouble and find out for himself the true and correct law. I have also given references to Baillie's Digest of Mahomedan Law,* Hamilton's English translation of Hidayah,† and Macnaghton's Principles of Mahomedan Law,‡ for the purpose of enabling the reader immediately to see how those authorities lay down the same principles in an uncodified form. For the benefit of those of my readers who have the time or inclination to make a further research into the rules of law laid down in this treatise, I have given references to two admirable modern works relating to Kadri Pacha's Mussalman Code, viz., Monsieur Eug. Clavel's Commentaries entitled "Droit Musulman, du statut personnel et des successions d'après les différents rites et plus particulièrement d'après le rite Hanafite"§ and Professor

Mahomed Zaidu-nil-Ambani's Commentaries on *Al Ahkam-ul-Shariah-fil Ahwalil-Shaksiah.* I have also collected important decided cases in the Indian Courts and the Judicial Committee of the Privy Council, from 1795 to 1906, and arranged them under the different Articles in order to enable the reader to know the case-law bearing on them. Such Acts and Statutes as are applicable to the different Articles, have also been noted. In short, the object I have in view is to bring out a handy book on Mussalman Law with materials already alluded to, so that the minimum of labour on the part of the student may yield the maximum of result: whilst those with more time and patience have all the resources at their disposal for obtaining a fair mastery of the subject.

I also desire to note that I have carefully collected the important decided cases under the Shia School and inserted them in their proper places, in order to enable the reader to see the divergence of that branch of law from the Sunni School.

In the present treatise, among other things, I have dealt with the law relating to marriage, dower and divorce, the law relating to children including paternity and filiation, suckling, fosterage, the custody of children, maintenance of parents by their children, maintenance of relatives other than ascendants and descendants, and the law relating to Gifts, Wills and Executors. With the rise of the sun of learning in the West and of Western domination over the East, the study of Oriental languages in India has, owing to various causes, fallen into the back-ground, and Indian Mussalman youths are not infrequently obliged to learn their own Personal Law in English translations. It is hoped that it may be of some advantage

* Egypt, 1903.
to them to have a full and comprehensive exposition of Mussalman Law based on the original Arabic texts carefully selected for their benefit. It is a matter of common knowledge that in every well-regulated Indian Mussalman household, most of the rules on Mussalman Law are, consciously or unconsciously, strictly adhered to, although seldom, if ever, a case arising out of them comes up before a Court of Justice. An intimate acquaintance, therefore, with the law relating to the reciprocal rights and duties of husband and wife, of parents and children, and maintenance of relations, are of supreme importance. Mussalman religion and law are bound up together and the Koran itself contains a great code of rules regulating the whole of the private and public life of a Mussalman. As religious training and moral discipline are essential for the formation of character of a Mussalman youth, it is equally important for good government and good citizenship that he should be conversant with the true principles of his own Law either through the medium of Arabic or English.

The motive of many a crime among the Indian Mussalmans remains unfathomed, and the cause of many a life-long hostility untraced, for want of familiarity with the forces which influence and dominate the life of a Mussalman. I, therefore, venture to think that an acquaintance with the subject dealt with in this treatise may prove useful also to those called upon to undertake the task of administering justice to a large population where Mussalmans preponderate.

I have included the chapter on Missing Persons in this treatise, which, strictly speaking, does not belong to this volume, as I desire to indicate some of the important changes which have been introduced by the Indian Evidence Act. It was understood
for many years that a missing person could not be held to be dead under Mussalman Law until after the lapse of ninety years from his birth,* but recent decisions on the subject have laid down that such a rule of law was one of evidence only and fell within the purview of the Indian Evidence Act. I am inclined to take the same view with regard to the period of gestation under Mussalman Law,† viz., that it is only a rule of presumption which falls within the scope of the Indian Evidence Act. Thus it is highly important to draw a clear distinction between the rules of substantive Mussalman Law and those which purely belong to the province of adjective Law. The rules of Inheritance, Wakf and Pre-emption are not dealt with here, but should the reception of the present work be sufficiently encouraging, they may form the subject of a separate volume.

References to Sale's Koran have been given and cross-references to the different Articles are quoted at the foot of the page. I have carefully avoided Arabic or technical words, and wherever such words are used, I have given their English equivalents. The General Index along with the Summary of Contents and General Contents will, it is hoped, facilitate any search for references.

No one is more deeply conscious than myself of the defects that may have crept into this work, and I can only urge the numerous calls on my time and energy, apart from the pressure of official work, as an excuse for their presence. But if, in spite of these blemishes, "Institutes of Mussalman Law" serves in any way to lighten the burden of the student or the task of the

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* See "Institutes of Mussalman Law," p. 185.
† See Ibid, p. 322.
Bench and the Bar engaged in the practical application of Mussalman Law, I shall deem my labours amply rewarded.

Finally, I desire to record my thanks to various friends for assistance and encouragement; to the late Sir John Scott, for inspiring me with the idea of writing the present treatise; to the late Hon’ble Mr. Justice Gilbert Henderson, for fostering and developing that idea; to the Earl of Cromer for his kindness and courtesy in readily supplying me with necessary books and information; to the Hon’ble Sir John Stanley, Chief Justice, Allahabad High Court, for valuable suggestions and continuous encouragement; to Mr. F. K. Dobbin, Judge, Presidency Court of Small Causes, for the correction of the proofs; to Mr. M. Y. Gauher Ali, Barrister-at-Law, for helping me in translating the French of Kadri Pacha’s Mussalman Code into English; and lastly, to Mr. Gerald H. Carey, Barrister-at-Law, Cairo, Egypt, for revising my translations from the French into English.

A. F. M. ABDUR RAHMAN.

16, TOLTOLLAH, CALCUTTA;

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Durrul-Mukhtar (Lucknow, 1314, A. H.)—
“A note book, or Hashiyat, entitled the Hashiyat-al-Tahtawi Ala Durrul-Mukhtar, was printed and published at Bulak, in the year 1839 (A. H. 1254); but I have not seen it, and am not aware whether it be explanatory of the work of Al-Hiskafi, or of some other treatise bearing a similar title.”—Introduction to Morley’s Digest of Indian Cases, Vol. I, pp. cclxxxviii—cclxxxix.

Fatawa-i-Alamgiri (Lucknow, 1312, A. H.)—
“The Fatawa-i-Alamgiri was commenced in the year of the Hijrah 1067 (A. D. 1656), by order of the Emperor Aurangzeb Alamgir, by whose name the collection is now designated. It contains a bare recital of law cases, without any arguments or proofs; an omission which renders it defective for elementary instruction. The immense number of cases, however, compensate in some measure for this want, which is, moreover, supplied by the Hedayah, and other works; and the insertion of argument can the more readily be dispensed with, since the opinions of the modern compilers could not have been esteemed of equal authority with those of the older writers on jurisprudence, and the mere decisions, without comment or explanation, are equally applicable to particular
cases, when illustrated and explained by reference to works of authority as text books.”—Introduction to Morley’s Digest of Indian Cases, Vol. I, p. cclxxxix.

"Of the books of Futawa which have been mentioned, none appear to require further notice, except the Fatawa-i-Alamgiri. Mr. Hamilton, by an extraordinary mistake, has stated this work to have been composed in the Persian language, by the authority and under the inspection of the ‘Emperor Aurangzeb;' whereas it is well-known to have been written in Arabic, the usual language of Mahammudan law and science; and to have been translated into Persian, by order of the Emperor’s daughter, the Princess Zeb-oo-Nisa. Several copies of the Arabic original are in Calcutta; and some imperfect copies of the Persian version; or rather of parts of it. In the catalogue of books appertaining to the Nizamat Adalut (among which is an incomplete copy of the Arabic Fatawa-i-alumgeeree), the Kazee-ool-Koozat describes this work in the following terms:—‘It was commenced in A. H. 1067,' corresponding with the 11th year of Alamgir’s reign.”—Harington’s Analysis of the Bengal Regulations, Vol. I, p. 243.

Fatawa-i-Kazi Khan (Lucknow, 1295, A. H.)—

"The Fatawa-i-Kazi Khan, or collection of decisions of the Imam Fakhr-ad-Din Hasan Ben Mansur al-Uzjandi al-Farghani, commonly called Kazi Khan, who died in A. H. 592 (A. D. 1195), is a work held in the highest estimation in India, and indeed, is received in the Courts as of equal authority with the Hidayah of Burhan-ad-Din Ali, with whom Kazi Khan was a contemporary: it is replete with cases of common occurrence, and is therefore of great practical utility, the more especially as many of the decisions are illustrated by the proofs and reasoning on which they are founded.”—Introduction to Morley’s Digest of Indian Cases, Vol. I, p. cclxxxv.

"The Futawa-i-Kazi Khan by Fakhr-ood-Deen Husun, of Ouzjand, in Furghana, who was contemporary with the author of the Hidayah, and whose collection is esteemed of equal authority with that celebrated work, must, in some measure, be excepted from the above remark, as it illustrates many cases by the proofs and reasoning upon which the decision of them is founded.”—Harington’s Analysis of the Bengal Regulations, Vol. I, p. 236.


Fatawa-i-Khairiah (Egypt, 1300 A. H.)—

A collection of Fatwas by Khairuddin Ahmed-al-Faruqi, 1081, A. H.
Fatawa-i-Serajiah (Lucknow, 1295, A. H.)—

"The highest authority on the law of inheritance amongst the Sunnis of India is the Sirajiyah, which is sometimes called the Faraiz-as-Sajawandi, and was composed by Siraj-ad-Din Muhammad Ben Abd-ar-Rashid-as-Sajawandi, but at what precise time is uncertain. The Sirajiyah has been commented upon by a vast number of writers upwards of forty being enumerated in the Kashf-az-Zunun. The most celebrated of these commentaries, and the one most generally employed to explain the text, is the Sharifiyah by Sayyid Sharif Ali Ben Muhammad-al-Turjani, who died in A. H. 814 (A. D. 1411)."—Introduction to Morley’s Digest of Indian Cases, Vol. I, p. cclxxxi.

See also Kashf-uz-Zunun, Vol. IV, p. 358 (Leipzig.)

Fath-ul-Kadir (Lucknow)—

"The Fath-ul-Kadir lil Aajiz-al-Fakir, by Kamal-ad-Din Muhammad-as-Siwasi, commonly called Ibn Hammam, who died in A. H. 861 (A. D. 1456), is the most comprehensive of all the comments on the Hidayah, and includes a collection of decisions which render it extremely useful."—Introduction to Morley’s Digest of Indian Cases, Vol. I, pp. cclxix—cclxx.

"The Futhool-Kudeer is preferable to the whole as an ample collection of cases (rendering it equal in this respect to a Futawa), expressed with suitable brevity of language.”—Harington’s Analysis of the Bengal Regulations, Vol. I, p. 230.

See also Kashf-uz-Zunun, Vol. VI, p. 484 (Leipzig).

Hamavi (Lucknow, 1294 A. H.)—

A commentary on Ashbah-wan-Nazair by Ahmed bin Mohamed-ul-Hamavi, 1090, A. H.

Hidayah (Lucknow, 1290 A. H.)—

"The text of the Hidayah was published in the original Arabic at Calcutta in A. H. 1234 (A. D. 1818), and was again edited, together with its commentary, the Kifayah, by Hakim Moulavi Abdal-Majid in 1834.”—Introduction to Morley’s Digest of Indian Cases, Vol. I, p. cclxviii.

"The Hidayah is so well-known, from the English version of it, made by Mr. Charles Hamilton, and published in the year 1791, that it will be unnecessary to say much of it. The Kazee-ool-Koozat, in his catalogue of books already adverted to, describes it in the following terms: ‘The Hidayah is a commentary upon the Bidayut-ool-Moobtudee, and both the text and comment were composed by Shykh Boorhan-oo-
Deen Allee, son of Abu Bukr, of Murghheenan, who lived to the age of sixty-two; and, after employing thirteen years in the composition of the latter work, departed from this world A. H. 593. The general arrangement, and divisions of it, are adopted from the Jama-i-Sugheer of Imam Mohummud. It is celebrated amongst the learned for its selection of law cases, and connection of them with the proofs and arguments by which they have been determined. Wherefore in every age it has been esteemed by lawyers; many of whom have written comments and annotations upon it.' It is spoken of in nearly the same language, by the author of the Kushfo-o-Zunoon, who adds 'it is a rule observed by the composer of this work to state first the opinions and arguments of the two disciples (Aboo Yoosuf and Imam Mohummud); afterwards the doctrine of the great Imam (Aboo Huneefah); and then to explicate on the proofs adduced by the latter, in such manner as to refute any opposite reasoning on the part of the disciples. Whenever he deviates from this rule it may be inferred that he inclines to the opinion of Aboo Yoosuf and Imam Mohummud. It is also his practice to illustrate the cases specified in the Jama-i-Sugheer, and by Kudooree: intending the latter, whenever he uses the expression he has said in the book. In praise of the Hidayah, it has been declared, like the Koran, to have superseded all previous books on the law; that all persons should remember the rules prescribed in it; and that it should be followed as a guide through life.' This eulogium on the Hidayah is confirmed in a paper written by Moulayee Mohummud Rashid, one of the Mooftees of the Supreme Court of Judicature and Courts of Sudr Deewanee and Nizamut Adalut, as well as one of the most learned Mosulmans in India, who remarks on the text, and some of the principal comments, to the following effect. 'No text or commentary now extant, can be compared with the Hidayah as a digest of approved law cases, illustrated by the proofs and arguments which establish them.' It is therefore, with its comments, fit to be the standard of legal decision in the present times. Many commentaries have been written upon it: but four only, the Nihayah, Inayah, Kifayah and Futh-ool-Kudeer, are forthcoming in Bengal. The Nihayah was first composed: and has superior credit as being the original from which the others have borrowed. But the author of the Inayah has merited esteem by his studious analysis; and interpretation of the letter and meaning of the Hidayah. The Kifayah also deserved commendation, from its concise statement of the substance of other commentaries, as well as from some additions to them."—Harington's Analysis of the Bengal Regulations, Vol. I, pp. 237—239.

See also Kashf-uz-Zunun, Vol. VI, p. 479 (Leipzig).
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Jami-ur-Rumuz (Lucknow, 1301, A. H.)—

"The last commentary (on the Nikayah) written by Shams-ud-Din Muhammad-al-Khurasani Al-Kohistani in A. H. 941 (A. D. 1534), is entitled the Jami-ur-Rumuz, which is the fullest and the clearest of the lot, as well as one of the most useful law books frequently referred to in this country. This work was for several years adopted for study in the first and second classes of the Calcutta Madrassah."—Tagore Law Lectures, 1873, pp. 44—45.

Jawahir-i-Nayerah (Delhi)—

A commentary on the Kuduri by Abu Bakr bin Ali-ul-Haddadi-ul-Abbadi, 800, A. H.

Kunz-ul-Dukaik (Bombay)—

"The Kunz-ul-Dukayik has been already mentioned, as composed by Hafiz-oo-Deen, author of the Kafee and Wafee. It is a short general treatise of law, used in Mosulman Colleges, as an elementary book of instruction; but superseded, as a book of reference for legal exposition, by its commentaries; of which the following are extant in India. The Tabieen-ool-Hukayik, by Fukr-oo-Deen Aboo Mohummud Osman of Zyla, who died in A. H. 743. His comment is valued by the followers of Aboo Huneefah, as containing a complete refutation of the opposite doctrine of Shafiee. The Buhr-oo-Rayik, by the learned Zyn-ool-Aabideen Ibni-i-Nujeem, of Egypt, left incomplete at his death, A. H. 970; and unequally finished by his brother Siraj-oo-Deen Omur, who also wrote a commentary entitled the Nahr-i-Fayik, but of inferior merit to that of Zyn-ool-Aabideen, which is held in the utmost estimation; and is spoken of in the Kushf-oo-Zunoon as equalled only by the Futh-ool-Kadeer, Ibni-i-Homam's commentary on the Hidayah. The Mutlub-i-Fayik, or, as more generally called Aynee, by Budr-oo-Deen Mohummud Aynee, of Dubur in Arabia. This commentary is also esteemed, as containing an ample collection of law cases; and though surpassed, in this respect by Buhr-i-Rayik it has the advantage of having been brought to the conclusion by the author; whose erudition obtained him the title of Ulamah, in common with Zyn-ool Aabideen.

Another commentary on the Kunz-ul-dukayik, entitled Maadun, is known in India. But the name of the author has not been ascertained. The Eezab by Shykha Yahaya and Rumz-ool Hukayik by Kazee Budr-oo-deen Mahmood, are also noticed, with the names of some other commentators, in the Kushf-oo-Zunoon; but they are not celebrated, or quoted as authorities. The court of Nizamut Adalut possess an incomplete copy of the Buhr-oo-Rayik; on which the Kazee-oool-Koozat remarks (in his.
catalogue) that "it comprises a compilation of cases, general and particular; with the useful result of the author's researches upon a variety of legal questions; and is received as authentic by the followers of Aboo Huneefah in every city of Islam."—Harington's Analysis to the Bengal Regulations, Vol. I, p. 239—240.

"An-Nasafi is also the author of the Kanz-ad-Dakaik, a book of great reputation, principally derived from the Wafi, and containing questions and decisions according to the doctrines of Abu Hanifah, Abu Yusuf, the Imam Muhammad, Zufar, Ash-Shafii, Malik and others. Many commentaries have been written on his work: the most famous is the Bahr-ar-Raik, which may, indeed, almost be said to have superseded it in India."—Introduction to Morley's Digest of Indian Cases, Vol. I, p. cclxx.

See also Kashf-ns-Zunnun, Vol. V, p. 249 (Leipzig).

**Kurat-ul-Ayoon (Egypt, 1307 A. H.)**—
A supplemental commentary on Durrul-Mukhtār by Mohamed Alanddin Effendi bin Shaikh Mohamed Ameen, better known as Ibn Abideen.

**Munhat-ul-Khaliq (Egypt, 1307 A. H.)**—
A marginal commentary on Radd-ul-Muhtar by Mohamed Ameen, better known as Ibn Abideen, 1252, A. H.

**Radd-ul-Muhtar (Egypt, 1307, A. H.)**—
"Another commentary on the Durrul-Mukhtār is the Radd-ul-Muhtār. The Radd-ul-Muhtār is composed by Muhammad Amin, known by the name of Ibnu Abidin, and printed in Egypt, A. H. 1286, in five volumes of 4to size. This great work is occasionally referred to in this country."—Tagore Law Lectures, 1873, p. 46.

**Sharh-i-Vikayah (Lucknow, 1323 A. H.)**—
"The Vikayah which was written in the seventh century of the Hijrah, by Burhan-ash-Shariyat Mahmud, as an introduction to the study of the Ḥidayah, has been comparatively eclipsed by its Commentary, the Sharh-i-Vikayah, by Ubaid Allah Ben Masund, who died in A. H. 750 (A. D. 1349); this author's work combines the original text with a copious glossary explanatory and illustrative."—Introduction to Morley's Digest of Indian Cases, Vol. I, pp. cclxx—cclxxi.

"The text of the Vikayah, composed in the seventh century of the Hijrah, by Boorhan-oo-Shureeent Mahmood, son of the first Sudr-oo-Shureeent, like that of the Kunz-oo-Dukayik, has been superseded, for legal consultation, by its more extensive commentaries; especially by that of the
second Sudr-oo-Shureut, Obydoollah bin-i-Musaood, who died A. H. 750, distinguished by the title of Sharh-i-Vikayah; and combining, with the original treatise, an ample comment in illustration of it. But both are used in Mussulman colleges, for instruction in the science of law, preparatory to the study of the Hidayah; upon which the Vikayah is founded; being, as its title at length imports (Vikayah-oo-Riwayah, fee Musaeel-il-Hidayah), the Custos, guardian or preserver, of the reports of cases in the Hidayah. Other commentaries are mentioned in the Kushf-oo-Zunoon; but they are not known to be extant in India; or quoted "as authorities."—Harington’s Analysis to the Bengal Regulations, Vol. I, pp. 240—241.

Tafsirat ul-Ahmedia (Bombay, 1300 A. H.)—
A comprehensive commentary on the Koran by the well-known scholar Mulla Jeewan, 1130, A. H.

Tahtavi (Egypt, 1254, A. H.)—
"The most celebrated of the commentaries written on Durrul-Mukhtár is the ‘Tahtavi,’ a work used in this country."—Tagore Law Lectures, 1873, p. 46.

Tankihul Hamidiah (Egypt, 1310)—
A treatise on Mussalman jurisprudence by Ibn Abideen, 1252, A. H.

Umdat-ul-Riayah (Lucknow)—
A commentary on Sharh-i-Vikaya written by Moulana Abdul Hai of Lucknow.
CORRIGENDA.

Page 1 Last line for 'Law' read 'Laws.'

2 line 25 for 'XVII of 1876' read 'XVIII of 1876.'

4, 24, 26, 27, 29, 30, 88, 150, 175, Foot-note, for 'Art. 482' read 'Art. 553' for 'Art. 495' read 'Art. 566.'

38 line 28 place a colon after 'consideration.'

38 Foot-note 1, for 'Prophed' read 'Prophet.'

46 line 12 for 'All.' read 'All., 77.'

46 lines 26, 27 for 'one' read 'she.'

61 line 31 for 'wife' read 'a wife.'

63 line 6 for 'I. L. R., All.' read 'I. L. R., 6 All.'

75 In marginal notes of Art. 123 for 'Christian' read 'Christian wife.'

79 lines 5, 8 for 'he' read 'it,' and for 'his' read 'its.'

98 line 20 omit the word 'of' before 'her travelling expenses.'

99 after the line 8 add 'See section 245-A of the Code of Civil Procedure (Act XIV of 1882).'

101 In marginal notes of Art. 175 for 'must be husband's calling' read 'must be regulated by husband's calling.'

105 In marginal notes of Art. 185 for 'another' read 'another wife.'

111 line 28 omit the words 'See the Indian Limitation Act (XV of 1877).'

112 after line 10 add the words 'See Rashid Karmali v. Sherbanoo, I. L. R., 29 Bom., 85 (1904).'

148 line 14 for 'or' read 'and,' and also in marginal note for 'or' read 'and.'

150 line 2 for 'paying' read 'receiving.'

165 last but one line for 'are' read 'is,'

172 after line 13 add 'See Act XXI of 1850.'

199 line 17 omit the word 'if.'

217 line 5 for 'him' read 'it.'

220 line 1 for 'born' read 'born and married.'

232 line 1 for 'of age' read 'adults.'

248 line 28 for 'prevailed' read 'prevail.'

291 In marginal notes of Art. 501 omit 'made.'

292 line 28 for 'Creditors whose debts were before the last contracted' read 'Creditors whose debts were contracted before the last.'

293 line 22 for 'will last' read 'last will.'

323 line 24 for '12 All.' read '12 All.'
INSTITUTES OF MUSSALMAN LAW.

BOOK I.

MARRIAGE.

(Art. 1—149.)

CHAPTER I.

PROPOSALS OF MARRIAGE.

(Art. 1—4.)

Art. 1. A proposal of marriage may be made to any woman who is free from the marriage tie and from Iddat.¹

Notes.


The chapter entitled "Women" deals with matters relating to women, marriage, divorce, dower, &c.—Sale's Koran, Chap. IV, p. 59.

Where a Mahomedan married woman is not repudiated by her husband, she is not entitled legally to marry another—Ameena v. Kuttoo Khan, 7 Sel. Rep., S. D. A., 32 (1842).

Nor even a proposal of marriage can be made to a woman who is a married woman—See Dec. Mad. S. D. A., 157 (1855).

In suits regarding marriage and caste, and all religious usages and institutions, the Mahomedan Law with respect to

¹ Retreat or term of probation, see Art. 310.

AR, IML
Mahomedans are to be considered as the general rule by which judges are to form their decisions, and their Lordships of the Privy Council could conceive nothing more likely to give just alarm to the Mahomedan community than to learn by a judicial decision, that their law, the application of which has been secured to them, is to be overridden upon a question which so materially concerned their domestic relations—*Buzloor Ruheem v. Shumsoonnissa Begum*, 11 M. I. A., 614 (1872).

In India the personal law of Mussalmans on marriage has been made applicable to Mussalmans by Statutes and Acts:

The Bengal, North-Western Provinces and Assam Civil Courts Act (XII of 1887), section 37, is as follows:—

(1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding marriage or caste or any religious usage or institution, the Mahomedan Law in cases where the parties are Mahomedans shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished.

(2) In cases not provided for by sub-section (1), or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

See The Punjab Laws Act (IV of 1872), s. 5, amended by Act XII of 1878, s. 1; The Madras Civil Courts Act (III of 1873), s. 16; The Central Provinces Laws Act (XX of 1875), s. 5; The Oudh Laws Act (XVII of 1876), s. 3; The Lower Burma Courts Acts (XI of 1889, s. 4 and VI of 1900); Bombay Regulation IV of 1827, s. 28. See also 21 Geo. III, Chap. 70.

In Bengal, Act I (B. C.) of 1876, provides for the voluntary registration of Mahomedan marriages and repudiations.

**Art. 2.** It is not lawful to openly propose marriage to a woman while she is observing *Iddat*, consequent upon either a revocable or irrevocable repudiation, or upon widowhood. It is, however, allowable to express a desire to obtain a widow's hand, though it is not lawful to enter into a contract of marriage with her until the period of her *Iddat* has expired.

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1 See Art. 310.  
2 See Art. 217.
PROPOSALS OF MARRIAGE.

Notes.


Marriage with a woman within 4 months and 10 days (Iddat) from her husband’s death is invalid—Dec. Mad. S. D. A., 157 (1855).

Art. 3. A suitor is allowed to see the face and hands of the woman to whom he proposes marriage.

Notes.


Art. 4. No marriage is complete without declaration and acceptance. Promises of marriage, the reading of Al Fatiha, or the entering into an agreement are not sufficient. Where such promises are made or the agreement entered into, each party may retract even after acceptance by the woman, or by her guardian if she is a minor, and even after the intended husband has made presents with a view to marriage, or has paid the whole or part of the stipulated dower.

Notes.


A written agreement does not, as a rule, constitute a contract of marriage; it is only one of the modes of proving it—Clavel, Vol. 1, p. 10.

1 See Art. 33.  
2 See Art. 70.
CHAPTER II.

CONDITIONS REQUISITE FOR A VALID MARRIAGE, AND THE LEGAL EFFECTS OF MARRIAGE.

(Arts. 5—18.)

Art. 5. Marriage is legally contracted by a declaration made by one contracting party and by acceptance proceeding from the other.

The declaration may be made by either the man or the woman, or by their guardians when the contracting parties are minors or legally incompetent. Where the parties are legally competent, the declaration may be made by their agents.

Notes.


Articles 27 and 132 of the text clearly show that marriage contracted during the period of Iddat, is absolutely null and void, whether there had been cohabitation or not. Article 2 does not permit even of proposing marriage to a woman while she is observing Iddat—Clavel, Vol. 1, p. 17.

It is enacted by section 11 of the Indian Contract Act (IX of 1872), that every person is competent to contract, who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

1 See Arts. 482, 495. 2 See Art. 57.
By section 2 of the Indian Majority Act (IX of 1875), the capacity of a Mahomedan in the matter of marriage is not affected, and he, being subject to his own personal law, is entitled to enter into a contract of marriage when he has attained puberty. The age of puberty, according to Mahomedan law, depends on the physical signs which denote that state, and when no such signs are visible, the age of majority in either sex is fixed on the completion of the 15th year.

When a child is given in marriage by any person other than the father or grandfather, he or she has the option of either ratifying it or repudiating it on attaining puberty—Badal Aurat v. Queen-Empress, I. L. R., 19 Cal., 79 (1891).

It is essential according to Mahomedan law that the husband should be capable of giving a valid consent, or should be represented by some one who can lawfully consent on his behalf; and that the girl also when a minor should be represented by a duly authorized person for the purpose of binding her—Sobrati v. Jungli, 2 C. W. N., 245 (1898).

Consent of a Muslim girl who is of age is essential to make the marriage valid—Asghar Ali v. Mubabbat Ali, 22 W. R., 403 (1874).

Although neither writing nor any religious ceremony is necessary to the validity of a marriage contract, words of proposal and acceptance must be uttered by the contracting parties or their agents in each other's presence and hearing, and in the presence and hearing of two male or one male and two female witnesses, who must be sane and adult Muslims, and the whole transaction must be completed at one meeting—Aklemannissa Bibi v. Mahomed Hatem, I, L. R., 31 Cal., 849 (1904).

Although marriage is a civil contract, it is not positively prescribed to be reduced to writing, but the validity and operation of the whole are made to depend upon the declaration or proposal of one, and the acceptance or consent of the other, of the contracting parties or of their natural and legal guardians before competent and sufficient witnesses:—Abdul Kadir v. Salima, I. L. R., 8 All., 149, F. B., per Mahmood, J. (1886).

The betrothal made by a father cannot be annulled by a daughter on her coming of age—Fukhrunnissa v. Ally Raza, 6 Sel. Rep., S. D. A., 368 (1840).
The *nikah* form of marriage is well known and established amongst Mahomedans:—*Moneeroodeen v. Ramdhun Bajeekur*, 18 W. R. Cr., 28, *per* Kemp, J. (1872).


**Art. 6.** Where both the contracting parties are present, the declaration and acceptance must be expressed at the same meeting; however long it may last: otherwise the marriage is not valid. It is essential also that the attention of the contracting parties should not be distracted by any other occupation.

It is necessary that each party should hear the words of the other, which may even be uttered in a foreign language, so long as both parties know that marriage is being contracted.

It is necessary also that the acceptance in no way varies from the declaration.

**Notes.**


Baillie, Bk. 1, Chap. 1, pp. 5, 10, 11; Macn. Prin., Chap. 7, s. 3, p. 6; Zaidu-nil-Ambani, Vol. 1, p. 16.

Marriage must be completed at one meeting—*Aklemannissa Bili v. Mahomed Hatem*, I. L. R., 31 Cal., 849 (1904).

**Art. 7.** A marriage is not valid unless it is contracted in the presence of two male witnesses, or of one male and two female witnesses.

The witnesses must be adult, of sound mind, and Muslims. They must hear the speech of both the parties and must be aware that marriage is being
contracted. They may be blind, profligate, descendants of both the parties or of one of them.

A deaf man cannot act as witness to marriage: nor will a marriage contract be valid, if made in the presence of a witness who is asleep or intoxicated, and therefore unable to understand what he heard.

Notes.


See Sections 118 and 134 of the Indian Evidence Act (I of 1872).

As to the Mahomedan law of Evidence having ceased to have any validity in Indian Courts, see the Report of the Commissioners appointed to prepare a body of substantive law for India; See also Queen v. Khyroollah, 6 W. R., Cr. 21, F. B., per Peacock, C. J. (1866).

When both parties are Mussalmans, marriage cannot be contracted, but in the presence of two male witnesses or of one man and two women—Butoolun v. Koolsoom, 25 W. R., 444 (1876).

A suit for jactitation of marriage lies in a Civil Court in India—Azmat Ali v. Mahmud-ul-Nissa, I. L. R., 20 All., 96, per Edge, C. J. (1897).


Art. 8. When a father contracts for the giving of his adult daughter in marriage, with her consent and in her presence, one male witness or two female witnesses are sufficient to render the marriage valid.

This provision also applies when the father is present at the marriage of his minor daughter, whom

One male or two female witnesses necessary when a father gives his adult daughter in marriage.
he has authorized a third party to contract in marriage.

**Notes.**

_Durrul-Mukhtâr, Vol. 2, p. 2._


**Art. 9.** When both parties are present, the declaration and acceptance must be expressed verbally.

When the proposing party is absent, and makes his proposal of marriage in writing, the woman to whom it is addressed must read it out to the witnesses or inform them that such a person has written to her proposing marriage, and she must at the same meeting express her acceptance.

**Notes.**


Baillie, Bk. 1, Chap. 1, p. 11; Macn. Prin., Chap. 7, s. 6, p. 56; Zaidu-nil-Ambani, Vol. 1, p. 22.

**Art. 10.** The marriage of the dumb is validly contracted by signs, provided the signs used clearly indicate a desire to be married.

**Notes.**


**Art. 11.** Marriage contracted without the amount of the dower being fixed, or without settlement of any dower¹ at all, is none the less valid, and the contract entitles the wife to her proper dower.²

¹ See Art. 12. ² See Art. 78.
CONDITIONS REQUISITE FOR VALID MARRIAGE.

Notes.


It is not necessary by Mahomedan law that dower should be agreed upon before marriage: it may be fixed afterwards—Kamar-un-nissa Bibi v. Hussaini Bibi, I. L. R., 3 All., 266, P. C. (1880).

For widow’s possession of property in lieu of dower, see Nowsha Begum v. Umrao Begum, 7 N.-W. P., H. C. R., 60 (1878).

A widow is entitled to a lien for whatever dower remains due to her, although there may be a dispute as to what is the amount actually due—Ahmed Husain v. Khadija, 3 B. L. R., A. C., Footnote, 28 (1868).

Art. 12. Marriage is not valid when contracted subject to a condition or circumstance, the realisation of which is uncertain.

When it is contracted under an illegal condition, the marriage is valid and the condition void; such would be the marriage in which the husband stipulates that there should be no dower.¹

Notes.


Art. 13. Temporary marriage or marriage in Mutah form, the duration of which is limited to a fixed period, cannot be validly contracted.

Notes.


¹ See Art. 11.
According to the Sunni school of Mahomedan law, a marriage contracted under the form of Mutah is void, but according to the Shiah school such a marriage is perfectly valid—In the matter of the petition of Luddun Sahiba, I. L. R., 8 Cal., 736 (1882).

See also Mahomed Abid Ali Kumar Kadar v. Ludden Sahiba, I. L. R., 14 Cal., 276 (1886).

Art. 14. The marriage contracted under the form of Mutah, or mere enjoyment is void. Neither of the parties inherits from the other, even when the marriage is contracted in the presence of witnesses.

Notes.


Art. 15. A marriage by exchange is valid, and each wife is entitled to the proper dower.¹

A marriage by exchange is one in which a man gives his daughter or his sister in marriage to another man without dower, at the same time marrying the sister or daughter of the latter as compensation.

Notes.


Art. 16. The contracting parties in a marriage cannot reserve any option with regard to seeing each other, nor can they impose any other conditions whatsoever.

¹ See Arts. 77, 78.
If the husband, verbally or in writing, stipulates in the marriage contract for beauty or virginity in the woman, or for the absence of any fault in her, and makes such stipulation a condition of his union with her, or if the wife on the other hand stipulates for the total absence of any malady or infirmity in her husband, the contract remains valid, and the stipulation is null and void. Neither party can demand the cancellation of the marriage in the event of the non-fulfilment of the conditions stipulated for.

A wife only has the option of having the marriage cancelled when her husband proves to be impotent.\(^2\)

**Notes.**


**Art. 17.** As soon as the marriage is validly contracted, the marriage ties are established, and the rights and duties of the married parties\(^3\) commence, even before consummation. A valid marriage contract renders the husband liable towards the wife for the proper dower\(^4\) in default of any stipulated dower, and obliges him to maintain\(^5\) her so long as she is not rebellious\(^6\) or not too young for sexual intercourse or to be a companion to him in his house. It also renders lawful sexual intercourse between the parties, assures the husband marital authority,\(^7\) and makes it binding upon the wife to accede to her husband’s desire where such desire is lawful; it prevents her leaving her husband’s house without his permission or without reasonable excuse. Such a contract

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1 See Art. 48.  
2 See Art. 298.  
3 See Art. 206.  
4 See Art. 78.  
5 See Art. 166.  
6 See Art. 171.  
7 See Art. 206.
further enjoins on her the duty of properly performing the household duties after having received in full the prompt part of the dower; it also creates affinity and the prohibitions arising therefrom, and finally it entitles each party to inherit from the other.

Notes.


This Article leaves no room for any controversy on the conclusive effects of the marriage independently of consummation. Once the marriage is validly contracted the ties of marriage are secured, the rights and duties of husband and wife commence even before consummation—Clavel, Vol. 1, p. 48.

See Section 488 of the Code of Criminal Procedure (Act V of 1898); Abdur Rohoman v. Sakhina, I. L. R., 5 Cal., 558 (1879). In the matter of the petition of Din Muhammad, I. L. R., 5 All., 226 (1882); In the matter of the petition of Luddun Sahiba, I. L. R., 8 Cal., 736 (1882).

On the legal effects of marriage, Mahmood, J., says:—"These authorities leave no doubt as to what constitutes marriage in law, and it follows that, the moment the legal contract is established, consequences flow from it naturally and imperatively as provided by the Mahomedan law. I have said enough as to the nature of the contract of marriage, and in describing its necessary legal effects I cannot do better than resort to the original text of the Fatawa-i-Alamgiri, which Mr. Baillie has translated in the form of paraphrase, at page 13 of his digest, but which I shall translate here literally, adopting Mr. Baillie's phraseology as far as possible:—"The legal effects of marriage are that it legalizes the enjoyment of either of them (husband and wife) with the other in the manner which in this matter is permitted by the law; and it subjects the wife to the power of restraint, that is, she

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1 See Art. 73.
2 See Arts. 19, 20.
becomes prohibited from going out and appearing in public; it renders her dower, maintenance, and raiment obligatory on him; and establishes on both sides the prohibitions of affinity and the rights of inheritance, and the obligatoriness of justness between the wives and their rights, and on her it imposes submission to him when summoned to the couch; and confers on him the power of correction when she is disobedient or rebellious, and enjoins upon him associating familiarly with her with kindness and courtesy. It renders unlawful the conjunction of two sisters (as wives) and of those who fall under the same category.

That this conception of the mutual rights and obligations arising from marriage between the husband and wife bears in all main features close similarity to the Roman law and other European systems which are derived from that law, cannot, in my opinion, be doubted; and even regarding the power of correction, the English law seems to resemble the Mahomedan, for even under the former 'the old authorities say the husband may beat his wife'; and if in modern times the rigour of the law has been mitigated, it is because in England, as in this country, the criminal law has happily stepped in to give to the wife personal security which the matrimonial law does not. To use the language of the Lords of the Privy Council in the case already cited:—'
The Mahomedan law, on a question of what is legal cruelty between man and wife, would probably not differ materially from our own, of which one of the most recent expositions is the following:—'There must be actual violence of such a character as to endanger personal health or safety, or there must be a reasonable apprehension of it.' 'The Court', as Lord Stowell said in Evans v. Evans, 'has never been driven off this ground.'

Now the legal effects of marriage, as enumerated in the Fatawa-i-Alamgiri, come into operation as soon as the contract of marriage is completed by proposal and acceptance; their initiation is simultaneous, and there is no authority in the Mahomedan law for the proposition that any or all of them are dependent upon any condition precedent as to the payment of dower by the husband to the wife.'—Abdul Kadir v. Salima, I. L. R., 8 All., 149, F. B. (1886).
Art. 18. Every marriage contracted without witnesses or without one of the conditions requisite for the validity of a marriage is radically void, and failing the voluntary separation of the parties must be cancelled by a judge.

Notes.


A marriage, contracted without witnesses, produces no effect. When cancelled before cohabitation or any equivalent act, it creates no prohibition of affinity, nor does it entitle the survivor to inherit from the party dying first. Where the husband has settled no dower in the contract and the marriage is cancelled after actual consummation or after the disappearance of the wife’s virginity, the wife is entitled to her proper dower—Butoolun v. Koolsoom, 25 W. R., 444 (1876).

Cohabitation as husband and wife would be evidence of a marriage if the parties were Mahomedans, or persons between whom a valid marriage could be celebrated—Manowar Khan v. Abdullah Khan, 3 N.-W. P., H. C. R., 177 (1871).

Marriage will be presumed when there has been continued cohabitation and when children have been born during that intercourse—Kureem-oon-Nissa v. Ata-ool-lah, 2 Agra, H. C. R., 217 (1867); Masit-un-Nisa v. Pathani, I. L. R., 26 All., 295 (1904).


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1 See Art. 7.
2 See Arts. 134, 172.
CHAPTER III.

IMPEDIMENTS TO MARRIAGE.

(Arts. 19—32.)

Art. 19. It is not lawful for a man to marry more than four wives at one time.

Notes.


See Sale's Koran, Chap. IV, p. 59.

The Mahomedan law prohibits the marrying of more than four wives only in case all four are living—Shumsoonissa v. Gouher Ali, 4 Sel. Rep., S.D.A., 359 (1827).

An agreement made by a man not to marry a plurality of wives is not illegal according to Mahomedan law—Hurroon v. Khyroollah, 1 Fulton's Rep., 361, per Ryan, C. J. (1838).

Art. 20. For the validity of marriage it is necessary that there should be no prohibition affecting the parties.

Notes.


Art. 21. Prohibitions are either perpetual or temporary. The causes that produce perpetual prohibitions are legitimate and natural relationship, affinity and fosterage.¹

The causes that create temporary prohibitions are as follow:—The union with two women related to one

¹ See Art 377.
another within the prohibited degree; the union with more than four women at one time; the absence of a heavenly and revealed religion; a final repudiation or one pronounced three times; and the fact that the woman is another man's wife or is observing *Iddat*, consequent upon repudiation or widowhood.

**Notes.**


The absence of a heavenly or revealed religion causes temporary prohibition to marriage. Both schools, Shiah and Sunni, prohibit sexual intercourse between a Mahomedan woman and a man who is not of her religion—*Himmut Bahadur v. Sahebzadee Begum*, 14 W. R., 125 (1870).

A Mahomedan woman cannot enter into a contract of marriage with a man who is not a Mussulman—*Bakhshi Kishen Prasad v. Thakur Das*, I. L. R., 19 All., 375 (1897).


**Art. 22.** A man is forbidden to marry his mother, his grandmother, how high soever; his daughter, his son's daughter, or daughter's daughter, how low soever; his sister, his sister's daughter or brother's daughter, how low soever; his paternal or maternal aunt.

The corresponding male relations are forbidden to the woman. Marriage is permissible between first cousins.

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* See Art. 22.  
* See Art. 31.  
* See Art. 310.  
* Or any woman above her in the direct line of ascent.  
* Or any woman below her in the direct line of descent.
Impediments to Marriage.

Notes.


See Sale’s Koran, Chap. IV, pp. 62, 63.

Art. 23. A man is forbidden to marry the daughter of his wife with whom he has consummated marriage, and the mother of the wife with whom he has validly contracted marriage.

Notes.


Art. 24. A man, who has had illicit intercourse with a woman, can marry neither her mother nor her daughter, and the woman herself is forbidden to his father and his son.

Notes.


Art. 25. Fosterage produces the same impediments as legitimate and natural relationship, with the exceptions mentioned in the Chapter on Suckling.

Notes.


Notes.

1 See Bk. IV Chap. II, S. 1, Arts. 365-374.
Marriage is not valid with the sister, aunt or niece of a wife that is living.

**Art. 26.** No one can marry the sister, the aunt or the niece of the woman with whom he is still united in marriage, or of the wife that he has repudiated and who has not yet completed the period of *Iddat*. But if the woman who causes the impediment should die or should the marriage be dissolved by repudiation in any form, the impediment would be removed, and after completion of the *Iddat*, marriage with the above-mentioned women would be lawful.

**Notes.**


See Sale's Koran, Chap. IV, entitled 'Women,' p. 59.


When a man marries two sisters by one contract, and one marriage is known to precede the other, the marriage which is the later of the two is absolutely void—Azizunnissa Khatoon v. Karimunnissa Khatoon, I. L. R., 23 Cal., 130 (1895).

**Art. 27.** Before completion of the prescribed period, marriage is not permitted with a woman in *Iddat*, whether such *Iddat* is in consequence of repudiation, the husband's death, or the cancellation of a void marriage.

**Notes.**


Baillie, Bk. 1, Chap. 3, p. 31; Zaidu-nil-Ambani, Vol. 1, p. 51; Clavel, Vol. 1, p. 17.

1 See Art. 310.  
2 See Art. 217.
Art. 28. It is not lawful for a man to take back his wife, whom he has repudiated three times, until she has been legally married to another man, who has effected actual consummation of marriage with her and has subsequently repudiated her, or has died, and until she has completed the prescribed period of *Iddat.*

Notes.


Art. 29. It is not lawful to marry a woman in a pregnant condition when the author of the pregnancy is known.

But a man may marry a woman pregnant by illicit intercourse, on condition that no cohabitation is permissible until after her delivery, unless it is the man that rendered her pregnant who marries her.

Notes.


Art. 30. Any man having four lawful wives cannot marry a fifth, until he has repudiated one of the four and waited until the period of *Iddat,* consequent upon such repudiation, has expired.

Notes.


Where a man has married four slave girls, his union with a free woman is not the fifth marriage and therefore valid—

1 See Art. 248. 2 See Art. 310.
Non-Muslim women who are lawful to Muslims.


Art. 31. A Muslim can marry non-Muslim women whose religion is founded on the scriptures, that is to say, Christians or Jewesses settled in Muslim States, or elsewhere.

Notes.


See Sale’s Koran, Chap. V, p. 82.

A woman of the Shiah sect, cannot contract a valid marriage with a Christian—Bakhshi Kishen Prasad v. Thakurdas, I. L. R., 19 All., 375 (1897).

Art. 32. It is unlawful for a Muslim to marry fire-worshippers, sabæns or star-worshippers, whose religion is not based on any holy book.

Notes.


According to Mahomedan law, both the Sunni and Shiah schools prohibit marriage between a Mussalman woman and a man who is not of her religion—Himmun Bahadur v. Sahebzadee Begum, 14 W. R., 125 (1870).

Continued cohabitation between a Mahomedan and a Hindu woman does not raise presumption of marriage—Monowar Khan v. Abdoollah Khan, 3 N.-W. P., H. C. R., 178 (1871).

See In the matter of Ram Kumari, I. L. R., 18 Cal., 264 (1891); Abdul Razack v. Jaffer Bindaneem, L. R., 21 I. A. 56 (1893).

1 See Art 21.
CHAPTER IV.
GUARDIANSHIP IN MARRIAGE (VILAYA).

(Art. 33—56.)

SECTION I.—QUALIFICATIONS, NECESSARY FOR, AND DUTIES OF, A GUARDIAN IN MARRIAGE.

(Art. 33—43.)

Art. 33. A guardian in marriage, must be adult, of sound mind and a Muslim. A profligate person is not disqualified from becoming a guardian.

Notes.

The father who is an apostate from the Mahomedan faith cannot be the guardian in marriage of his daughter, and consequently his consent is not necessary—In the matter of Mahin Bibi, 13 B. L. R., 160 (1874).

See Guardian and Wards Act (VIII of 1890), Chap. III.

Art. 34. The intervention of a guardian is an essential condition to the validity of the marriage of minors, and of adults who are insane, but it is not necessary for the validity of marriage between persons who are adult and of sound mind.

Notes.

1 See Art. 44.
The Hanifites hold that a girl who arrives at puberty, without having been married by her father or guardian, is legally emancipated from all guardianship, and can select a husband without reference to his wishes—Muhammad Ibrahim v. Gulam Ahmed, 1 Bom. H. C. R., 236, per Couch, J. (1864).

Art. 35. The guardians having the right to intervene in the marriage of minors and of adults who are insane, are the nearest Asab\(^1\) relations,\(^2\) following the order of inheritance, the nearer excluding the more remote.\(^3\)

The father of a family\(^4\) is the natural guardian of his minor children, failing the father, the guardianship devolves upon the paternal grandfather, then upon the line of collateral male relations, \textit{viz.}, the full-brother, the half-brother by the father's side, the son of the full-brother, the son of the half-brother by the father's side, the full-uncle, the half-uncle by the father's side, the son of the full-uncle, the son of the half-uncle by the father's side.

Notes.


Art. 36. Failing Asab relations, the right of guardianship devolves upon the female line in the following order:

The mother, paternal grandmother, daughter, granddaughter born of a son or daughter, their descendants, maternal grandfather, full-sister, half-sister by the father's side, uterine brother and sister, their

\(^1\) Agnate.  \(^2\) See Art. 139.  \(^3\) See Art. 52.  \(^4\) See Art. 44.
descendants, then upon the other *Zavil Arhams*,\(^1\) viz., the paternal aunt, maternal uncle, maternal aunt, daughters of aunts, their descendants, following the established order.

**Notes.**


The nearer guardian being in jail, and being precluded by his absence from acting as guardian in marriage, the marriage contracted by the mother and grandmother of the minor was held lawful—*Kaloo v. Guriboollah*, 13 B. L. R., 163, *per* Kemp, J. (1868).

In the case of apostacy of father, mother’s consent held sufficient—In the matter of *Mahin Bibi*, 13 B. L. R., 160 (1874).

**Art. 37.** Minors having no near or remote relation, are subject to the guardianship of the ruling authority, or the judge, duly authorized to contract in marriage orphans of either sex, who are within his jurisdiction.

**Notes.**


**Art. 38.** The executor under a will has no authority to contract his wards in marriage, even though the father in his will should have conferred this power upon him, unless this right is acquired by relationship, or is vested in him by a judge, and no other person exists having preference over him.

**Notes,**


Baillie, Bk. 1, Chap. 4, p. 48; Zaidu-nil-Ambani, Vol. 1, p. 63.

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\(^1\) Uterine relations.
Art. 39. Muslims cannot act as guardians to non-Muslims in their marriages, nor in the administration of their property, unless it is in the capacity of ruling authority, or its representative. Non-Muslims can, however, act as guardians to non-Muslims, both in their marriages and in the administration of their property.

Notes.


Art. 40. A remote relation has not the right to contract minors in marriage, if there is a nearer relation fulfilling the necessary conditions for exercising guardianship.

But if the nearer relation is absent and at such a distance that the chosen bridegroom's withdrawal is to be feared before the arrival of the reply, the right of guardian passes to the next nearest relation, who can validly contract the minor's marriage without the nearer relation being able to demand its cancellation. It would be the same if the nearer relation were legally incompetent.¹

Notes.


Art. 41. If the nearer relation refuses a proposal of marriage made to his ward, the more remote relation has not the right to contract the ward in marriage.

¹ See Art. 482.
GuARDIANSHIP IN MARRIAGE.

This right is vested in the judge, before whom the complaint is lodged, even when the refusal proceeds from the father. The Judge, on being satisfied that there is no sufficient cause for the refusal, that the husband is suitable, and that the dower settled on the girl is equal to the proper dower, shall, himself or by his deputy, contract the marriage in the name of the refusing party. But if the refusal of the proposal was based on good grounds, such as inferiority, either of the husband's condition, or of the dower settled on the girl, the judge cannot give her in marriage against the wish of her relation.

Notes.

Baillie, Bk. 1, Chap. 4, p. 50; Zaidu-nil-Ambani, Vol. 1, p. 66; Clavel, Vol. 1, p. 54.

Art. 42. Where there are two relations of the same degree, either can validly contract the ward in marriage; and, so long as the marriage is validly contracted, ratification by the other relation is not necessary.

Notes.

Baillie, Bk. 1, Chap. 4, p. 49; Zaidu-nil-Ambani, Vol. 1, p. 67.

Art. 43. The judge, empowered to give female orphans in marriage, cannot contract one to himself, nor can he contract her to one of his ascendants or descendants.

Notes.

Baillie, Bk. 1, Chap. 4, p. 47; Zaidu-nil-Ambani, Vol. 1, p. 68.

1 See Art. 62. 2 See Art. 78.
SECTION II.—MARRIAGE OF MINORS AND OF ADULTS, WHO ARE LEGALLY INCOMPETENT.¹

(Art. 44–56.)

Art. 44. The father of a family has the power of compelling his minor children of either sex, to enter into the state of marriage, even when the daughter is not a virgin. This right of compulsion is extended to the paternal grandfather and all other guardians fulfilling the necessary conditions.²

Adults of either sex afflicted with imbecility or habitual madness, and who have been without lucid intervals for a whole month, are judicially in the same position as minors, and like them, are subject to the right of compulsion.

Notes.


Baillie, Bk. 1, Chap. 4, p. 46; Zaidu-nil-Ambani, Vol. 1, p. 69.

Art. 45. Where the father or grandfather contracts in marriage his son, grandson, daughter or granddaughter, they being minors or adults who are legally incompetent, the marriage is valid, and its consequences are binding without any one of the above being able, on reaching majority, to demand its cancelment. This is so, even when the boy suffers loss by the heavy amount of dower paid, or when the girl suffers by the inferior amount settled on her, or by the husband not being her equal.³

It is the same in the case of an insane woman contracted in marriage by her son who is also her guardian.

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¹ See Art. 482. ² See Art. 33. ³ See Art. 62.
GUARDIANSHIP IN MARRIAGE.

Notes.


Art. 46. Where the father or the grandfather, reputed profligate, compels to enter into the state of marriage his son, grandson, daughter or granddaughter, whether minor or adult who is legally incompetent, and seriously injures the boy by making him pay a dower greater than that which he is bound to provide, or seriously injures the girl by accepting a dower smaller than that which ought to have been settled on her, or if he marries her to a husband not her equal, the marriage shall be invalid.

Notes.


Art. 47. When a guardian, other than the father or grandfather, has a boy or girl placed under his guardianship, and contracts one of them in marriage to an unsuitable person, or causes the ward serious injury by reason of the dower given or accepted, the marriage is invalid, even when it is a judge who has contracted it.

Where a guardian marries his ward to a suitable person and the dower is equal to the proper dower, the marriage is valid, but the ward upon attaining majority or when informed of such marriage, is entitled to demand its dissolution, even when the marriage has been consummated.

1 See Art. 482.  2 See Art. 62.  3 See Art. 78.
Notes.


According to Mahomedan law of the Sunni school, a marriage by a minor is voidable only, that is, complete unless avoided by the dissent of the girl on her reaching puberty.

According to the Shiah doctrine, a fazoolee marriage requires assent of the minor, after attaining puberty and mature understanding, to perfect it, and that, in the event of death intervening before such assent is given, the marriage remains incomplete. Without the assent of a girl after attaining puberty, the marriage remains imperfect and does not create any rights and obligations.

In the absence of evidence to the contrary, the presumption of Mahomedan law is that a girl attains puberty when she reaches the age of 9 years—Mulka Jehan v. Mahomed Uskhrree, L. R., I. A., Sup. Vol., 192 (1873).

See Khajoorooniissa v. Rowshan Jehan, I. L. R., 2 Cal., 184, P. C. (1876).

Art. 48. If the wards married under compulsion prefer, on attaining puberty, to have their marriage dissolved, they must seek their remedy before a judge.

The judge, after having ascertained that their right has not lapsed, will pronounce the dissolution of the marriage. If one of the parties dies before the judge has pronounced his decision, the survivor is entitled to inherit from the deceased, and the dower settled on the wife remains her property or devolves upon her heirs.

Notes.


Baillie, Bk. 1, Chap. 4, p. 50; Zaidu-nil-Ambani, Vol. 1, p. 76.

Notes.


Baillie, Bk. 1, Chap. 4, p. 50; Zaidu-nil-Ambani, Vol. 1, p. 76.
Art. 49. Where a woman has the option, upon attaining puberty, of having her marriage cancelled, and upon reaching that age while yet a virgin, still wishes to take advantage of this right, she must protest against the action of her guardian and declare before witnesses that she is free. This declaration must be made at the moment the signs of her puberty become visible, or as soon as she is informed, after reaching puberty, of her marriage which she had hitherto been kept in ignorance of; otherwise she loses her right.

Her ignorance of this right, or of the moment at which she ought to exercise it, is not a valid excuse. But having once protested against her marriage before witnesses at the proper time, any delay in taking judicial action, however protracted it may be, does not cause her to lose her right; unless, in the meantime, she has such intercourse with her husband as would presume her consent to the marriage.

Notes.


Baillie, Bk. 1, Chap. 4, pp. 51, 52; Hamilton’s Hedayah, Vol. 1, Bk. 2, pp. 37, 38; Zaidu-nil-Ambani, Vol. 1, p. 78.


Art. 50. Where a girl contracted in marriage has the option of having such marriage cancelled on attaining puberty, and she reaches that age after the disappearance of her virginity, then her silence, at the moment her puberty\(^1\) becomes visible, or her silence

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\(^1\) See Art. 495.
when informed of her marriage after reaching puberty, if she were ignorant of the fact before that age, does not deprive her of the right to protest, unless she has given formal or tacit consent to the marriage.

It is the same for a boy attaining puberty,\(^1\) and who was contracted in marriage by a guardian other than the father or grandfather.

**Notes.**


Baillie, Bk. 1, Chap. 4, p. 54; Hamilton's Hedayah, Vol. 1, Bk. 2, Chap. 2, p. 34; Zaidu-nil-Ambani, Vol. 1, p. 79.

A minor, given in marriage by any person other than the father or grandfather, has the option of ratifying or repudiating it on attaining puberty—*Badal Aurat v. Queen-Empress*, I. L. R. 19 Cal., 79 (1891).

**Art. 51.** Every male, adult and of sound mind, can marry, even if he is a spendthrift, without the intervention of a guardian.

Every woman at the age of puberty,\(^1\) who is of sound mind, whether a virgin or not, can marry without the intervention of a guardian. The marriage which she herself contracts is valid and binding, so long as the husband she chooses is her equal,\(^2\) and the dower settled upon her is equal to the proper dower.\(^3\)

**Notes.**

Hidaya, Vol. 2, p. 34.

Baillie, Bk. 1, Chap. 4, p. 54; Hamilton's Hedayah, Vol. 1, Bk. 2, Chap. 2, p. 34; Zaidu-nil-Ambani, Vol. 1, p. 81.


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\(^1\) See Art. 495.

\(^2\) See Art. 62.

\(^3\) See Art. 78.
According to Art. 51, every woman at the age of puberty, who is of sound mind, can marry without the intervention of a guardian, and Art. 53 says that a woman, who has attained puberty, whether virgin or not, cannot be compelled in marriage. She must be consulted and give her consent—Clavel, Vol. 1, p. 35.

See Section 11 of the Indian Contract Act (IX of 1872), and Section 2 of the Indian Majority Act (IX of 1875).

Art. 52. Where a woman, adult and legally competent, herself contracts marriage against the wish of an Asab\(^1\) guardian and the dower is inferior to the proper dower,\(^2\) such guardian can impugn the marriage, in spite of its validity, and demand from the husband payment of the difference existing between the dower settled, and the proper dower, or demand that the marriage should be cancelled by a judge. If the husband were not suitable,\(^3\) the marriage would be void \textit{ab initio}, and the subsequent consent of her Asab guardian would not render it valid. Where there is no Asab guardian, or where such guardian gives his previous and formal consent, an unsuitable marriage contracted by the woman herself is perfectly valid.

Notes.


Art. 53. A woman who has attained puberty, whether virgin or otherwise, cannot be compelled in marriage: she must be consulted and her consent obtained.

\begin{footnotes}
\footnote{1}{Agnate.}
\footnote{2}{See Art. 78;}
\footnote{3}{See Art. 62.}
\end{footnotes}
When a girl, who is a virgin, is consulted before her marriage, or informed of such marriage after its conclusion by a near relation; or his agent, and of her own accord remains silent, after being made aware of the husband to whom she has been united, and of the amount of dower that has been settled on her, or when she smiles or laughs, weeps without sobs, then her silence, smile, laugh, or tears will amount, before conclusion of the marriage, to a ratification.

But where a girl, who is a virgin, is consulted and informed of her marriage by a distant relation, it is indispensable that her consent should be expressed in words or by an act which presumes consent, even when she has been made aware of her future husband, and of the amount of the dower.

Notes.


Baillie, Bk. 1, Chap. 4, p. 55; Hamilton's Hedayah, Vol. 1, Bk. 2, Chap. 2, p. 34; Zaidu-nil-Ambani, Vol. 1, p. 84.

See Sections 13, 14 of the Indian Contract Act (IX of 1872.)

Art. 54. An adult woman, who is not a virgin, cannot be given in marriage, unless her consent is obtained in words, or by an act which implies her consent: and if consulted by a near or distant relation, she remains silent, her silence does not amount to consent.

Notes.


* See Art. 57.
Art. 55. A woman, who has lost her virginity through an accident or old age, is to be treated as a virgin, and so must a wife, separated from her husband by reason of his impotency,¹ or dissolution of marriage by repudiation² or his death, before consummation of the marriage.

Notes.


Art. 56. A woman, married too young, must not be taken to her husband’s house, before she is physically fit for sexual intercourse. Her father, who cannot be compelled to make her over, has the right of demanding and receiving on her behalf the prompt³ part of the dower. In case of dispute between the husband and the father of the child wife as to her condition, the judge shall appoint either one or two trustworthy matrons to examine her. If the report of the matrons confirms the husband’s claim, the wife shall be taken to her husband’s house: if the report is to the contrary, she will continue to remain provisionally in her father’s house. In such disputes it is the physical constitution and not the age that must be considered.

Notes.


Baillie, Bk. 1, Chap. 4, p. 54; Zaidu-nil-Ambani, Vol. 1, p. 90.

According to Mahomedan law, the effect of the contract of marriage is to place the wife under the dominion of the husband, but notwithstanding marriage, the right to the care and custody of a girl belongs, not to the husband, but to her mother, until she attains the age of puberty—In the matter of Khatija Bibi, 5 B. L. R., 557, per Norman, J. (1870).

¹ See Art. 298. ² See Art. 217. ³ See Art. 73.

See In the Matter of Mahin Bibi, 13 B. L. R., 160 (1874); Nur Kadir v. Zulaikha Bibi, I. L. R., 11 Cal., 469, per Garth, C. J. (1885); Korban v. King-Emperor, I. L. R., 32 Cal., 444 (1904).

CHAPTER V.
AGENCY IN MARRIAGE.
(ARTS. 57—61.)

Art. 57. It is allowable for the contracting parties, when they are adult, and of sound mind, to contract marriage by means of agents.¹

This power is also accorded to the father and other guardians² who can be represented at the marriage of their wards.

Notes.


Art. 58. The appointment of an agent for marriage can be made verbally or in writing, no witness being

¹ See Art. 140. ² See Art. 35.
necessary for its validity. Witnesses are only required to avoid disputes on the part of the principal.

Notes.


Baillie, Bk. 1, Chap. 6, p. 76; Zaidu-nil-Ambani, Vol. 1, p. 92.

The authority of an agent may be expressed or implied—See Section 186 of the Indian Contract Act (IX of 1872).

Art. 59. Without the principal’s sanction the agent cannot delegate his authority to a third party, unless his powers are absolute.

Notes.


Baillie, Bk. 1, Chap. 6, p. 83; Zaidu-nil-Ambani, Vol. 1, p. 92.

See Section 190 of the Indian Contract Act (IX of 1872).

Art. 60. Where an agent is authorized by a woman to give her in marriage, he is not bound to make her over to the husband. Nor is he responsible to her for her dower unless he has guaranteed it; in which case he is bound to discharge it, his remedy being against the husband, provided the latter had authorized such guarantee.

Notes.


Baillie, Bk. 1, Chap. 6, p. 75; Zaidu-nil-Ambani, Vol. 1, p. 93.

Art. 61. The contract entered into by the agent in the name of his principal is only binding on the latter, provided it is made within the scope of his authority. If this authority is exceeded, the contract only becomes binding after ratification1 by the principal.

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1 See Arts. 141, 142.
CHAPTER VI.
EQUALITY IN MARRIAGE.
(ARTS. 62—69.)

Art. 62. In order that a marriage may bear the character of a suitable union in law, the husband must be the equal of the woman in accordance with the conditions laid down in the following articles.

The woman’s inferiority does not render the marriage invalid. Equality in respect of the husband is a right, which may be claimed by the woman’s guardian and by the woman herself. The question must be considered at the time the contract is made; a subsequent change in the husband’s condition would not affect the validity of a marriage.

Notes.

Art. 63. Where a woman, legally competent, chooses a husband without the previous consent of an Agnate guardian, or where a young girl is given in marriage, etc.

Notes.

The bride’s father is entitled to set aside the marriage, on the ground of inequality between the parties to the marriage, if it had taken place without his consent—Mohumdee Begum v. Bairam Khan, 1 Agra H. C. R., 130, per Morgan, C. J. (1866).

As to enforcement and consequences of agent’s contracts, see Section 226, as to how far the principal is bound when agent exceeds his authority, see Section 227, and as to the effects of ratification, see Section 196, of the Indian Contract Act (IX of 1872).
marriage by a relation, other than the father or grandfather, or by one of the latter when he is a reputed profligate, it is necessary for the validity of the marriage, that the contracting parties, if they are of Arab origin, should possess equality of birth; if not of Arab origin, they must possess equality of Islam, fortune, virtue and calling.

Should the husband be inferior to the wife in one of the foregoing conditions, the marriage in the above cases would be invalid.

Notes.


Art. 64. In deciding equality in Islam, it is not necessary, with regard to the husband, to go back further than his father and grandfather.

Thus he, who has embraced Islam without having been born a Muslim, cannot be the equal of a Muslim woman born of a Muslim father, and he, whose father only is a Muslim, is not the equal of a woman whose father and grandfather were Muslims.

But he, whose father and grandfather are Muslims, is the equal of the woman who has many Muslim ancestors.

Notes.

Art. 65. Nobility acquired by knowledge and merit is superior to that which is inherited.
Thus a learned man, who is not of Arab origin, is the equal of an Arab woman, even if she be a Koreishite. A learned man who is poor, is the equal of the daughter of the man who is rich and ignorant.

Notes.


Art. 66. Possession of wealth on the part of the woman is not considered in marriage. The man, who possesses sufficient means to discharge the prompt portion of the dower, and is able to maintain the wife for one month, or, by his labour provide her daily with the necessary maintenance, is the equal of a rich woman.

Notes.


Art. 67. The man, who is a profligate, is not the equal of a virtuous woman, but he is the equal of a woman of immoral character.

Notes.


Art. 68. With regard to persons not of Arab origin, equality of calling or profession must be taken into consideration as regards Arabs themselves, equality is only to be considered among those who are engaged in trade.

1 Of the tribe of Koreish in Arabia, to which the Prophed Mahomet belonged.
2 See Art. 73.
EQUALITY IN MARRIAGE.

If the trade followed by the husband is nearly on a footing with that followed by the father-in-law, the slight difference would not constitute a misalliance; but if the trades differ greatly, he, who exercises a low calling, cannot be the equal of a woman whose father follows a higher calling.

In this connection the custom of each country must serve as a guide, according as the trades there are considered more or less reputable.

Notes.


Art. 69. Where a guardian has contracted a woman in marriage by her own consent, and is ignorant of the husband's condition in life, neither the guardian nor the woman can have the marriage cancelled, if it is discovered subsequently that the husband was not the wife's equal.

But where the guardian has stipulated that the husband should be the wife's equal, and the husband, representing himself as such, turns out to be manifestly inferior to the wife, the guardian may either ratify the marriage or have it dissolved.

Notes.


Baillie, Bk. 1, Chap. 5, pp. 70, 71; Zaidu-nil-Ambani, Vol. 1, p. 102.

CHAPTER VII.

DOWER.

(ARTS. 70—119.)

SECTION I.—AMOUNT OF DOWERY, AND THE FIT SUBJECTS OF WHICH DOWER MAY CONSIST.

(ARTS. 70—73.)

Art. 70. The lowest amount of dower is fixed at ten dirhems or pieces of silver weighing seven miskals, coined or uncoined. There is no limit to dower, and the husband may settle upon the wife a dower more or less considerable in accordance with his means.

Notes.


See Sale's Koran, Chap. XXXIII, p. 348.

There is nothing in the Mahomedan law to limit the amount fixable for dower—Mulleeka v. Jumeela, 11 B. L. R., 375, P. C. (1872).

By the Sunni doctrines of Hanifa, the extent of dower is not limited; the parties may extend it by agreement to what amount they please; ten dirhems is the lowest rate. Among the Shiias, the lowest or highest rate is not fixed; anything possessing a legal value, may lawfully be given as dower, but the proper dower is five hundred dirhems.—Oomduton-Nissa Begum v. Asud Ali, 1 Sel. Rep., S. D. A., 369 (1809).

1 Six Shillings and eight pence sterling.
Agr eeably to the doctrines of the Shahi and the Sunni sects, it is optional with the parties contracting the marriage to fix the amount either before or after the reading of the marriage ceremony—_Rahut-Oo-nissa v. The heirs of Mirza Hizubr Beg_, 2 Sel. Rep., S. D. A., 254 (1816).

Where the amount of dower stipulated was excessive with reference to the means of the husband, under the Oudh Laws Act, 1876, a reasonable amount was allowed to the wife, having regard to her status in life—_Suleman Kadr v. Mehdi Begum Surreya_, L. R., 20 I. A., 144; 1. L. R., 21 Cal., 135, P. C. (1893).

Dower is often high among Mahomedans, to prevent the husband repudiating his wife, in which case he would have to pay the amount stipulated—_Zakeri Begum v. Sakina Begum_, L. R., 19 I. A., 157; 1. L. R., 19 Cal., 689, P. C. (1892).

The Courts in the N.-W. Provinces have not been vested by the Legislature with the discretion which has been conferred on the Courts in Oudh, by section 5 of Act XVIII of 1876, to award to a Mahomedan lady only so much of the stipulated amount of dower, as the Court may consider reasonable with reference to the means of the husband and the status of the wife—_The Collector of Moradabad v. Harbans Singh_, I. L. R., 21 All., 17 (1898).


See _Tajoo Beebee v. Noorn: Bebee_, 1 W. R., 31 (1864); _Abdul Kadir v. Salima_, I. L. R., 8 All., 149 (1886).

Art. 71. Dower may consist of movable and immovable property, jewels, animals, things which may be replaced by things of like nature, and even the usufruct of movable or immovable property.

Notes.


Where a deed of settlement covered certain property which was not in the possession of the settlor, held that the settlement was invalid—Noor Buksh Chowdree v. Mahomed Arif Chowdree, 7 Sel. Rep., S. D. A., 142 (1843).

Where property given to wife in her dower contained no specification, held that the Kabinnamah did not convey such property—Kadirdad Khan v. Nooroon Nissa, 7 Sel. Rep., S. D. A., 185 (1844); See also Shaik Futtuh Ali v. Jarwa, 6 Sel. Rep., S. D. A., 216 (1837).


Where the husband had previously settled the whole of his property upon a wife in lieu of dower, he cannot, without the latter's permission, make over any portion of the same to another wife—Banno Beebee v. Fukheroodeen Hosein, 2 Sel. Rep., S. D. A., 230 (1816).


**Art. 72.** Those things which have no value in themselves or cannot be lawfully possessed by Muslims, cannot validly be settled as dower.

If unlawful things are settled as dower, the settlement is void, but the contract none the less remains valid.¹

**Notes.**


**Art. 73.** The dower may be paid in full at the time of the marriage contract or subsequently, or it can be divided into two parts, one prompt and the other deferred, according to the custom of the locality.

¹ See Art. 91.
Notes.


Unless the payment of the whole or part of the dower is expressly postponed, it is payable on demand—Masthan Saheb v. Assan Bivi Ammal, I. L. R., 23 Mad., 371 (1900).

No claim would lie for the dower not exigible, until the death of the husband, or the dissolution of the marriage by repudiation—Noorunnissa Begum v. Nawab Syed Moshin Ali Khan, 7 Sel. Rep., S. D. A., 46 (1841).

When nothing has been said as to the character of dower, the Court may determine the amount to be considered prompt, with reference to the position of the woman and the amount of the dower named in the contract, taking into consideration at the same time what is customary. The reference to custom appears to be in respect of the portion to be held as prompt, and it does not appear to have been contemplated to refer to custom to decide, whether or not the entire dower should be deferred—Tanjikunnissa v. Ghulam Kambir, I. L. R., 1 All., 506 (1877).

An inquiry into custom with the view of determining the portion of the dower debt payable promptly is proper; and when the question can not be decided by reference to custom, it is proper to determine it with reference to the status of the woman and the amount of the fixed dower—Eidan v. Mazhar Husain, I. L. R., 1 All., 483 (1877).

The admitted rule seems to be that laid down in Macnaghten’s Principles, Chapter 7, section 22, to the effect that when it may not have been expressed whether the payment of the dower is to be prompt or deferred, it must be held that the whole is due on demand—Bedar Bukht v. Khurrum Bukht, 19 W. R., 315, P. C. (1873).

Where no specific amount of dower has been declared exigible, one-third only of the whole should be considered exigible during the life of the husband, the remaining two-thirds being claimable on the death of the husband—Fatma Bibi v. Sadruddin, 2 Bom. H. C. R., 291 (1865).

According to Mahomedan law and the current of decisions deferred dower can be demanded only when the marriage is dissolved either by repudiation or by the death of the husband—Khajaranissa v. Risannissa Begum, 13 W. R. 371; 5 B. L. R., 84 (1870); See Hosseinooddeen Chowdree v. Tajunnissa Khatoon, W. R. Sup. Vol., 199 (1864). Ranee Khajooroonissa v. Mirza Saifoolla Khan, 15 B. L. R., 306, P. C. (1875).

In the absence of express contract, dower is presumed to be prompt—Tadiya v. Hassenebiyari, 6 Mad. H. O. R., 9 (1870).

Where a husband charged his whole estate with the amount of dower, and his widow, on his death, took possession of his estate in satisfaction of her claim, she was held to have a lien on her husband’s estate in lieu of dower—Ameer-oon-Nissa v. Moorad-oon-Nissa, 6 M. I. A., 211 (1855); See Soorna Khatoon v. Attafoonnissa Khatoon, 2, Hay 210 (1863); Ahmed Hossein v. Khadija, 3 B. L. R., A. C., 28 (1868).

A Mahomedan widow, is entitled to a lien for whatever dower remains due to her, although there may be a dispute as to what is the amount actually due, having reference either to the amount originally fixed as dower or to the amount satisfied by payments—Ahmed Hossein v. Mussamat Khodeja, 10 W. R., 368 (1868), and she has a prior claim on account of her dower on the property left by her husband, whether real or personal—Syed Atahur Ali v. Altaf Fatima, 10 W. R., 370, per Peacock, C. J. (1863).

Where a Mahomedan widow obtained actual and lawful possession of her husband’s estates under a claim to hold them as heir for her dower, held that she was entitled to retain possession until her dower was satisfied—Bebee Bachun v. Sheikh Hamid Hossein, 14 M. I. A., 377 (1871); Bakreedian v. Ummatul Fatma, 3 Cal. L. J., 541 (1905).

Under Article 103 of the Schedule II of the Indian Limitation Act (XV of 1877), a Mahomedan is entitled to bring a suit for exigible or prompt dower within three years from the time when the dower is demanded and refused, or where during the continuance of the marriage no such demand has been made, then when the marriage is dissolved by death or repudiation.

See Begoo Jann v. Gashee Bebee, 6 W. R., 19, c. r. (1866); Mulleeeka v. Juneela, 11 B. L. R., 375, P. C. (1872); Mahaba Bibi v. Amnia, 10 Bom. H. C. R., 430 (1873); Ranee Khajooroonissa v.

The period of limitation for a suit for deferred dower is prescribed by Article 104 of the Schedule II of the Indian Limitation Act (XV of 1877), and a suit must be brought within three years from the time the marriage is dissolved by death or repudiation.


SECTION II.—THE WIFE'S RIGHT OVER THE DOWER.

(Art. 74—80).

Art. 74. The wife acquires a legal right over her whole dower as soon as the marriage is validly contracted, whether the husband or his guardian settled the amount in the contract, whether no amount was agreed upon, or whether there was a stipulation that no dower at all should be paid.

Notes.


According to Mahomedan law, the simple contract of money payment in lieu of dower does not necessarily give the wife a lien over her husband's property. It is possible, no doubt, in any given case, that the terms of the contract may be such as to give her the security of specified property for the payment of the money—Mehran v. Kubiran, 6 B. L. R., 60, per Phear, J. (1870).

A widow, in possession of her husband's estate and holding over until payment of her dower against the heirs, was entitled to hold over until her dower was paid—Wahidunnissa v. Shubrat-tun, 6 B. L. R., 54; 14 W. R., 239 (1870); Woomatool Fatima v. Meerunmunnissa, 9 W. R., 318 (1868).
When a Mahomedan widow, was, by a decree of the court, put into possession of the property of her husband, in order to obtain by that possession payment of her dower; and she during her lifetime, and after her death, her heir, had continued in possession of the property ever since that time, held that her husband’s heir was entitled to an account of the mesne profits received by her in satisfaction of the dower—Mahomed Ameenoodeen Khan v. Moozaffar Hossein, 5 B. L. R., 570; 14 W. R., 5, P. C. (1870).


Where a Mahomedan husband made a gift of immovable property in lieu of the whole dower in favour of his wife, such gift was held valid according to Mahomedan law—Sahiba Begum v. Atchamma, 4 Mad. H. C. R., 115 (1868).

Where a Mahomedan widow has a valid claim for dower against the estate of her late husband, she cannot, as against the legal heirs, take possession of the same, but must bring a regular suit—Bibee Selamut v. Mowla Buksh, 5 W. R., 194 (1866); Kareem Buksh v. Doolhin Khoord, 15 W. R., 82 (1877).

It is settled by several decisions that the Mahomedan widow’s right to dower against the estate of her deceased husband is, generally speaking, simply in the situation of a debt which one, like any other creditor, can take legal measures to enforce against such property of her husband as one can find in the hands of the heirs or in the hands of any other persons, provided these have taken as volunteers or with notice of her making a specific claim against that property—Begum v. Doolee Chund, 20 W. R., 92, per Phear, J. (1873).

A lien for dower which a Mahomedan widow may obtain on lands of her husband is a purely personal right and does not survive to her heirs—Hadi Ali v. Akbar Ali, I. L. R., 20 All., 262 (1898).

A Mahomedan widow is entitled to purchase property as her own with money given to her by her husband on account of dower—Nasoo v. Mahatal Beebee, 4 W. R., 7 (1865).

The right of a Mahomedan widow to dower is personal to herself and does not pass to a purchaser of the estate. For
dower stands upon no higher or better footing than any other debt due from her deceased husband; and, except where there is a distinct agreement to that effect, there is no presumption of hypothecation of his estate for her dower to be drawn from the mere circumstance that dower is due—Ali Mahomed Khan v. Azizullah Khan, I. L. R., 6 All., 50, per Straight, C. J. (1883).

Where a widow's claim for unpaid dower constitutes a debt payable pari passu with the demands of other creditors—Humeada v. Budlun, 17 W. R., 525, P. C. (1872).


Nor can a Mahomedan widow, in possession in lieu of dower, sell any portion of the property. She cannot give a good title to any portion of the property, inasmuch as her position is only that of a widow in possession in lieu of her dower—Chuhi v. Shams-un-nisa Bibi, I. L. R., 17 All., 19, per Edge, C. J. (1894).

According to the Punjab Code of 1854, the Court was entitled to properly exercise its discretion in making an equitable division of the estate of a deceased Mahomedan between the widow and heirs and to award the widow a fair sum of the dower—Mulakah Do Alum v. Jehan Kudr, 10 M. I. A., 252 (1865).
A Mahomedan widow's claim for dower is not a lien on her husband's property such as is obtained by a mortgage. The Mahomedan law has nowhere placed a claim for dower as high as a mortgage, but has ranked it on a par with ordinary debts—Ameer Ammal v. Sankaranarayanan Chetty, I. L. R., 25 Mad., 658 (1901).

Art. 75. If the amount of the dower is specified in the contract at ten dirhems, or at a lower value than this amount, the husband is bound to pay the full ten dirhems.

Should the husband settle in the contract a dower larger than the minimum, he is obliged to discharge it, however large it may be.

Notes.


A Mahomedan widow was entitled to the whole of the dower which her late husband agreed to give her, and which was fixed not in reference to his means at the time of marriage, but to the value she possessed in the matrimonial market, that value being mainly determined by the local position and traditions, the surroundings and antecedents of her family—Sugra Bibi v. Masuma Bibi, I. L. R., 2 All., 573, F. B. (1877).

An excess of dower, though improper, is not prohibited by Mahomedan law. The amount of the dower is recoverable from the real and personal property left by the husband, in preference to the claims of heirs—Wujih-oon-Nisa Khanum v. Husun Ali, 1 Sei. Rep., S. D. A., 356, (1808.)


See Notes to Art. 70; The Oudh Laws Act (XVIII of 1876), s. 5.
Art. 76. Where a marriage takes place without the amount of dower being settled in the contract, the wife is entitled to the proper dower.

The same rule applies in the following cases:—

(1). When the husband or his guardian has settled as dower, unlawful things, or objects or animals, without specifying their particular kind or quality.

(2). When the husband has stipulated that no dower should be paid.

(3). When the marriage is contracted by exchange.1

(4). When the husband in lieu of dower undertakes to teach his wife the Koran.

Notes.


The Mahomedan dower being the consideration paid by the bridegroom for the marriage, it is regulated by the position and dignity of the bride, especially since Mahomedan men often contract most unequal marriages. A customary or proper dower is made out by showing a custom of the women of the woman's family to receive, rather than of the men of the husband’s family to pay, a certain dower—Shah Nujumooddeen Ahmed v. Beebee Hosseinee, 4 W. R., 110 (1865).

See Tauifik-un-nissa v. Ghulam Kambar I. L. R., 1 All., 506 (1877).

Art. 77. The proper dower of a woman, is determined by the amount of dower, which has been paid to a woman who is her equal and belongs to her father's family. The dower which has been given to her full-sister or half-sister by the father, to her paternal

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1 See Art. 72.

2 See Art. 15.
aunt, or to the daughters of her paternal uncle, may be taken as a means of comparison, but not the dower settled upon her mother or maternal aunt, if they do not belong to the same family as her father.

On making the comparison, due regard must be paid to the woman's age at the time of the marriage contract, her beauty, the fortune she possesses, the country in which she lives, the intelligence with which she is endowed, the times in which she lives, her piety, her virtue, the fact of her being a virgin or not, her training and education, taking into account also the fact of her having borne a child or not, and the condition of her husband.

If in her father's family a woman excels the others, in respect of all or some of these qualities, a woman of some family equal to that of the father, may be taken for comparison.

The declaration of two irreproachable male witnesses, or that of one male and two female witnesses, of recognised integrity, is necessary for determination of the proper dower.

In default of irreproachable witnesses or of women fulfilling the necessary conditions, the sworn declaration of the husband may be received.

Notes.


Art. 78. If no dower has been settled, the woman is entitled, after solemnization of marriage, to insist upon her husband fixing the dower before consummation of the marriage.
In case of refusal, the judge, on the wife’s requisition and after a summons to the husband, shall decree the amount of dower taking the proper dower as a basis, in accordance with the procedure laid down in the foregoing Article.

The husband becomes responsible for the dower, fixed after marriage by mutual agreement or by judicial decree.

**Notes.**


Where there was no deed of dower, it was held that the widow was entitled to her proper dower having regard to her rank and circumstances of her family—*Uzeez-o-Nisa* v. *Culub Ali*, 3 Sel. Rep., S. D. A., 428, (1824).

In order to support a claim for dower, very satisfactory evidence was absolutely indispensable—*Huseena v. Husmutoonissa*, 7 W. R., 495 (1867).

**Art. 79.** After solemnization of the marriage the husband, as also his father or paternal grandfather, may make additions to the stipulated dower, and the husband shall be bound to discharge such additions, provided that the wife or her guardian is aware of the amount of such additions and accepts them before dissolution of the marriage.

**Notes.**


See Sale’s Koran, Chap. IV, p. 63.
Art. 80. An adult wife of sound mind, may voluntarily remit in her husband’s favour, the whole or part of the stipulated dower.

In no case can a father remit a part of the dower settled on his minor daughter, nor can he do so in the case of his adult daughter without obtaining her formal consent.

Notes.


Where a Mahomedan widow assented to a person, taking a legacy, under her husband’s will, without putting forward her claim to dower, held, that such assent operated as a waiver of her claim—Rezza Hossein v. Ifatoonnissa, 2 Hay’s Rep., 564 (1863).

SECTION III.—CIRCUMSTANCES PERFECTING THE WIFE’S RIGHT TO THE FULL DOWER, AND THOSE CAUSING HER TO FORFEIT THE HALF OR THE WHOLE OF THE DOWER.

(Art. 81—90.)

Art. 81. The full amount of stipulated dower becomes due and payable in the following three cases:

1. On the consummation of marriage, consequent upon a valid or invalid marriage or a semblance of right.

2. On the valid retirement, consequent upon a valid marriage.

3. On the death of either husband or wife, even before consummation of the marriage.

In a valid marriage the wife is entitled to any additions made to the dower. In a marriage invalid
by reason of cohabitation by mistake, or where no dower at all is fixed, or where the wife leaves its fixation to the husband, or where the husband has settled unlawful objects by way of dower, the wife is entitled to her full proper dower.

After the wife's right over the whole dower has been perfected by one of the above specified circumstances, she does not forfeit such right even when she herself is the cause of the dissolution of the marriage, unless she renounces her claim in favour of her husband.

**Notes.**


**Art. 82.** The valid retirement which constitutes a legal presumption of the consummation of marriage, and perfects the wife's right over the whole dower, is that in which the husband and wife are alone together in a secluded place, in which nobody can overlook them without their knowledge, and where the husband is free to have connection with his wife without let or hindrance.

**Notes.**


**Art. 83.** Where a marriage is valid, a valid retirement is equivalent to consummation, and produces the same effect, in that it renders payment of the dower in full binding upon the husband even though he is
impotent. It is sufficient to establish the legitimacy of the children born to the wife with whom the retirement took place, and it obliges the husband to maintain her, and provide her with the necessary clothing and lodging. It also entails the prohibition to marry her sister or four other women while she is observing *Iddat*.1

**Notes.**


**Art. 84.** When, after a valid marriage, a wife is repudiated2 before actual or presumed consummation, she is only entitled to one half of the stipulated dower. Unless the wife has received the dower, the second half goes back to the husband without the wife's consent, or the need of a judicial decree, and the wife is entitled to only one half of any increase in the original dower, whether such increase occurred before or after repudiation.

Where the wife has received the whole dower, she must restore one half of it, but this half does not become the husband's property until the wife has consented, or there has been a judicial decree, nor can the husband validly dispose of it before such consent or decree; the wife, on the other hand, can dispose of the dower by any lawful means.

If there are increases in the dower, whether before or after repudiation, but before the decree, they belong exclusively to the wife, and she is only bound to restore one half of the original dower, having regard to the time at which it was paid to her.

The wife repudiated before actual or presumed consummation of marriage, is not entitled to any additions

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1 See Art. 310.  
2 See Art. 217.
to the dower made by a subsequent act, not even the half.

Notes.


See Sale’s Koran, Chap. II, p. 28.

When consummation of marriage cannot be presumed, only half the dower is claimable of the husband—Abdul Karim v. Fazelat-un-nissa, 5 Sel. Rep., S.D.A., 92 (1830).

Art. 85. In the case referred to in the preceding Article, the wife would only be entitled to the stipulated dower, provided the marriage is dissolved by repudiation before consummation, and where the husband is in fault as in the case where he makes an imprecation,¹ or where the marriage is cancelled by reason of his impotency,² apostasy,³ or refusal to embrace Islam⁴ after the wife has been converted to that faith.

But if the marriage is dissolved before its consummation by the fault of the wife as would be the case where she abjures Islam, or, being neither a Christian nor a Jewess, refuses to embrace Islam after her husband has done so, she loses all right to the second half of the stipulated dower, and if this second half has been paid to her, she is bound to restore it.

Notes.


¹ See Art. 335.
² See Art. 303.
³ See Art. 298.
⁴ See Art. 126.
Where wife in lieu of dower is entitled to *Mutah* or present.

**Art. 86.** When repudiation, precedes actual or presumed consummation, the wife married without any fixed dower is entitled neither to half of the proper dower, nor to the half of any dower settled upon her after marriage.

Thus, when no dower has been settled by the husband, or when unlawful objects have been settled as dower,¹ and the wife consequently becomes entitled to her proper dower,² or when the dower has been settled after the marriage contract, in all these cases, the husband, when he repudiates his wife before actual or presumed consummation of marriage, is liable for nothing beyond *Mutah*³ or the present consisting of clothes. Moreover if the dissolution of marriage is brought about by her own fault, the wife loses her right even to *Mutah*.

**Notes.**


See Sale’s Koran, Chap. II, p. 28.

**Art. 87.** Where the marriage is void and is dissolved before consummation, a valid retirement would not be equivalent to consummation, nor entitle the wife to half the dower.

Thus, in the event of judicial or voluntary separation of the married parties before actual consummation, the wife can claim no part of the dower even if there has been a valid retirement.⁴

Where a marriage is cancelled after consummation, the wife is entitled to whichever is the lower of the stipulated or proper dower, and in default of any

¹ See Art. 72.
² See Art. 77.
³ * See Art. 90.
⁴ See Art. 82.
stipulated dower, to the proper dower, however large it may be.

**Notes.**


**Art. 88.** When a minor marries without the consent of his guardian, and the latter disapproves of and cancels the marriage, the wife is entitled to neither dower nor *Mutah*.

**Notes.**


Where a minor was married in the absence of the guardian and the dower was fixed without the latter's consent, and on the minor attaining majority, he did not acknowledge the amount, held that the wife was not entitled to the amount of dower so fixed—*Kureemoonissa v. Ruheem Ali*, 2 Sel. Rep., S. D. A., 299 (1817).

**Art. 89.** When a woman is married by her guardian, other than her father or grandfather, to a husband who is her equal¹ and who provides dower equivalent to her proper dower,² and on attaining puberty she protests against the contract before actual or presumed consummation, and demands annulment of the marriage, she also loses her right to dower or *Mutah*.

**Notes.**


¹ See Art. 62. ² See Art. 77.
Art. 90. Mutah, or the present consisting of clothes which is given to the wife, who is repudiated and not entitled to half the dower, must be fixed according to local custom, due regard being paid to the clothes that women generally wear when going out, and to the respective conditions of husband and wife.

*Mutah* can be paid in money, the value in no case to exceed half the proper dower, however rich the husband may be, nor to fall below five *dirhems* if the husband is poor.

The wife who has a stipulated dower and is repudiated\(^1\) before the marriage is consummated, and the woman who becomes a widow, are not entitled to *Mutah*. As regards the wife repudiated after consummation of the marriage, it is praiseworthy not to deprive her of *Mutah*, even when she has a stipulated dower.

Notes.


SECTION IV.—CONDITIONS IN THE SETTLEMENT OF DOWER

(Arts. 91—94.)

Art. 91. The husband who settles upon his wife a dower less than the proper dower, at the same time undertaking to procure for her an equivalent compensation by way of meeting the difference, needs only pay the dower agreed upon provided he fulfils his undertaking.

In case of non-performance, he must pay the proper dower\(^2\), so long as the use of the objects promised is

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\(^1\) See Art. 86.  
\(^2\) See Art. 77.
lawful. But if their use is unlawful, the husband's undertaking becomes void, and he is only liable for the dower agreed upon, without being bound to pay the difference between that and the proper dower.  

Notes.

Art. 92. Where a man marries a woman, and upon the condition that she is a virgin provides a dower higher than the proper dower, he is only bound to pay the proper dower, if it is proved that she does not comply with the condition of virginity.

Notes.

Art. 93. Where a husband settles upon a woman two different amounts of dower, undertaking to pay the higher amount on condition that she possesses certain physical qualities, and the lower amount in the event of her not possessing the same, he is bound to pay the higher or lower amount in accordance with the manner in which she fulfils the required conditions.

Notes.

1 See Art. 72.  
2 See Art. 77.
Art. 94. Where a man makes virginity a condition of his union with a woman, and finds that she is not a virgin, he is none the less bound to pay the whole dower stipulated in the contract, and where there is no dower stipulated, he must pay the full proper dower which cannot be reduced by reason of the absence of virginity.

Notes.

SECTION V. PAYMENT OF DOWER. THE WIFE'S RIGHT OVER THE DOWER.

( Arts. 95—99.)

Art. 95. The father, grandfather, executor or judge may receive payment of the dower on behalf of a minor, virgin or otherwise placed under their guardianship and may give a valid receipt in respect of the same. Such receipt releases the husband from liability, the wife on attaining puberty having no claim against him.

The adult wife herself takes possession of her dower; if she is not a virgin, no guardian can realise it for her without her express authority; nor can he receive it in the case where she is a virgin and forbids its payment. If, however, the adult virgin does not forbid it, the guardian may validly receive the dower on her behalf.

Notes.

Art. 96. No other guardians, including the mother except in their capacity of executors, have a right to receive payment of dower on behalf of a minor. Thus

\[ ^1 \text{See Art. 78.} \]
when the mother is executrix and as such receives the dower of her minor daughter, the latter on attaining puberty must sue her mother, and not her husband; but if the mother, not being an executrix, receives payment of the dower, her daughter on attaining puberty, must proceed against the husband, whose remedy would be against the mother.

This rule applies to guardians other than those mentioned in the preceding Article.

Notes.


Art. 97. The dower is the sole property of the wife; if she has attained puberty she can dispose of it in all cases.

Without the consent of her husband, her father, her grandfather, or the executor, she can alienate it, pledge it, let it out by way of loan or on hire, and can make a free gift of it to her husband, to her relations, or to third parties.

Notes.


When a Mahomedan widow realised the full amount of her dower from the profits of the estate in her possession, for twenty years, held, that the estate became her actual property—Sahibjan Khatoon v. Dianut Beebee, 3 Sel. Rep., S. D. A., 16 (1820).

See Shaikh Nasoo v. Mahatab Beebee, 4 W. R., 7 (1865); Married Women’s Property Act (III of 1874).

Art. 98. Where wife has received her dower in full and makes a gift of the whole or a part of it to her husband, and the marriage is dissolved by repudiation before consummation, the husband is entitled to claim
half of the dower. The wife is bound to return the half even when she has made a gift of the dower to a stranger, who, acting under her authority, has received it from the husband or his surety.

Where the wife, before receiving her dower, makes a gift to her husband of the whole amount or of the deferred portion, the husband has no claim against her.

Where the wife makes a gift to her husband of the whole or of half the dower, the husband, if the marriage is dissolved before consummation, cannot compel her to restore the half.

In no case can a father make a gift of a part of the dower settled on his minor daughter.

Notes.

Art. 99. A wife cannot be compelled to relinquish a part of the dower in favour of her husband, her guardian or even her relations.

Should the wife die before receiving the whole of her dower, her heirs are entitled to demand from her husband or his heirs, the balance due after deducting the share devolving upon the husband from the wife’s estate, if she died before him.

Notes.

Where a suit for dower was brought by the heir of a Mahomedan widow, and while it was pending, the heirs of the deceased husband of the widow mortgaged the property which had belonged to the deceased husband in his lifetime, held, that the heirs of
the widow could only execute the decree which they got against the assets of the husband which the heirs of the husband had in their possession—Yasin Khan v. Yar Khan, I. L. R., 19 All., 504 (1897).

See Bazayet Hossein v. Dooli Chand, I. L. R., 4 Cal., 402, P. C. (1878); Ali Mahomed v. Azizullah, I. L. R., All., 50 (1883); Hadi Ali v. Akbar Ali, I. L. R., 20 All., 262 (1898); Ghulam Ali v. Sagir-Ul-Nissa, I. L. R., 23 All., 432 (1901); Bholanath v. Maqbul-un-Nisa, I. L. R., 19 All., 50 (1883); Bazayet Hossein v. Dooli Chand, I. L. R., 26 All., 266 (1903).

The heirs of a widow are entitled according to Mahomedan law to demand her dower from her husband's heirs—Whahid-Un-Nissa v. Shubrattun, 6 B. L. R., 54 (1870).


**SECTION VI.—SURETYSHIP IN DOWER. LOSS AND CONSUMPTION OF DOWER. WIFE’S CLAIM TO DOWER.**

(Art. 100—103.)

**Art. 100.** The guardian of the husband or of the wife whether minor or adult, can, when in good health, become surety for the dower that the husband has settled on her, provided the suretyship is approved by the wife herself or by her guardian, if she is a minor. But the guardian during his death-bed illness, cannot become surety for the payment of the dower, if either the wife or the husband is his heir. Even when they are not his heirs, he can only stand surety to the extent of a third of his property.

**Notes.**


Art. 101. The wife for whose dower surety is given, may claim its payment either from the husband when he attains majority, or from the surety, even though the latter should be her own guardian. The surety who makes payment for a dower that he guaranteed, has no claim against the husband, unless the guarantee was given, with the latter’s authority.

Notes.


Art. 102. The father who has given his minor son, destitute of means in marriage, is not personally bound to pay the dower unless he becomes surety for its payment.

Where the father pays the dower for which he is surety, he cannot claim its recovery from such minor, unless at the time payment was made, he declared before witnesses that he intended to make such claim.

Should a father become surety for dower on behalf of his minor son, and die before discharging it, the son’s wife may sue his estate for payment. In this case the heirs may recover such payment from the minor son’s share in the father’s estate.

A father, as guardian, may dispose of the property of his minor children, and so, when a minor has property of his own, the father can be compelled to pay the dower out of such property, even when he has not guaranteed its payment.

Notes.
Art. 103. Where the property of which the dower consists is specified, and happens to perish while in the husband's possession, or is consumed by him before delivery to the wife, or if a third party establishes a right to it after it has been delivered to her, she can compel her husband to deliver to her things of a like nature, or their value if they do not exist.

Notes.

SECTION VII.—DISPUTES RELATING TO DOWER.

Art. 104. After a wife has surrendered herself to her husband, the fact of the marriage being consummated implies that the prompt portion of the dower has been paid, and should the wife declare that no payment at all has been made, her claim to the amount would not be admissible. If however, she declares that a part of the prompt dower was paid, her claim to the balance would hold good.

This rule would not apply to localities, where it is an established custom that the husband does not advance any portion of the dower, until after consummation of the marriage.

Notes.
See Notes to Art. 213.
Art. 105. Where a dispute arises between the husband and wife as to dower, one party claiming that it has been fixed though unable to prove it, while the other party denies that the dower has been fixed, the latter shall be called upon to make the denial upon oath, and in case of refusal the judge shall decide against the party refusing. If the oath is taken, and it is the wife who contends that the dower was fixed, the proper dower shall be decreed, provided the amount does not exceed that which is claimed by her. If it is the husband who maintains that the dower was fixed, the amount of proper dower shall not be decreed below that which is stated by him. Where the dispute arises after repudiation but before consummation, *Mutah* instead of proper dower, is due.

Notes.


See Sections 8 and 12 of the Indian Oaths Act (X of 1873.)

Art. 106. Where there is a dispute between husband and wife as to the amount of dower agreed upon, the amount of proper dower is to be taken as a basis of settlement: whether the dispute takes place during the subsistence of the marriage before or after its consummation, or whether it arises after the dissolution of a marriage that has been consummated.

Should the amount of proper dower be equal to or higher than that claimed by the wife, her sworn declaration shall be accepted, unless the husband can adduce proof to the contrary. Should it be equal to or lower than that stated by the husband, his declaration on oath shall hold good in default of proof by the wife.

See Arts. 78.  
See Art. 90.
Where neither claim is based on the proper dower, both parties shall be put on oath, and shall be called upon to adduce evidence regarding their respective claims and the judge shall decide accordingly.

Notes.

Art. 107. The death of one of the parties does not alter the procedure, and all disputes between the survivor and the heirs of the deceased regarding the amount of the dower, are to be decided in the manner laid down in the preceding Article.

When both parties have died, and a dispute arises between their respective heirs, regarding the amount of dower, the declaration made by the heirs of the husband is to be accepted, and the amount of dower admitted by them shall be decreed in favour of the wife's heirs.

Where the dispute refers to the fixation of dower, and the husband's heirs deny that any dower was fixed and refuse to take oath, the judge shall decree the proper dower.

Notes.

Art. 108. In the cases indicated in the three preceding Articles, the proper dower is only to be paid in full to the wife, when the dispute takes place before the marriage is consummated.
Should the dispute take place after the marriage has been consummated, and the husband during his lifetime, or his heirs after his death, contend that the wife has received a part of the dower, and should it be an invariable practice in the locality that the wife does not surrender herself to her husband before receiving a part of the dower, the wife shall be called upon to declare what amount of dower she has received. If she refuses to make the declaration, the amount of proper dower shall be paid to her, after deduction of the prompt portion in accordance with the custom of the locality.

This deduction must therefore be made:

1. When the parties are agreed as to the amount of dower specified in the contract.
2. When the heirs of the husband deny that any dower was stipulated and, by their refusal to take the oath, entitle the wife to proper dower.
3. When they dispute the wife's right to the amount which she claims, and which is based upon the proper dower.
4. When, after the decease of both husband and wife, the husband's heirs, whose statement has been accepted admit the amount they owe the wife.

Notes.
Baillie, Bk. 1, Chap. 7, p. 133; Zaidu-nil-Ambani, Vol. 1, p. 166; Clavel, Vol. 1, p. 82.

Art. 109. Where a suitor advances a sum of money for the maintenance of a woman in Iddat, consequent upon either repudiation or widowhood, and at the same time agrees to marry her after completion of such Iddat, he is entitled in the event of the woman's refusal to marry him, to claim the sum advanced.

1 See Art. 310.
Where no agreement is made, and he subsequently marries her, his claim for the recovery of the amount advanced is not admissible.

Even when an agreement is made, he is not entitled to recover the price of food furnished to the woman.

Notes.

Art. 110. Where a man, with a view to marriage, sends presents to a woman, or advances her the whole or part of the dower, and she refuses to marry him, or her guardian refuses permission, or if she dies or the man himself changes his mind before marriage, in each case he is entitled to a return of the gifts or things advanced as dower, provided they exist even in a state of deterioration, or their equivalent value in the case of loss or consumption.

Notes.

Art. 111. Where disputes arise between the married parties as to the intention with which the husband gave certain sums or movable effects, or as to food sent by the husband to the wife, before or after the solemnization of marriage, the husband contending that he sent them on account of dower, while the wife maintains that they were merely presents, the husband's sworn declaration is to be accepted with regard to those articles which are not usually offered in that locality as presents. The wife's word is accepted with regard to those articles which are usually offered as presents.
In a case where the husband’s sworn declaration has been accepted, the wife, if the articles still exist, can either keep them on account of dower, or return them to the husband, and demand payment of the remainder of the dower, or of the whole dower in the event of her having received no part of it.

If the wife has lost or consumed that which was advanced as dower, its value is to be deducted from the full dower.

Notes.


Hamilton’s Hedayah, Vol. 1, Bk. 2, Chap. 3, pp. 56, 57

SECTION VIII.—THE WIFE’S MARRIAGE OUTFIT. THE HOUSEHOLD EFFECTS, AND DISPUTES RELATING THERETO.

(Art. 112—119.)

Art. 112. Property is not the object of marriage.

The wife cannot be obliged to use her own property, or the dower she receives for the acquisition of her marriage outfit. The father is not bound to defray the expenses of the daughter’s marriage outfit.

If the marriage outfit which the wife brings is not proportionate in value to the dower paid by the husband, or if she does not bring a marriage outfit at all, the husband cannot claim one either from the wife or her father, nor can he sue them for a reduction of the dower, which he had purposely increased with a view to the purchase of a costly marriage outfit.

Notes.

Art. 113. Where a father in good health, makes a present of a marriage outfit to his adult daughter, it becomes her property as soon as she takes possession of it. Neither the father, nor his heirs, can subsequently dispossess her of it.

Where she obtains possession of the marriage outfit during her father’s death-illness, such outfit becomes her property only by consent of the other heirs.

Notes.

Art. 114. Where a father in good health, with his own money purchases a marriage outfit for his minor daughter, such outfit becomes her property by the mere fact of her father making such purchase:

Provided that when the purchase is made, the daughter is aware that her father makes such purchase while in good health, the outfit becomes her property whether she takes possession or not, neither can the father nor his heirs subsequently dispossess her of it.

Where the father dies before paying for the outfit, the vendor may realise the cost of such outfit from the father’s estate. The heirs cannot recover the amount from the daughter.

Notes.

Art. 115. Where the father purchases his daughter’s marriage outfit from the amount of the dower paid to her, she is entitled to demand from him the balance of the dower in his hands.
Notes.


Art. 116. The marriage outfit is the exclusive property of the wife. The husband cannot lay claim to any part of it, nor can he compel her to place any articles belonging to her, at his, or at his guest's disposal; he can only make use of them with her consent.

Where, during the subsistence of the marriage or after its dissolution, the husband takes any article forming part of the marriage outfit, the wife may sue him for its recovery or its value in case of loss or destruction.

Notes.


Art. 117. Where a father makes over to his daughter a marriage outfit which he himself has procured, and he or his heirs subsequently claim that a part or the whole of such outfit was merely given by way of loan, while the daughter, or if she is dead, her husband, maintains that it was her own property, local custom shall serve as a guide for the settlement of the dispute.

If it is the general practice for a father to provide his daughter with such a marriage outfit, the declaration of the daughter or of her husband is to be accepted, unless the father or his heirs adduce proof to the contrary. If it is not the general practice, and if the marriage outfit seems more than is necessary for a woman of her station, the father's declaration or that of his heirs shall be accepted.

Where the mother sends a marriage outfit, the above provision also applies.
Art. 118. Where there is a dispute between the husband and wife, during the subsistence of the marriage or after its dissolution, as to the household effects of the house in which they live, those articles which are more specially used by women shall be assigned to the wife, unless the husband can adduce proof to the contrary.

Those articles which are in general use among men or can be used by either sex, shall be allotted to the husband, unless the wife adduces proof to the contrary. Whichever party establishes ownership to any particular article, it shall be allotted to that party. As to goods of merchandise, they shall be assigned to that party who is engaged in trade.

Art. 119. Where, after the decease of either husband or wife, there is a dispute as to the household effects, those articles which can be used by both parties shall be allotted to the survivor, unless proof is adduced to the contrary.
CHAPTER VIII.

THE MARRIAGE OF MUSLIMS WITH CHRISTIAN WOMEN OR JEWESSES, AND THE NATURE OF THE MARRIAGES OF NON-MUSLIMS ON THEIR SUBSEQUENTLY EMBRACING ISLAM.

(Arts. 120—130.)

SECTION I.—THE MARRIAGE OF MUSLIMS WITH CHRISTIAN WOMEN AND JEWESSES.

(Arts. 120—125.)

Art. 120. It is lawful for Muslim men to marry Christian women and Jewesses, subjects of a Muslim State or foreigners. The marriage is validly contracted by the intervention of a Christian or Jewish guardian and in the presence of two Christian or Jewish witnesses, even though they do not profess the same religion as the woman. The testimony of these witnesses serves as proof of the marriage in case of the wife's denial but not in the case of the husband's denial.

Notes.


Baillie, Bk. 1, Chap. 1, p. 6; Zaidu-nil-Ambani, Vol. 1, p. 182.

See The Indian Evidence Act (I of 1872), ss. 59, 60.

Art. 121. A Muslim, already married to a Muslim woman, can also marry a Kitabiah, that is to say, a Christian woman or a Jewess, in the same way as he can marry a Muslim woman when he has already a Christian or Jewish wife. Both wives must be treated with perfect equality.
MARRIAGE WITH NON-MUSLIMS.

Notes.

Art. 122. A Muslim woman can only marry a Muslim; she can neither marry an idolater, nor a Christian, nor a Jew; and a marriage contracted with any one of these is void.

Notes.

Both the Sunni and Shiah schools prohibit marriage between a Muslim woman and a non-Muslim man—Himmul Bahadoor v. Sahebzaadee Begum, 14 W. R., 125 (1870).

A woman of the Shiah sect cannot contract a valid marriage with a Christian—Bakhshi Kishen Prasad v. Thakur Das, I. L. R., 19 All., 375 (1897).

See Monowar Khan v. Abdoollah Khan, 3 N.-W. P., H. C. R., 177 (1871); In the matter of Ram Kumari, I. L. R., 18 Cal., 264 (1891); Abdool Razack v. Aga Mahomed Jaffer Bindaneem, I. L. R., 21 Cal., 666; L. R., 21 I. A., 56 (1893).

Art. 123. Where a Christian wife, married to a Muslim husband, becomes a Jewess, or where a Jewess becomes a Christian, the marriage none the less remains valid.

Notes.

Art. 124. The children of either sex born of the marriage between a Muslim and a Christian woman or a Jewess, follow their father's religion.

1 See Arts. 31, 32.
Notes.


Art. 125. Difference of religion deprives the husband of all right to inherit his wife's estate, and the wife of all right to inherit her husband's estate.

Notes.

SECTION II. MARRIAGES BETWEEN NON-MUSLIMS, WHERE BOTH OR ONE OF THE PARTIES EMBRACE ISLAM.

(Art. 126—130.)

Art. 126. Where the wife of a non-Muslim embraces Islam, that faith, must be presented to her husband. If he embraces the faith the marriage remains intact, unless the wife is related to him within the prohibited degrees of kindred, when the marriage must be cancelled.

If the husband refuses Islam, the Judge shall pronounce the dissolution of the marriage, even when the husband is a minor, possessing sufficient understanding, and even when he is insane.

Where the minor has not sufficient understanding in the matter of religion, the Judge shall wait until he attains it.

If the husband is insane, the Judge, without waiting until he has recovered his intellectual faculties, shall present Islam to his father or mother; in the event of one of them accepting the faith, the son will be deemed to have accepted it also, and the marriage will remain

1 See Art. 22.
MARRIAGE WITH NON-MUSLIMS.

undissolved. But should the lunatic's parents refuse to embrace Islam, the marriage is to be dissolved.

Where the insane husband has neither father nor mother, the Judge, in order that he may pronounce the dissolution of the marriage, shall appoint a guardian for the purpose.

This dissolution of the marriage pronounced by the Judge in consequence of the refusal of the husband, when he is sane, or of one of his parents when the husband is insane, operates as repudiation. The marriage is deemed to exist until the Judge has pronounced its dissolution.¹

Notes.


Art. 127. Where the husband of a Christian or Jewish wife turns Muslim, the marriage cannot be dissolved, but when the wife turns idolatress, and on being asked to embrace Islam she consents, the marriage will remain intact.

Notes.


¹ See Art. 85.
Art. 128. Where both the husband and the wife embrace Islam together, the marriage and all its consequences are valid unless it was contracted within prohibited degrees,¹ in which case the Judge shall pronounce its dissolution.

Where the contracting parties to a marriage are non-Muslim, the Judge cannot dissolve the marriage, however unlawful it may be, except at the parties' own request; but he may pronounce the dissolution of a marriage contracted by a Christian woman or a Jewess while she is observing *Iddat,* consequent upon her repudiation by a Muslim husband.

Notes.


Art. 129. Where the married parties are non-Muslim and the husband embraces Islam, all the children already born of the marriage before his conversion to Islam shall be brought up in the Muslim religion. So also must any children born to them after Islam is presented to his wife. This rule only applies when the children are settled in *Darul Islam,* whether the parent who accepts the faith resides there or not.

Notes.


Art. 130. Minor children who have lost their father, are not bound to embrace Islam in the event of their grandfather accepting that faith.

¹ See Art. 22.
² See Art. 310.
A child, whether of sound mind or not during minority, follows the faith of that parent who embraced Islam.

The child is only released from this obligation, when he attains majority in full possession of his intellectual faculties.

Where a child attains majority and is insane or an imbecile, he still continues to be under the control of his parents.

Notes.


CHAPTER IX.
VOID AND INVALID MARRIAGES.

(Art. 131—144.)

SECTION I.—VOID MARRIAGES.

(Art. 131—137.)

Art. 131. A marriage legally prohibited for reasons of consanguinity, affinity, or fosterage, is void.¹

If the married parties do not separate voluntarily, they must be separated by a Judge.

Where the husband contracts the marriage in bad faith, he renders himself liable to a heavy punishment, either with fine or imprisonment, and where he acts in good faith, he is liable to a lighter punishment.

Notes.


¹ See Arts. 21, 22, 23.
Marriage with a woman already married, or in Iddat is also void.

Art. 132. Where a man contracts marriage with a woman, who is already married, or with a woman who is observing Iddat, consequent upon repudiation or widowhood, such marriage is void. The man who contracts such a marriage renders himself liable to a heavy or light punishment according as he acts in good faith or not.

Notes.

See Sections 493 and 494 of the Indian Penal Code (Act XLV of 1860).

Art. 133. Where a man contracts marriage by a single contract, with two sisters who are unmarried and not observing Iddat, the marriage is void; but if one sister is observing Iddat, the marriage with the other sister is valid. In this case the two sisters are not entitled to dower if the cancelment of the marriage precedes its consummation.

Where the two sisters are married by two successive contracts, the marriage of prior date, if admitted and regularly contracted, is valid, but the other marriage is void.

Where husband has had sexual intercourse with the sister married under the contract of later date, he must wait until her Iddat has expired before he can cohabit with the other sister, whose prior marriage is valid.

Where it cannot be established, which marriage was contracted first, both marriages are radically void,

1 See Art. 310. 2 See Art. 26.
unless one was void \textit{ab initio}. If, however, cancellation takes place before either marriage is consummated, the two sisters are entitled to one-half of the stipulated dower, provided their dowers are equal and of like nature, and that both claim their marriage to be of prior date without being able to adduce proof in support of such claim. In this case where cancellation has preceded consummation of the marriage, the husband is at once free to marry whichever sister he pleases.

Where one sister establishes the priority of her marriage, that marriage shall be valid, and she is entitled to the full half of the dower.

Where the marriage is contracted without dower being settled, the two sisters have only one single \textit{Mutah}\footnote{See Art. 90.} or present between them.

Where cancelment of the marriage takes place after consummation of the marriage, each of the two sisters is entitled to her full dower, in the same way as two sisters married by a single contract.

\textbf{Notes.}


Where a Mahomedan married a woman first, and afterwards married her sister, it was held that the marriage with the wife’s sister was invalid in consequence of his previous marriage with her sister. No defect, however, arises in the first marriage from the invalidity of the second—\textit{Shureefoonissa v. Khizuroonisa,} 3 Sel. Rep., S. D. A., 280 (1824).

Where a Mahomedan marries two sisters by one contract, and one marriage is known to precede the other, the marriage which
Marriages which are absolutely void.

Art. 134. The following marriages are absolutely void:—

1. The marriage contracted by a man with a woman he has repudiated three times and who has not remarried, or who has remarried, but has not been repudiated by the last husband, or who has been left a widow by the second husband after consummation of the marriage.

2. The marriage with an idolatress.

3. The marriage with a fifth woman, before the fourth has been repudiated and the period of her Iddat expired.

4. The marriage contracted without witnesses.

In each of the above cases, the Judge can always pronounce the dissolution of the marriage. The married parties are not bound to wait for the Judge to cancel the marriage: either party may separate, provided that due notice is given to the other party.

Notes.


According to Mahomedan law, a man cannot legally have more than four wives living at the same time—Shumsoonisa v. Gouhur Ali, 4 Sel. Rep., S. D. A., 359 (1827).

As to witnesses necessary in a Mahomedan marriage—Butoolun v. Koolsoom, 25 W. R., 444 (1876); See Notes to Art. 7.

1 See Art. 224.  
2 See Art. 310.  
3 See Art. 18.
Art. 135. The marriages declared in the preceding Article to be absolutely void, create no prohibition for either party to marry the kindred without the prohibited degree of the other party to marriage, so long as cancellation precedes consummation, and also they give the husband and wife no right to inherit from each other.

Children born of these marriages are deemed legitimate, provided they are born under the conditions laid down in the Chapter on Paternity and Filiation.

Notes.


See Syed Jammeendeen Mahomed v. Muheeoodeen Bebee, S. D. A., Ben., 932 (1853);

Art. 136. Where two guardians of the same degree of relationship and acting independently of each other, give the ward in marriage to a separate individual, the marriage first contracted shall alone be valid, and the other null and void. If it is not known which contract was entered into first, or if the two contracts were made at the same time, both marriages are void.

Notes.


Art. 137. Where a guardian has under his guardianship an adult woman, with whom his marriage is not prohibited, and such guardian marries her himself, without having first obtained her consent, the marriage is void, even though the woman, when informed of her marriage, remains silent or gives her express consent after the marriage is contracted.

Notes.

1 See Bk. IV, Chap. I, Section II, Arts. 341, 342, 343.
INSTITUTES OF MUSSALMAN LAW.

Notes.


SECTION II. INVALID MARRIAGES.

(Art. 138—144.)

Art. 138. Where a minor of either sex who has reached the age of discretion, but is still under a guardian, or where an incapable adult contracts marriage without the guardian’s consent, the marriage is not binding unless it is ratified by the guardian.

Where the guardian ratifies the marriage, the contract is valid, provided that the dower,¹ in the case of a minor girl, is not too low, and in the case of a minor boy, not too high; but if the dower seriously prejudices either the boy or the girl, the marriage shall be cancelled whether the guardian ratifies it or not.

Notes.


Art. 139. Where a remote relation gives a minor girl in marriage, when there is a nearer relation competent to exercise the guardianship, the marriage is invalid, unless it is approved of by the nearer relation who may cancel the marriage.

Notes.

Baillie, Bk. 1, Chap. 4, p. 49; Zaidu-nil-Ambani, Vol. 1, p. 207.

¹ See Art. 78.
Art. 140. Where a man authorizes an agent to contract him in marriage but mentions no particular woman, and the agent gives him in marriage to a woman who is suffering from some malady, such marriage is valid; but where he contracts him in marriage to his minor daughter or his ward, such marriage is only valid when it is ratified by the principal.

Where a man authorizes an agent to contract him in marriage to one woman only, but the agent exceeds his powers and gives him in marriage to two women by a single contract, the principal is not obliged to acknowledge either, until he has ratified the contract in respect of one or both of them.

Where the agent gives his principal in marriage to two women by two successive contracts, the first marriage alone is binding, and the second is binding subject to ratification by the principal.

Notes.


Baillie, Bk. 1, Chap. 6, pp. 77, 79; Zaidu-nil-Ambani, Vol. 1, p. 208.

Art. 141. Where a man authorizes an agent to contract him in marriage to a certain woman whom he indicates, but the agent gives him in marriage to another, the marriage is not valid, unless it is ratified by the principal.

The same rule applies where the agent contracts him in marriage, and provides for a larger dower than he was authorized to do.

Where the principal is not aware that his agent has settled a larger dower than he was authorized to fix,

See Arts. 57, 58.
the marriage is invalid, even if he has had sexual intercourse with the woman.

The agent cannot compel the principal to acknowledge the marriage, even though the agent himself undertakes to pay the difference in the dower.

Notes.


Baillie, Bk. 1, Chap. 6, p. 80; Zaidu-nil-Ambani, Vol. 1, p. 209.


Art. 142. Where a woman authorizes an agent to contract her in marriage to a man, but mentions no particular person, and the agent gives her in marriage to himself or to his father, or to his son, the marriage is invalid unless she ratifies it.

Where the agent gives her in marriage to a man and causes her serious loss by accepting a dower smaller than is her due, both the woman or her guardian may have the marriage cancelled, unless the difference in dower is made good.

Where the agent gives her in marriage to a man who is not her equal, the marriage is invalid; but where he gives her in marriage to a man who is her equal and who settles upon her the proper dower, the marriage is binding even though the man chosen by the agent possesses some physical defect or suffers from some malady or disease.

Notes.


1 See Arts. 57, 58. 2 See Art. 62. 3 See Art. 78.
Art. 143. Where in a marriage the man deceives the woman and gives himself a false title or misrepresents his condition in life, and the woman discovers the fact after the marriage, both she and her guardian may either ratify or cancel such marriage.

Notes.
Tahtavi, Vol. 2, pp. 41, 42.

Art. 144. The marriage proposed or accepted by an unauthorized person remains in abeyance, until it is either ratified or cancelled by the party interested.

Notes.

CHAPTER X.
PROOFS OF MARRIAGE.
(Art. 145–149.)

Art. 145. Where there is a dispute between husband and wife as to whether they are actually married, the marriage is proved by the testimony of two male witnesses or of one male and two female witnesses whose integrity is beyond question.

Where a person claims to have contracted marriage with a woman and she denies the marriage, or vice versa, the plaintiff, in default of proof in support of the claim, may put the defendant on oath; if the defendant takes the oath, the plaintiff is non-suited; if the oath is refused, the claim is proved and the marriage established.
Notes.


See the Indian Evidence Act (I of 1872), Part II, Chap. 3, "On Proof"; Section 12 of the Indian Oaths Act (X of 1873); Queen v. Khyroollah, 6 W. R. Cr., 21, F. B., per Peacock, C. J. (1866).

Art. 146. Where either the husband or the wife, seeks to prove his or her marriage, the evidence of their descendants cannot be accepted in support of such claim.

The same rule applies where one witness is a descendant of the husband and the other a descendant of the wife. If both witnesses are descendants of the same party their evidence can only be admitted against their ascendant, when called for by the other party.

Notes.


Art. 147. The testimony of a guardian against his ward cannot be admitted in case of a denial of marriage, unless such testimony is supported by witnesses or accepted by the ward herself when she attains puberty.¹

Notes.


Art. 148. Where a man acknowledges a woman as wife and is not married to one of her relations within the prohibited degree,² or to four other wives, the marriage is proved provided that she is not already

¹ See Art. 495.
² See Arts. 21, 22, 23.
married, is not observing *Iddat*,¹ and gives her formal consent. The woman is entitled to maintenance and both parties are entitled to inherit from one another.

**Notes.**


Where a Mahomedan man and woman lived in the same house as husband and wife, and a son was born to them, held, that Mahomedan law presumed a marriage between the parties and that there was no bar to such son sharing his inheritance equally as a son born in proved wedlock—*Mīhr Ali v. Kureemoonisa Begum*, 2 Sel. Rep., S. D. A., 142 (1814).

Where a woman was free and not married to any other man although the actual celebration of her marriage may not have been proved with the man with whom she cohabited, yet he declared the son of such woman to be his, that son would certainly be accounted his legitimate offspring; and should the mother of the child also confirm this declaration, she would be considered to all intents and purposes, the lawful wife of the person so declaring—*Qaim Ali v. Hingun*, 3 Sel. Rep., S. D. A. 203 (1822).

The Mahomedan law requires that an acknowledgment made by one man to another person that a particular specified woman was his wife, must be distinct and unmistakable—*Kedarnath Chuckerbutty v. Benjamin Donzelle*, 20 W. R., 352, *per* Phear, J. (1873).

According to Mahomedan law where a child has been born to a father, of a mother where there has been not a mere casual concubinage, but a more permanent connection, and where there is no insurmountable obstacle to such marriage, the presumption is in favour of such marriage having taken place—*Khajah Hidayut Oollah v. Rai Jan Khanum*, 3 M. I. A., 295 (1844).


¹ See Art. 310.
Art. 149. Where a woman in good health or in sickness, acknowledges a man as husband, the marriage is proved, provided that the man assents while she is still living; in this case he is entitled to inherit from her but where he assents after her death, he is not entitled to inherit from her.

Notes.

BOOK II.

RECIPROCAL RIGHTS AND DUTIES OF HUSBAND AND WIFE.

(Art. 150—216.)

CHAPTER 1.

THE HUSBAND'S DUTIES TOWARDS THE WIFE.

(Art. 150—159.)

Art. 150. The husband is obliged to treat his wife with kindness, to live on good terms with her, and to provide her with maintenance, which comprises food, raiment, and lodging.

Notes.


Baillie Bk., 11, Chap. 1, p. 188; Zaidu-nil-Ambani, Vol. 1, p. 220.

See Section 488 of the Code of Criminal Procedure (Act V of 1898); Abdur Rohoman v. Sakhina, I. L. R., 5 Cal., 558 (1879); In the matter of the petition of Din Mahomed, I. L. R., 5 All., 226 (1882); In the matter of the petition of Luddun Sahiba, I. L. R., 8 Cal. 736 (1882).

See Notes to Art. 17.

Art. 151. It is praiseworthy for every husband to cohabit with his wife, but he is legally bound to do so at least once during the subsistence of the marriage.

Notes.


Zaidu-nil-Ambani, Vol. 1, p. 221; Clavel, Vol. 1, p. 135
Art. 152. Where a man has several wives, he is bound to treat them with strict equality in all matters, but with regard to maintenance and partition of his nights among them, he is bound to treat them with as much equality as lies in his power.

Notes.
Baillie, Bk. 1, Chap. 11, p. 188; Zaidu-nil-Ambani, Vol. 1, p. 221; Clavel, Vol. 1, p. 135.
See Sale’s Koran, Chap. IV, p. 60.

Art. 153. These duties must be observed by the husband in respect of all his wives, without distinction between virgin and otherwise, between those long married and those married recently, or between the Muslim wife and the Christian or Jewish wife.

Notes.
Baillie, Bk. 1, Chap. 11, p. 188; Hamilton’s Hedayah, Vol. 1, Bk. 2, Chap. 4, pp. 66, 67; Zaidu-nil-Ambani, Vol. 1, p. 222.

Art. 154. It is the husband’s duty to pass alternately with each wife, the period of twenty-four hours, three days, or seven days, in whatever order of turn he himself shall fix and establish. Equality in the partition of his society, is only binding upon the husband during the night, unless he is occupied at night, in which case he must spend his time equally between his wives during the day.

Notes.

Art. 155. The husband must not favour one wife more than another, nor remain with one beyond the
HUSBAND'S DUTIES TOWARDS WIFE.

allotted period without the consent of the wife thereby deprived of his society, nor enter a wife's apartment if it is not her proper turn. In case of illness he can visit a wife out of turn, and if her illness is serious he can remain with her until she has recovered.

Notes.
Baillie, Bk. 1, Chap. 11, p. 189; Zaidu-nil-Ambani, Vol. 1, p. 224.

Art. 156. A wife may abandon her rights in favour of a co-wife, but she is at liberty to recover them whenever she pleases.

Notes.

Art. 157. Whenever the husband goes on a journey, there shall be no question of partitioning his time. The husband can take with him whichever wife he chooses, but it is better to cast lots.

On his return, none of his other wives can require him to pass with them the same number of nights that he passed with the wife whom he took with him on his journey.

Notes.
See Sale's Koran, Chap. XXXIII, p. 348.

Art. 158. Where a husband is prevented through illness from leaving his own apartment, he can send for the wife whose turn it is to come to him.
If he falls sick in the apartment of one of his wives, and finds that he is not well enough to be removed to the dwelling of a co-wife, he may remain in the former apartment until he has recovered, provided he passes with the other wives as many days as he has passed while sick in the apartment of the first wife.

**Notes.**


**Art. 159.** Where a husband, after having settled the length of time to be spent with each wife, and fixed the order to be followed, acts unjustly to one of his wives and favours a co-wife by passing with her more time than he should, the Judge, except in the case of a journey, shall, at the request of the wife concerned, warn the husband to be more just in future.

Where the husband, in spite of the judicial admonition, again acts unjustly towards the wife, he shall be liable to a severe punishment, but not to imprisonment.

**Notes.**

_Radd-ul-Muhtar, Vol. 2, pp. 433, 434._

CHAPTER II.

THE HUSBAND'S DUTIES TOWARDS THE WIFE AS REGARDS MAINTENANCE.

(Arts. 160—205.)

SECTION 1.—WIVES ENTITLED TO MAINTENANCE.

(Arts. 160—165.)

Art. 160. The husband though poor, sick, impotent, or too young for sexual intercourse, is obliged to provide his wife with maintenance, whether she is rich or poor, Muslim or otherwise, old or young, so long as she is able to fulfil the primary object of marriage. When the marriage is valid, this obligation commences from the conclusion of the marriage ceremony.

Notes.


See Notes to Art. 56.

Art. 161. Maintenance is due to the wife even when she is resident in her father's house, unless without valid reason she refuses to comply with the husband's request to reside in his house.

Notes.


See Kolashun Bibee v. Sheikh Didar Buksh, 24 W. R. Cr., 44 (1875); Section 488 of the Code of Criminal Procedure (Act V of 1898).
Art. 162. Maintenance is due to the wife who refuses to follow her husband on a journey, to a place which is three days' distance from that in which the marriage was contracted, or who, even after consummation of the marriage, refuses to surrender herself to her husband, because she has not received in full the prompt portion\(^1\) of her dower, which according to the custom of the locality she is entitled to demand.

**Notes.**


Art. 163. Where a wife, after the marriage has been consummated, falls sick in either the husband's or her father's house, she is entitled to maintenance even when the illness renders her unfit for sexual intercourse, unless she has refused, without lawful reason, to surrender herself to her husband.

Where the wife falls sick in her husband's house and causes herself to be taken to her father's house, she is entitled to maintenance even when her husband claims her back, so long as it is found impossible to remove her; but if her removal is possible and she opposes it without a valid reason, she loses her right to maintenance.

**Notes.**


Art. 164. The husband, when undergoing a term of imprisonment, is not released from the obligation to

\(^1\) See Arts. 73, 104.
pay his wife's maintenance, even when imprisoned for a debt due to his wife which he is unable to pay.

**Notes.**


**Art. 165.** The husband, who is in easy circumstances, must provide for the necessary maintenance of his wife's personal attendant. When the wife is taken to her husband's house with several servants, if the husband has the means, he is obliged to maintain them all.

Where the husband has children, and one servant is not sufficient for their service, he must, if he is in easy circumstances, maintain two or more servants according to the needs of the children.

**Notes.**


**SECTION II.——WIVES NOT ENTITLED TO MAINTENANCE.**

(Arts. 166—172)

**Art. 166.** When the wife is too young for sexual intercourse, the husband may refuse her maintenance, unless he retains her in his house for the sake of company.

**Notes.**


A right to maintenance, depending upon the personal law of the individual, is a right capable of being enforced, and properly
forms the subject of a suit in a Civil Court—In the Matter of the petition of Luddun Sahiba, I. L. R., 8 Cal., 736; 11 C. L. R., 237 (1882).

Art. 167. When the wife is sick and her marriage has not been consummated, she is not entitled to maintenance if she cannot be removed to her husband’s house.

Notes.

Art. 168. When the wife undertakes a journey, or goes on a pilgrimage unaccompanied by her husband, she is not entitled to maintenance for the time she is absent, even though she is accompanied on her journey by one of her relations within the prohibited degree. When the husband undertakes a journey and takes his wife with him, he must defray all the costs of travelling and living.

When the wife undertakes the journey and takes her husband with her, he must defray her living but not of her travelling expenses.

Notes.

Art. 169. Where the wife exercises a profession necessitating her absence from her husband's house throughout the day, she is not entitled to maintenance if she leaves the house in spite of her husband’s prohibition.

Notes.

1 See Arts. 21, 22.
WIVES NOT ENTITLED TO MAINTENANCE.

Art. 170. Maintenance is not due to a wife during the term of her imprisonment, though it be for a debt she cannot pay, unless it is the husband who has caused her arrest for debt due to himself.

Notes.


Art. 171. Where a wife leaves her husband’s house without his permission and without lawful reason, she is deemed rebellious, and not only loses all right to maintenance for the period during which she continues rebellious, but to all arrears of maintenance, and to the sums she has borrowed for maintenance without either a judicial decree, or an order from her husband.

She is also held to be rebellious, when she forbids her husband to enter the house belonging to her but inhabited in common, unless she has asked him to take her to some other house and he has not done so.

Notes.


According to Mahomedan law, a Mahomedan wife defying her husband and refusing to live with him is not entitled to maintenance—A (the wife) v. B. (the husband), I. L. R., 21 Bom., 77 (1896).

Art. 172. Where the marriage of a wife is radically void or has been consummated under a semblance of right, she can claim nothing from her husband on account of maintenance.

Where the Judge decrees that maintenance be paid to a wife, whose marriage is subsequently pronounced void.
invalid, the husband is entitled to a refund of the amount paid under the decree, but not to the amounts he has advanced voluntarily.

Notes.


SECTION III.—RULES REGULATING THE AMOUNT OF A WIFE'S MAINTENANCE.

(Art. 179—180.)

Art. 173. When fixing the amount of maintenance, due regard shall be paid to the respective conditions of the husband and wife.

Where both are rich, the husband shall allow maintenance on a generous scale. Where they are both poor, the allowance shall be simple.

Where it is the husband who is poor, he must furnish as much as he is able out of the maintenance agreed upon, the balance constituting a debt to the wife, payable when the husband's position has improved.

Notes.


See Sale's Koran, Chap. LXV, p. 455.

As to the alteration in wife's maintenance—see Section 489 of the Code of Criminal Procedure (Act V of 1898).
According to Mahomedan law until there has been an ascertamation of the rate at which maintenance is payable, no right to maintenance accrues to a wife on which she can found a suit—*Mahomed Musehooddin v. Clara Jane Musehooddin*, 2 N.-W. P., H. C. R., 173 (1870).

**Art. 174.** Maintenance may be fixed in kind or in money, according to the variations in the price of commodities in the locality.

Where a judicial decree has fixed the amount of maintenance and the price of commodities thereafter rises, the wife is entitled to the additional amount, but where the price falls the husband is entitled to a reduction.

**Notes.**


**Art. 175.** Payment of maintenance, whether in kind or in money, must be regulated by the husband's calling. The husband, who lives by his labour from day to day, shall pay daily and in advance the sum fixed for his wife's maintenance. The workman, receiving a weekly wage, shall pay weekly. The tradesman, who is paid by the month, shall pay monthly.

The cultivator who gathers his crops annually, shall pay annually. Nevertheless, the wife can insist on being paid daily, where the husband neglects to pay at the times fixed.

**Notes.**


**Art. 176.** During the marriage, the husband can undertake that he himself will furnish the necessary food for his wife.
Where he does not do so regularly, the Judge shall order the husband to appear, and after having satisfied himself that the complaint is well-founded, and that the husband does not as a rule supply sufficient food, he shall fix the amount of maintenance in accordance with the rules laid down in the preceding Article, and shall direct the husband to pay the amount to the wife, so that she may provide herself with her requirements.

If the husband refuses, in spite of the judicial order, to pay the amount, the Judge, if the wife demands it, may have him arrested. If he does not even then discharge the debt he owes his wife, the Judge may commit him to prison, and may also order the sale of his property which is not indispensable to him, and use the proceeds in payment of the wife's maintenance.

Notes.


Baillie, Bk. 6, Chap. 1, pp. 441, 443; Zaidu-nil-Ambani, Vol. 1, p. 245.

A Mahomedan wife is entitled to maintenance from the date of decree, where there is no agreement for maintenance before suit. She is also entitled to maintenance during the continuance of marriage. Abdool Futtek v. Zabunnessa Khatun, I. L. R., 6 Cal., 631, per Garth, C. J. (1881).

A Mahomedan husband was bound to pay the maintenance money to his wife according to the terms of the order of the Magistrate up to the date when he repudiated his wife—Nepoor Aurut v. Jurai, 10 B. L. R., App. 33 (1873).


Art. 177. Where the husband is known to be in straitened circumstances and does not possess the means
to pay for his wife's maintenance, the Judge shall not commit him to prison, nor shall he pronounce separation on this account. But after having fixed the amount of maintenance, he shall authorize the wife to buy food on credit or to borrow in her husband's name.

The wife's relations on whom, in default of the husband, falls the obligation of providing her with maintenance, and those relations whose duty it is to maintain the children in the event of their father's death, are obliged to lend the wife what is necessary for her and her children's maintenance.

Notes.


Art. 178. Where the amount of maintenance has been mutually agreed upon or fixed by a judicial decree, and the wife learns that her husband intends leaving her, or fears that he may absent himself, she can demand that a reliable surety be furnished for one month or more, according to the length of her husband's absence.

Notes.


Art. 179. Where the amount of maintenance has been fixed by judicial decree, it may be raised or lowered according to the changes in the position of husband and wife.

Notes.


Art. 180. The wife can claim no wages from the husband for preparing his food, although legally she may not be bound to do this work. She is only entitled to wages when, by her husband's order, she cooks food or makes bread for sale.

Notes.

SECTION IV.—CLOTHING AND LODGING.

(Art. 181—188.)

Art. 181. From the day a valid marriage is contracted, the wife is entitled to clothing. The husband is bound to provide her each year with two complete sets of clothing, at least one for summer and one for winter. Their quality is determined by the position of the husband and wife and in accordance with local custom.

Notes.

Art. 182. The price of clothing, like that of food, can be made payable in kind or in money, and must be provided for in advance.

Notes.

Art. 183. The wife cannot claim a new garment before the date fixed, unless the garment furnished has suffered by fair wear and tear. She is responsible for
the loss of a garment, and the husband is not bound to replace it until the expiry of the period fixed.

**Notes.**


**Art. 184.** Where husband and wife are both wealthy, the husband must provide a separate house for his wife's residence; where they are not wealthy, the husband must provide a separate apartment according to his means, which must possess the necessary conveniences and must not be isolated.

**Notes.**


See Sales' Koran, Chap. LXV, p. 455.

**Art. 185.** The husband cannot force his wife to provide lodging in her dwelling for any of his relations, or for his children by a former marriage, except those under the age of reason.

On her side, the wife cannot give lodging to any of her relations or to her own children by a former marriage. In both cases, the consent of the other party is necessary.

**Notes.**


Baillie, Bk. 6, Chap. 1, p. 448; Hamilton's Hedayah, Vol. 1, Bk. 4, Chap. 15, s. 2, p. 185; Zaidu-nil-Ambani, Vol. 1, p. 257.

**Art. 186.** The residence of a near female relation of the husband in the house occupied by the wife, does not entitle the wife to demand the return of the house in which the husband resides, or for any of his relations, or for his children by a former marriage, except those under the age of reason.

On her side, the wife cannot give lodging to any of her relations or to her own children by a former marriage. In both cases, the consent of the other party is necessary.
not entitle the latter to claim a separate lodging elsewhere, except when she has cause to complain of the relation's familiar behaviour with her husband.

But the lodging of a co-wife in the same house gives the wife a right to demand a separate lodging elsewhere. The same rule applies where a co-wife or one of the husband's relations is lodged in the same apartment with the wife.

Notes.


Art. 187. Where the house possessed by the husband, contains no other inmates, and the wife suffers from loneliness, or where the husband neglects her by night, and remains with a co-wife while she has neither child nor servant to keep her company, the husband is bound to procure a companion for her, or else provide another dwelling for her in which she will have no cause to complain of solitude.

Notes.


Art. 188. The husband is bound to supply his wife with a mattress, blankets and suitable furniture in accordance with his position in life. He is not even relieved from this obligation when the wife possesses such articles herself.

The husband must also provide the necessary household utensils, as well as the cosmetics and other articles, indispensable to the wife's toilette according to the custom of the country.
SECTION V.—THE WIFE'S MAINTENANCE WHEN THE HUSBAND IS ABSENT.

(Art. 189—196.)

Art. 189. Where a husband is absent, the wife may, for the purpose of maintenance, be authorized to dispose of such goods, or quantities of gold or silver, coined or uncoined, left by the husband, as will suffice to provide for the amount decreed in her favour.

Where the husband has left behind deposits or debts, the wife may be authorized to use a part of them also, provided they are of such nature as may be used for maintenance, and the depositary and debtor respectively admit the deposit and debt and recognize the marriage. She may also be authorized to dispose of them where she can establish the deposit or debt and the Judge is cognisant of her marriage.

The Judge shall first make an order that payment of the maintenance be made from the sale of the household effects, and afterwards from the deposit and debts. He shall require good security from the wife for the amounts she receives, and shall make her declare on oath that her husband had advanced her no maintenance.

Notes.


Art. 190. Where the absent husband has not provided for any maintenance for his wife during his absence, and the wife proves her marriage with him, the Judge shall make an order for her maintenance, and authorize her to borrow or make purchases on credit in her absent husband's name, but he shall not dissolve the marriage even though the wife demands it.

Notes.

Art. 191. Where the husband on his return, proves that he had paid his wife her maintenance in advance or where the wife, in default of proof, refuses to take the oath, the husband is entitled to recover the amount from his wife, or the surety.

Where the wife admits that she had received maintenance in advance from her husband, he shall be entitled to recover the amount from her alone.

Notes.

Art. 192. Where the husband, on his return, denies the fact of marriage, his sworn declaration shall be accepted, unless the wife produces proof to the contrary. Where the husband takes the oath, he can, in case of a deposit, sue his wife or the depositary for payment; in the case of a debt, he can only sue the debtor, who, in turn, can proceed against the wife.

Notes.
Art. 193. Where the husband, on his return, proves that the marriage was dissolved by repudiation¹, that the period of *Iddat*² had expired, and that consequently the wife was in no way entitled to the maintenance received by her in his absence, he may sue his wife for recovery of the amount recovered by her, but can not sue the depositary or debtor, unless the husband can establish that the depositary or the debtor was aware that the marriage had been dissolved.

Notes.

Art. 194. Where the depositary or debtor, directed by the Judge to provide maintenance for the wife of the absentee, claims to have paid the deposit or the debt to the wife for her maintenance, and she denies it, the depositary's declaration shall be accepted, but the debtor shall be required to adduce proof in support of such payment.

Notes.

Art. 195. Where the husband leaves behind a deposit or goods that cannot be used for maintenance, neither the wife nor the Judge has the right to dispose of them in order to provide maintenance.

The immovable property belonging to the absent husband shall be leased out, and a part of the income expended for the wife's maintenance.

¹ See Art. 217. ² See Art. 310.
Art. 196. In all cases where a Judge authorizes a wife to dispose of the property left by her absent husband, it is lawful for her to take from the property so left by him what is necessary for her maintenance without a judicial decree.

Notes.
Baillie, Bk. 6, Chap. 1, p. 443; Zaidu-nil-Ambani, Vol. 1, p. 270.

Art. 197. The necessary debts contracted for the maintenance of a man, his wife, and his children, are payable before any other debt.

Notes.
Bahrr-ul-Rayek, Vol. 8, p. 95.

Art. 198. Maintenance does not constitute a debt until it is fixed by a judicial decree, or mutually agreed upon by the husband and wife.

Notes.

According to Mahomedan law until there has been an ascertainment of the rate at which maintenance is payable, no right to maintenance accrues to a wife on which she can found

When a woman sues her husband for maintenance for a time antecedent to any order of the Judge or mutual agreement of the parties, the Judge is not to decree maintenance for the past. —Abdool Futteh v. Zabunneessa Khatun I. L. R., 6 Cal., 631, per Garth, C. J. (1881).

Art. 199. The debt for maintenance, judicially made payable to the wife, or settled by mutual agreement between husband and wife, is not subject to the law of limitation, and where the wife has not claimed the debt in full or in part at the dates fixed so long as she and her husband are living, she is entitled to the debt however much overdue.

Notes.

Radd-ul-Muhtâr, Vol. 2, p. 714,

Baillie, Bk. 6, Chap. 1, p. 443 ; Hamilton’s Hedayah, Vol. 1, Bk. 4, Chap. 15, s. 1, p. 142 ; Zaidu-nil-Ambani, Vol. 1, p. 274.

Art. 200. Where a wife has expended or borrowed some amount on account of maintenance before the same has been fixed by judicial decree, or by mutual agreement, she is not entitled to recover the amount from her husband, whether present or absent, if she allows a full month to pass without claiming it.

Notes.


See the Indian Limitation Act (XV of 1877).

Art. 201. The death of either husband or wife extinguishes the latter’s claim to arrears of maintenance...
awarded by judicial decree, or fixed by mutual agreement, and whatever she has borrowed without judicial authority.

The repudiation of the wife does not cause her to forfeit arrears of maintenance, unless it is proved that she, by her misconduct, has forced the husband to repudiate her.

**Notes.**


**Art. 202.** A debt for maintenance contracted by the wife in her husband’s name in pursuance of a judicial decree, always constitutes a debt against the husband, and if he dies first, becomes chargeable against his estate.

Where a loan is effected by virtue of a judicial decree, the lender may sue the wife or her husband for payment. Where there is no judicial decree, the lender must proceed against the wife, who, if she is entitled to do so, may proceed against the husband.

**Notes.**


**Art. 203.**—Advances for maintenance made to the wife by the husband or by his father, cannot be recovered in the event of repudiation\(^1\) or of the death of husband or wife even when such advances have not been entirely consumed.

**Notes.**


\(^{1}\) See Art. 217.
Art. 204.—A wife cannot release her husband from paying arrears of maintenance, before the amount has either been fixed by a judicial decree, or has been settled by mutual agreement.

When the amount has been fixed, the wife can validly renounce in her husband's favour any arrears of maintenance, and where the maintenance is payable daily, weekly, monthly, or yearly, she can release him from the payment provided for one of these periods, if the period has already commenced.

Notes.

Art. 205. Where a wife is in debt to her husband, she cannot set off the amount of her debt against maintenance due to her, unless he consents to it.

On the other hand, the husband, without his wife’s consent, can set off a debt for maintenance against a debt she owes him.

Notes.
CHAPTER III.
MARITAL AUTHORITY.

(Art. 206—211.)

Art. 206. A husband has no power over his wife's property. A wife can dispose of all her property without her husband's consent or sanction, nor does his marital authority empower him to restrain her from so doing.

She can receive the rents and income derived from her property, and can entrust the administration of her estate to a person other than the husband.

When a wife is of age and under no legal disability, all her contracts are valid without sanction of or ratification by her husband, father, paternal grandfather, or testamentary guardian.

Whatever fortune she may possess, the wife is not bound to contribute anything towards the household expenses.

Notes.


Art. 207.—After payment of the prompt portion of the dower, the husband has the right:

1 (1) To forbid his wife to leave the house without his permission, respecting her right to visit her father and mother, and relations within the prohibited degrees at fixed periods.

\[1 \text{ See Art. 73.} \quad \text{See Arts. 21 22.}\]
(2) To forbid her to visit and mix with strange women, and to prevent her attending festivals and social gatherings, even with her relations within the prohibited degrees.

(3) To compel her to leave her father’s house when she is not too young, and live among respectable neighbours in any quarter of the town in which the marriage was contracted, even if the contrary was stipulated when he married her.

(4) To prohibit her relations residing in the house, whether it is the husband’s own property or only lent or leased to him.

Notes.


See Notes to Art. 213.

Art. 208. After payment of the prompt portion of the dower, a husband can remove his wife from the place in which the marriage was contracted, to a distance of less than three days’ journey: but if the distance is a three days’ journey, he cannot compel her to follow him even if he has paid the whole dower.

Notes.


Art. 209. When the wife commits a fault, or her conduct calls for reprimand, for which the law has prescribed no judicial penalty, the husband can punish her

\[\text{Notes.}\]


Art. 209. When the wife commits a fault, or her conduct calls for reprimand, for which the law has prescribed no judicial penalty, the husband can punish her

1 See Art. 73.
in moderation. He must not use violence towards her even under extreme provocation.

Notes.
Bahr-ul-Rayek, Vol. 3, p. 84.


This conception of the mutual rights and obligations arising from marriage between the husband and wife, bears in all main features close similarity to the Roman law and other European systems, which are derived from that law; and even regarding the power of correction the English law seems to resemble the Mahomedan, for even under the former "the old authorities say the husband may beat his wife;" and if in modern times the rigour of the law has been mitigated, it is because in England, as in this country, the criminal law has stepped in to give to the wife personal security, which the matrimonial law does not. The Mahomedan law, on a question of what is legal cruelty between man and wife, would probably not differ materially from the English law—Abdul Kadir v. Salima, I. L. R., 8 All., 149, F. B., per Mahmood, J. (1886).

See Section 79 of the Indian Penal Code (Act XLV of 1860).

Art. 210. When the husband and wife disagree, the judge, before whom they bring their complaint, shall nominate two arbitrators of known respectability, one from the husband's family and one from the wife's, and refer to them the matters in dispute.

The arbitrators after hearing both sides shall, endeavour by all possible means to bring about a reconciliation. If unsuccessful, the arbitrators may grant a repudiation when empowered to do so by both parties.

Notes.
Tafsvi-i-Ahmedi, pp. 280, 281.


See Sale's Koran, Chap. IV., p. 65.
Art. 211. If the wife complains of her husband's ill-treatment, and brings positive proof of his having used violence towards her, even though under great provocation, he is liable to punishment in accordance with the gravity of the offence.

Notes.
See Indian Penal Code (Act XLV of 1860, Chap. XVI).

CHAPTER IV.
RIGHTS AND DUTIES OF THE WIFE.
(ARTS. 212—216.)

Art. 212. A wife must be obedient to her husband in all that is permitted and legally ordained as a duty of marriage: she must remain in her husband's house and not quit it without his permission, after payment to her in full of the prompt portion¹ of the dower: she must not refuse her person to him unless legally or physically prevented: she must live a virtuous life and must carefully watch over his property and household: and without his permission she must give away no part of his belongings, except that which it is customary to give.

Notes.

Art. 213. Where the dower is divided into two parts, the wife, even after voluntary consummation of the marriage, can refuse her person to her husband and refuse to follow him to his house until he has paid in full the prompt portion¹ of the dower.

¹ See Art. 73.
If the amount of prompt dower has not been fixed, the wife is justified in refusing her person until payment of the amount, which in accordance with the custom of the country, would be accorded to a woman of her rank and station.

She can refuse her person where the payment of the full dower is arranged for by instalments, unless a stipulation to the contrary was made.

Notes.


According to Inam Abu Hanifa, the founder of the Hanifa sect of Mussalmans, the wife even after consummation of marriage, can refuse her person to her husband until he has paid in full the prompt portion of the dower. In Egypt, Turkey and Arabia, this rule of law obtains among the Hanifites, and the British Courts in India administered it for nearly a century, as the following notes of their decisions would illustrate.

Dower must be considered as immediately demandable, unless the contrary was specified. The husband on the payment of the wife's dower due, can enforce her cohabitation with him, but not before—Abdul Karim v. Fazilatun-nissa, 5 Sel. Rep., S. D. A. 90 (1830); Fdukro-nissa v. Shah Ally Ruzzah, 6 Sel. Rep. S. D. A. 368 (1840).


An action for restitution of conjugal rights will not lie unless the husband has paid the prompt portion of the dower to the wife, even after the consummation of marriage with her.—Abdool Shukkoar, v. Raheemoon-nissa, 6 N. W. P., H. C. R., 94, per Turner, J. (1874).

A Mahomedan wife can refuse herself to her husband till her dower, being prompt, has been satisfied. The circumstance that the husband and wife already cohabited since their marriage does not preclude the wife from refusing further cohabitation until the
portion of her dower payable to her has been paid.—*Eidan v. Mazhar Husain*, I. L. R. 1 All., 483 (1877).

The views propounded by Abu Hanifa should be followed, and that a woman entitled to dower, that is prompt, may, even after consummation or valid retirement, deny her husband access to her person in order to enforce the man’s pecuniary obligation to her—*Wilayat Husain v. Allah Rakhi*, I. L. R., 2 All., 831, per Straight, J. (1880).

When a Mahomedan wife’s prompt portion of the dower was not paid, it was held that a suit for restitution of conjugal rights was not maintainable.—*Nasrat Husain v. Hamidun*, I. L. R., 4 All., 205 (1882).


But in a suit for restitution of conjugal rights by a Mahomedan husband, the question of the wife’s right to refuse cohabitation with her husband, after consummation of marriage, on the ground of non-payment of dower was argued in 1885 before the Full Bench of the Allahabad High Court, including Mahmood, J. Mahmood, J., disagreed with the views propounded by Imam Abu Hanifa, and agreeing with the views of the two disciples, Imam Abu Ynsuf and Imam Mahomed, overruled the current of decisions on the subject, and the Full Bench adopted his opinion.

Mahmood, J., observed as follows:

"The right of dower confers another right upon the Mahomedan wife, and the nature of this second right is described in the Hedayah in a passage on which the learned pleader for the respondent has relied for his contention. The passage is to be found in Grady’s edition of Hamilton’s Hedayah, at page 54; but as the translation is not sufficiently close, and is moreover interpolated with paraphrases, I translate the original text here literally, since much depends upon the exact meaning of the passage:—‘It is the wife’s right that she may deny herself to her husband until she receives the dower, and she may prevent him from taking her away (that is, travelling with her), so that
her right in the return may be fixed in the same manner as that of the husband in the object of the return and become like sale. And it is not for the husband that he may prevent her from travelling or going out of his house and visiting her friends until he has paid the whole exigible dower, because the right of restraint is for securing fulfilment (of his right) to the rightful person, and he has not the right to securing fulfilment before rendering fulfilment (himself); and if the whole dower is deferred, it is not for her to deny herself because of her having dropped her right by deferring it, as in sale. And in this matter Abu Yusuf holds the contrary opinion. And if the husband has retired with her the same would be the answer according to Abu Hanifa: but the two disciples have said she has not the right to deny herself, and the difference of opinion subsists where there is retirement with her consent; but if she was forced or an infant or insane, her right of denying herself does not drop according to the unanimous opinion of our Doctors.'

Another passage to be found in the *Durrul-Mukhtār* has also been cited by the learned pleader for the respondent, and I translate it here before considering the exact effect of these authorities upon the present case:— 'It is the wife's right to prevent the husband from connubial intercourse, and that which is implied therein, and from journeying with her, even though after connubial intercourse and retirement to which she has consented, because all connubial intercourse has been contracted with her, and the rendering of some does not imperatively require the rendering of the rest. This right is for the purpose of obtaining what has been stated as prompt dower, whether wholly or partly, . . . . . I wish to quote a passage from the celebrated *Fatwa Qazi Khan*, a text book as high in authority as the *Durrul-Mukhtār*:— 'A wife, having surrendered herself to her husband before the fulfilment (i.e., payment) of dower, subsequently denies herself (to him) for securing fulfilment of the dower. She has this right in the opinion of Abu Hanifa; but Abu Yusuf and Iman Mahomed maintain that she has not the right of prohibiting him from connubial intercourse, and doubts have arisen in regard to their opinions as to the power of preventing her from journeying. According to Abul Qasim Assaffar, it is her right that she may prevent him from taking her on a journey.'
Imam Abu Hanifa and his two disciples are known in the Hanifa school of Mahomedan Law as 'the three Masters,' and I take it as a general rule of interpreting that law, that whenever there is a difference of opinion, the opinion of the two will prevail against the opinion of the third. Now, bearing this in mind, it is clear that the two disciples of Imam Abu Hanifa, regarding the surrender of the wife to her husband as bearing analogy to delivery of goods in sale, held that the lien of the wife for her dower, as a plea for resisting cohabitation, ceased to exist after consummation. According to the ordinary rule of interpreting Mahomedan Law, I adopt the opinion of the two disciples as representing the majority of 'the three Masters,' and hold that, after consummation of marriage, non-payment of dower, even though exigible, cannot be pleaded in defence of an action for restitution of conjugal rights; the rule so laid down having, of course, no effect upon the right of the wife to claim her dower in a separate action."—Abdul Kadir v. Salima, I. L. R., 8 All., 149, F. B., (1886).

The Mahomedan matrimonial contract involves separate and independant contract by the husband and wife. The wife is by contract bound to submit herself to her husband and he is to pay the prompt or other dower according to the contract, or if no sum agreed on, according to the provision of the law. Each has a separate remedy against the other for non-performance of the contract—Kunhi v. Moidin, I. L. R., 11 Mad., 327 (1888).

Where a Mahomedan husband brought a suit for restitution of conjugal rights against his wife, and the latter urged that the husband was not entitled to succeed on the ground that he had not paid the exigible portion of the dower due to her, held, that there being a difference of opinion between Abu Hanifa and Mahomed, upon the question whether a woman can refuse herself to her husband after consummation upon the ground of non-payment of prompt dower, the former answering the question in the affirmative and the latter in the negative, the practice of later Jurisconsults has been to follow the two disciples, though they agree with Abu Hanifa upon the question of the wife's right to refuse to accompany the husband on a journey—Hamidunnessa Bibi v. Zohiruddin Sheikh, I. L. R., 17 Cal., 670 (1890).
In a suit for restitution of conjugal rights, the question of the jurisdiction of the Court was discussed—Aklemannessa v. Mahomed Hatem, I. L. R., 31 Cal., 849 (1904).

To a husband's suit for restitution of conjugal rights, the wife pleaded non-payment of dower. To this the husband pleaded consummation of the marriage, held, that after consummation of marriage, non-payment of dower cannot be pleaded in defence of an action for restitution of conjugal rights—Bai Hansa v. Abdulla, I. L. R., 30 Bom., 122, per Jenkins, C. J. (1905).

As to decree for the recovery of wives, see Section 259, and for restitution of conjugal rights, see Section 260 of of the Civil Procedure Code (Act XIV of 1882). See also Section 11 of the Code of Civil Procedure (Act XIV of 1882).

The period of limitation in a suit for the recovery of a wife or for the restitution of conjugal rights by a Mahomedan, is prescribed by Articles 34 and 35 of the Schedule II of the Indian Limitation Act (XV of 1877), and a suit must be brought within two years from the time when the possession of the wife was demanded and refused or when restitution was demanded and refused by the husband or wife, being of full age and sound mind.

Art. 214. When the wife has not received her prompt dower\(^1\) in full, after having laid claim to it, she is free to leave her husband's house without his permission and without thereby rendering herself rebellious or losing her right to maintenance.

Notes.


Art. 215. When her father and mother are unable to come and see her at her own house, a wife is entitled to visit them once a week, and to visit other male relations, who are within the prohibited degree\(^2\) once

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\(^1\) See Art. 73.
\(^2\) See Arts. 21, 22.
a year. She cannot pass the night at any of their houses except by the express permission of her husband.

**Notes.**


**Art. 216.** A wife, whose father is suffering from a protracted illness and has no one to tend him, without her husband’s consent can visit and remain with him in order to afford him the necessary attention, even if he be a non-Muslim.

**Notes.**


BOOK III.

DISSOLUTION OF MARRIAGE.

(Arts. 217–331.)

CHAPTER 1.

DIVORCE (TALAK.)

(Arts. 217–272.)

SECTION I.—POWER TO PRONOUNCE REPUDIATION: WIVES WHO CAN BE REPUDIATED: NUMBER OF REPUDIATIONS.

(Arts. 217–225.)

Art. 217. The husband alone has the right of dissolving marriage by repudiation.

Every adult husband of sound mind can pronounce a valid repudiation, even when he is legally incompetent, as a spend-thrift or is suffering from any disease which is not mental.

A repudiation is valid even if pronounced under compulsion or in jest.

Notes.


A repudiation is the mere arbitrary act of a Mahomedan husband, who may repudiate his wife at his own pleasure, with or without cause; but if he adopts that course, he is liable to pay her dowry—Buzul-ul-Raheem v. Luteefutoon-nissa, 8 M. I. A., 379 (1861).

According to Mahomedan law, a repudiation of one acting upon compulsion from threats is effective—Ibrahim Mulla v. Enayetur Ruhman, 4 B. L. R. 13 (1869).

Although the ordinary Mahomedan law of repudiation does not exist in respect of marriages by the Mutah form, and they are dissolved ipso facto by the expiry of the term for which they may have been contracted, still there is another way of terminating the marriage by the giving away of the unexpired portion of the term for which the marriage was contracted—Mahomed Abed Ali Kumar Kadar v. Ludden Saheba, I. L. R., 14 Cal. 276 (1887).

Art. 218. A repudiation is valid, even if pronounced by a husband, while he is intoxicated of his own free will from drinking a forbidden liquor.

When the husband becomes intoxicated under compulsion or from necessity, the repudiation he pronounces while in that state has no effect.

Notes.


Art. 219. A dumb man can validly repudiate by signs which are intelligible.

Notes.


Art. 220. When the husband is asleep and is afflicted with madness or imbecility, or has lost the use of his reason through old age, illness, or a sudden accident, he is incapable of pronouncing a valid repudiation. A repudiation pronounced by a husband while in any of these conditions has no effect. Where the husband makes a repudiation subject to a condition which is realised after he has lost his intellectual faculties, the repudiation shall produce all its effects.

Notes.

Art. 221. The father cannot validly repudiate the wife of his minor son, nor can the minor pronounce a valid repudiation.

Notes.

Art. 222. A repudiation can be expressed verbally or in writing.

A husband can delegate the power of repudiation to a third party, or send a letter of repudiation to his wife, or authorize her to pronounce her own repudiation, or direct her as his agent to repudiate his other wives.

Notes.
Where a Mahomedan husband signed an instrument of repudiation in the presence of his wife's father, but not in the presence of the wife herself, held, that the act of triple repudiation contained in the instrument effected a valid repudiation according to Mahomedan law—Waj Bibee v. Azmut Ali, 8 W. R., 23, per Phear, J. (1867).

A writing is not necessary to the legal validity of a repudiation under Mahomedan law, but where a repudiation takes place between persons of rank and property, and where valuable rights depend upon the marriage and are affected by the repudiation, the parties, for their own security, should have some document which might afford satisfactory evidence of what they had done—Gouhur Ali Khan v. Ahmed Khan, 20 W. R., 214, P.C. (1873).

According to Mahomedan law, the husband may give his wife an option to repudiate herself, and if she avails of it, the repudiation is binding on him, and a discretion to repudiate, when attached to a condition, need not be limited to any particular period, but may be absolute as regards time—Ashruf Ali v. Ashad Ali, 16 W. R., 260 (1871).

Where a Mahomedan husband entered into an agreement, authorizing his wife to repudiate herself and take another husband, if he married another wife without her consent, held, such an agreement was valid according to Mahomedan law—Badaranissa Bibi v. Manattala, 7 B. L. R., 442 (1871).

Mahomedan law provides for the delegation of the power of repudiation by the husband to the wife on certain occasions. An agreement entered into before marriage between the parties able to contract, under which the wife consented to marry on condition that, under certain specified contingencies, all of a reasonable nature, her future husband should permit her to repudiate herself under the form prescribed by Mahomedan law is valid—Hamidoollah v. Faizunnissa, I. L. R., 8 Cal., 327 (1882).

Where a condition in the Kabinnamah authorized the wife to repudiate herself on the failure of the husband to deliver certain ornaments on demand, and on his failure to do so, the wife pronounced repudiation upon herself, held, that according to Mahomedan law, she was competent to rely upon the condition, which was imposed by her and accepted by the husband and to pronounce a repudiation—Nuruddin v. Chenuri, 3 Cal. L. J., 49 (1905).
Art. 223. Repudiation can be validly directed against any woman who is married, or who is observing *Iddat*, consequent upon a revocable repudiation or an irrevocable repudiation not final, or who is observing *Iddat* consequent upon a separation amounting to repudiation, such as the separation pronounced in consequence of a vow of continence, the separation pronounced in consequence of the husband’s impotency, or a separation brought about by the refusal of one of the parties to embrace the religion of Islam.

Notes.


Art. 224. Every woman can be repudiated three times. When the marriage has been consummated, these repudiations can be pronounced on three separate occasions or by one single formula: when the marriage has not been consummated, these repudiations can only be pronounced by one single formula.

When the marriage is valid, the wife repudiated three times cannot be taken back by her first husband, until she has been validly married to another man and has been repudiated by him, or until she has become a widow after actual consummation of the marriage with the second husband, and has completed the period of *Iddat* consequent either upon repudiation or widowhood.¹

Notes.


¹ See Arts. 28, 237, 248.
According to existing usage, a repudiation by Talak is not complete and irrevocable by a single declaration of the husband. But there is one condition, in whichever way it takes place, namely, that the wife is to remain in seclusion for a period of some months after the repudiation, in order that it may be seen whether she is pregnant by her husband, and she is entitled to a sum of money from her husband, for her maintenance during the period of Iddat—Buzul-ul-Raheem v. Luteefutoon-nissa, 8 M. I. A. 379, (1861).

No special expressions are necessary under Mahomedan law to constitute a valid repudiation. It is sufficient if they clearly indicate an intention to put an end to the relation of husband and wife, nor is it necessary that the expression should be repeated thrice except when the repudiation is final and irrevocable—Ibrahim v. Syed Bibi, I. L. R. 12 Mad., 63, (1888).

Where a Mahomedan pronounced only once the repudiation of his wife in the presence of the Kazi but in her absence, and executed an instrument of repudiation, held, that according to Mahomedan law, having regard to the words, writing, intention and conduct of the husband, it was a valid repudiation—Sarabai v. Rabiabai, I. L. R., 30 Bom. 537, per Bachelor, J. (1905).

See Sherif Saib v. Usanabibi, 6 Mad. H. C. R., 452 (1871).

Art. 225. In order to render a repudiation valid the use of special words is necessary. The formulas for a repudiation are either express or implied.

An express formula is that which contains the letters of the word Talak or words which generally convey the meaning of the word Talak or repudiation, or that which signifies the dissolution of marriage in any other language.

An express formula includes repudiation in writing, the signs of a dumb man, and the signs made with the fingers accompanied by the pronouncement of the word Talak:

Provided they are directed against the wife to be repudiated, all these expressions effect repudiation by
their mere pronouncement, and the question of the husband’s intention does not arise.

An implied formula is that which is expressed otherwise than in words to signify repudiation. A repudiation pronounced by the latter depends for its validity upon the husband’s intention or upon the circumstances under which it was pronounced.

**Notes.**


Where a Mahomedan pronounced the word *Talak* three times without addressing it to any person in an assembly where he and certain others including his wife’s relations were present, held, that the pronouncing the word *Talak* under the circumstances did not constitute a valid repudiation according to Mahomedan law—*Furzund Hossein* v. *Janu Bibe*, I. L. R., 4 Cal., 588 (1878).

Where a Mahomedan used certain expressions to his wife, when she was leaving his house, and intended not to receive her back as his wife, held, that it constituted a repudiation according to Mahomedan law—*Hamid Ali* v. *İmtiazan*, I. L. R., 2 All., 71 (1878).

According to Mahomedan law it is of vital importance to know what are the exact words used by a Mahomedan husband when he is alleged to repudiate his wife—*Sakina Khanum* v. *Laddan Saheba*, 2 Cal. L. J. 218 (1902).

As to a Mahomedan wife’s costs of litigation against her husband—A. (the wife) v. B. (the husband), I. L. R., 21 Bom., 77 (1896) See also *Mayhew* v. *Mayhew* I. L. R., 19 Bom., 293 (1894).

SECTION II — DIFFERENT KINDS OF REPUDIATION (Raji & Bain).

(Art. 226—250.)

Art. 226. There are two kinds of repudiation, revocable (Raji) and irrevocable (Bain).

Irrevocable repudiation, is sub-divided into imperfect repudiation and perfect or final repudiation.

It is imperfect, when it has been only pronounced once or twice.

It is perfect or final, when it has been pronounced three times.

Notes.


1

REVOCABLE REPUDIATION (raji), AND ITS LEGAL EFFECTS.

(Art. 227—236.)

Art. 227. Repudiation is revocable, when the husband addressing his wife, with whom he has consummated marriage uses an express formula, unaccompanied by an offer of compensation or by the number three expressed either formally or with a show of the fingers. Thus, if the husband, addressing the wife uses the expression "Thou art repudiated; I have repudiated thee," the wife only incurs one revocable repudiation, even though the husband intended to convey one, two or three irrevocable repudiations.

Notes.


Art. 228. The expressions "Repudiation is binding on me," "Repudiation is incumbent on me" involve one revocable repudiation, even when the husband should intend two. If the husband declares that, when using one of these two expressions, he intended a final repudiation, his declaration shall be accepted.

Notes.


Art. 229. The following expressions "Count thy lunar periods," "Remain continent," "Thou art single" will involve one revocable repudiation by implication. When the husband, without being provoked, uses one of these expressions, the repudiation depends upon his intention. If, while pronouncing it, he intended repudiation, the wife incurs one revocable repudiation, even if the husband desired two or three repudiations.

When, in a moment of anger, or in response to a request for repudiation made by the wife, the husband pronounces one of the above expressions, one revocable repudiation by implication is incurred, without the question of the husband’s intention to repudiate arising.

Notes.


Art. 230. A revocable repudiation, whether pronounced once or twice, does not dissolve the marriage tie, and does not take away from the husband his marital
authority over the wife, before completion of the period of *Iddat*, incumbent upon her as a result of the repudiation.

The marriage still subsists during the *Iddat*, except that the wife withdraws to her own apartment or hangs a curtain between herself and her husband, who is always bound to provide for her maintenance during the period of retirement.

The husband is allowed access to the wife without her permission, and can treat her as his wife, but this treatment would constitute a return.

Should either husband or wife die during the period of *Iddat*, the survivor inherits from the deceased, whether the wife was repudiated while her husband was in good health or during his last illness, and whether she asked to be repudiated, or was repudiated against her wish.

**Notes.**


**Art. 231.** Any husband, who has once, or even twice, revocably repudiated his wife with whom he has consummated marriage, has the right to take her back during the *Iddat*, even after his renunciation of this right, without the necessity of another marriage or of a new settlement of dower.

The right to take her back can be exercised even without the wife's consent and without the husband being obliged to give her notice. The husband only loses this right at the expiry of the period of her *Iddat*.

1 See Art. 246.
INSTITUTES OF MUSSALMAN LAW.

Notes.


If a husband repudiates his wife three times during that period which extends over three months, the repudiation is irrevocable; but if one sentence of repudiation be pronounced, the husband might take the wife back at any time before the expiration of her Iddat or term of probation; but after that term has passed without the husband exercising the power of return on his repudiated wife, the marriage no longer remains—Syed Mozaffur Ali v. Kumurunnissa Bibee, W. R. Sup. Vol. 32, per Kemp, J., (1864).

Art. 232. The husband can validly exercise the right of return verbally by saying to his wife, if she is present, "I have taken thee back" or, if she is absent, "I have taken back my wife."

Notes.


Art. 233. To be valid, the return must be immediate and unconditional. Any return fixed for a future date or subject to a condition, has no effect.

Notes.

Bahrr-ul-Rayek, Vol. 4, p. 54.


Art. 234. Although a return to the wife is valid when made verbally without witnesses and without the wife's knowledge, the husband must inform his wife of it, and, as also in the case of return by cohabitation, he must declare before trustworthy witnesses that he has taken back his wife.
REVOCABLE REPUDIATION.

Notes.


Art. 235. The husband’s right of return together with his marital authority¹ over his repudiated wife, ceases at the close of the tenth day from the commencement of her menstrual purgation on the termination of her courses.

Notes.

Bahrr-ul-Rayek, Vol. 4, p. 57.


The husband might take the wife back at any time before the expiration of her period of *Iddat*; but after that period has passed without the husband exercising the power of return on his repudiated wife, the marriage ceases—*Syed Muzaffur Ali v. Kumurunnisa*, W. R., Sup. Vol. 32, per Kemp, J. (1864).


Art. 236. When a dispute arises between the married parties, the wife claiming that she has had her courses three times and that the period of her *Iddat* has expired, and the husband maintaining that the period has not expired, and that he has the right to demand her return to him, the wife’s word shall be accepted and she shall recover her liberty if her claim is justified by the length of time elapsed since the day of her repudiation.

When the *Iddat*² is counted by the number of courses, the shortest period of *Iddat* for a wife is sixty days.

¹ See Art. 206.
² See Art. 310.
The taking back of a repudiated wife does not annul the previous repudiations, and if, taken back after two revocable repudiations, the wife is repudiated a third time, the marriage ties are entirely dissolved, the husband loses his authority and cannot marry the woman, unless after marrying a second husband, she has been separated from him or becomes a widow after consummation of the marriage, and is free from Iddat.

A revocable repudiation, after completion of the wife's period of Iddat, renders payable the deferred part of the dower which is still due from the husband.

The repudiated wife is entitled to claim its payment, unless it was arranged to pay the dower by instalments, in which case, the wife can only claim it at the fixed dates.
IRREVOCABLE REPUDIATION

II

IRREVOCABLE REPUDIATION (*Bain*), PERFECT OR IMPERFECT.

(Art. 239—250.)

**Art. 239.** Repudiation is irrevocable when a husband, addressing his wife with whom he has consummated marriage, makes use of an express formula accompanied by the number *three* expressed either formally or with a show of the fingers when pronouncing the word *Talak*.

When the husband says to her, "Thou art repudiated absolutely," she incurs only one irrevocable repudiation, even though he denies any intention of repudiation. Should he declare that he intended three repudiations, his declaration must be accepted.

Should he say to her, "Thou art repudiated thrice," or should he make signs to her with three fingers, while saying "Thou art repudiated as many times as these fingers," the wife incurs a perfect or final repudiation.

It is the same if he uses the expressions "Thou art repudiated with the maximum of repudiations," or "Thou art repudiated many times, or a thousand times."

**Notes.**


**Art. 240.** Every repudiation of a wife with whom marriage is not consummated is irrevocable.

Thus, if the husband repudiates his wife with whom he has had no actual or presumed consummation of marriage, is irrevocable.
Where a revocable repudiation becomes irrevocable

marriage, such repudiation is irrevocable and Iddat\(^1\) is not incumbent upon the wife. It is the same if he repudiates her after a valid retirement,\(^2\) but in that case Iddat is incumbent on her.

If he thrice repudiates her by using one express formula, she is finally repudiated, but should he pronounce the three repudiations against her one after the other, the first alone produces its effect, the two others having no effect on her.

**Notes.**


**Art. 241.** When a husband who has pronounced against his wife one or two revocable repudiations, allows the whole period of her Iddat to expire without taking her back, the repudiation assumes the character of an irrevocable repudiation, and the wife acquires full liberty, and the husband can no longer exercise the right of return.

**Notes.**


**Art. 242.** When a husband repudiates his wife, and offers to pay her compensation, and she immediately accepts it, the repudiation is irrevocable.

**Notes.**

Jamī-ur-Romuz, p. 240.

\(^1\) See Art. 310.  \(^2\) See Art. 82.
Art. 243. When a husband uses the expression "All that which is lawful, or all that which God and Muslims regard as lawful is forbidden me," all his wives, if he has more than one, are irrevocably repudiated, even in the case of the husband's denial of any intention to repudiate them. Should he declare that he wished a final, or triple repudiation, his statement must be accepted.

But when he addresses these expressions to a particular wife "That which is unlawful is binding upon me," or "I have rendered thee unlawful" or "Thy union with me ceases to be lawful," she only incurs a single irrevocable repudiation: his other wives, if he has any, are not affected thereby.

Notes.
See Buksh Ali v. Ameerun Bībee, 2 W. R. 207 (1865); Furzand Hossein v. Jann Bībee, I. L. R. 4 Cal., 588 (1878).

Art. 244. With the exception of the three expressions mentioned in Article 229, all other expressions effect, as the case may be, an irrevocable repudiation, perfect or imperfect, in accordance with the intention expressed by the husband.

Notes.
Hamilton's Hedayah; Vol. 1, Bk. 4, Chap. 2, p. 84; Zaidu-nil-Ambani, Vol. 1, p. 336.

Art. 245. When a husband makes a vow of continence, and fulfils it by refraining from having any intercourse with his wife, for the period of four months, an irrevocable repudiation is effected, and the husband is released from his oath if made for a fixed period.
Legal effects of irrevocable repudiation.

Art. 246. An imperfect irrevocable repudiation, pronounced either once or twice, dissolves the marriage immediately. It takes away from the husband his marital authority\(^1\) over the wife, causes a cessation of the marriage rights and duties, and leaves no trace of the marriage beyond the *Iddat*\(^2\) to be observed by the wife.

The husband and wife must occupy separate apartments, and must cease to hold any communication with each other: and, if this is not practicable in the same house inhabited by them, the husband, if a profligate, should withdraw elsewhere.

If either the husband or wife die\(^3\) during the period of *Iddat*, the survivor cannot inherit from the deceased, except where the repudiation is made by the husband in his death-illness against his wife's wish, or where the wife provoked her husband to repudiate her during her death-illness.\(^4\)

Notes.


An order of Magistrate for payment of maintenance to wife is not enforceable, after the husband has repudiated her according to

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to Mahomedan law—In re Kasam Pirbhai, 8 Bom. H. C. Rep. c. 95 (1871).

Where a Mahomedan, while in health, repudiated his wife, and subsequently died during the period of her Iddat, held, that the repudiated wife is not entitled according to Mahomedan law, to inherit from her husband—Sarabai v. Rabiabai, I. L. R., 30 Bom., 537, per Bachelor, J. (1905).


Art. 247. Where the wife is repudiated by one or by two irrevocable repudiations, re-marriage with her late husband is not prohibited. He can marry her during or after the period of Iddat1 but he can only do so with her voluntary consent, and by virtue of a fresh contract and a new dower. No one else can validly marry her during the period of her Iddat.

Notes.

Art. 248. Final or triple repudiation2 dissolves the marriage at the moment it is pronounced. It does away with the husband’s authority over his wife, and renders the wife unlawful to her husband.

Whoever, by one single expression, pronounces a triple repudiation against his wife with whom marriage is not consummated, or whoever pronounces three repudiations, whether successively or by a single formula, against a wife with whom marriage has been consummated, cannot marry her again.

1 See Art. 310.
2 See Art. 226.
For their re-union to take place, it is necessary that the wife should have been married to another husband by a valid and binding contract, that she should have been repudiated or have become a widow after a real and bona fide consummation of marriage, and that she should have completed the period prescribed for the Iddat consequent upon repudiation or widowhood.

The death of the second husband, before consummation of the marriage, cannot make the wife's re-union with her first husband lawful.

Notes.


A Mahomedan who pronounces three repudiations against his wife, cannot marry her again, until she marries another husband; and she cannot be compelled to rejoin her husband, and continue to live with him in intercourse which, according to Mahomeden law, would be illicit and criminal—Akhtaroon-nissa v. Sharintoollah, 7 W. R. 268, per Peacock, C. J. (1867).

Art. 249. The second marriage, once consummated, nullifies all the previous repudiations pronounced by the first husband, and when the latter remarries his former wife, he acquires entirely new authority over her, which he will not lose, until after three fresh repudiations.

Notes.


Art. 250. Repudiation does not affect a woman whose marriage is void. The dissolution of such a marriage is rather a separation than a true repudiation.

When a man pronounces three repudiations against a woman whose marriage is void, he can re-marry her by a valid contract, without the necessity of her first contracting a second marriage with another man.

Notes.


SECTION III.—CONDITIONAL REPUDIATION.

(Art. 251—259.)

Art. 251. A repudiation, effected by words or in writing, can be either unconditional or conditional.

It is unconditional, when the expression used by the repudiating party is couched in definite terms, and the repudiation is not made subject to any condition or circumstance nor suspended until some future date. This repudiation produces its effect immediately.

A repudiation is conditional when it is made subject to a condition or circumstance or suspended until some future time. This repudiation only takes effect upon the realization of the condition or circumstance to which it was made subject. The making of a condition is equivalent to an oath.

Notes.


See *Mynounissa v. Mohabuth Ally*, 2 Hay, 404 (1863); *Badarannissa Bibi v. Majiattala*, 7 B. L. R., 442 (1871).

**Art. 252.** A suspensive condition is one that relates to something uncertain, yet possible, and must be uttered without voluntary interruption.

If it relates to something certain and existing the condition is void, and the repudiation takes place immediately. But should it relate to something impossible, not only the condition but the repudiation itself is void. Any repudiation is void that is expressed in a doubtful manner or put off to a date at which its realization would be impossible, or made subject to the divine will, without any voluntary interruption between the utterance of the formula and that of the condition.

**Notes.**


**Art. 253.** The suspensive condition only takes effect when the repudiation is directed against a wife with whom the repudiating party is still united, or against the wife who is observing *Iddat*, consequent upon a revocable repudiation, or against a woman whom he has regarded as repudiated before he has actually married her.

But if he makes use of the expression against a strange woman whom he does not regard in the light of a wife, and if the condition expressed is realized after his marriage with her, the suspended repudiation has no effect.
Art. 254. The loss of a husband's authority over his wife in consequence of either one or two irrevo-
cable repudiations, does not nullify any conditional repudiations that may have been pronounced during the subsistence of the marriage.

Thus, when a husband after having pronounced a conditional repudiation against his wife, dissolves the marriage by either one or two irrevocable repudiations, before the suspensive condition is realized, and when he afterwards renews the marriage, the conditional repudiation, no matter what its form, will take effect, provided that the condition to which it was subject is realized.

Notes.

Art. 255. When a woman ceases to be a man's lawful wife, consequent upon a final or triple repudiation, every conditional repudiation, even final, pronounced during the existence of the marriage is nullified.

If then, after having pronounced against his wife a conditional repudiation, the husband dissolves the marriage before the suspensive condition is realized, by a final and unconditional repudiation, and subsequently remarries the same woman after she has contracted and consummated marriage with a second husband, none of the conditional repudiations, pronounced during the existence

Notes.
"See Art. 248."
of the first marriage, produce any effect in the event of realization of the condition on which they depended.

**Notes.**


**Art. 256.** The effect of a suspended repudiation or of an oath taken by the husband immediately ceases upon realization of the condition or circumstance upon which either the repudiation or the oath depended, whether the realization occurs during the subsistence of the marriage or after its dissolution.

But should the realization take place during the subsistence of the marriage or during the wife's *Iddat*, consequent upon a revocable repudiation, the conditional repudiation takes effect.

**Notes.**


**Art. 257.** The oath taken by the husband ceases to have effect after the first realization of the circumstance upon which the oath depended, except in the case where he uses the expression "Each time". Thus when he says to his wife "Each time you visit your sister you shall be repudiated," the husband is not released from his oath until her third visit. Should he re-marry the woman, after she has complied with the conditions, the former oath has no effect.

It is otherwise when the husband says "Each time I marry a wife, she shall be repudiated". In this case the effect of the oath never ceases, and every wife he marries even after a second marriage, is *ipso facto* immediately repudiated.
REPUDIATION WITH WIFE'S CONSENT.

Notes.


Art. 258. When a husband makes repudiation subject to two conditions, or two different circumstances, both conditions or circumstances, or the last condition or circumstance, must be realized during the subsistence of the marriage or during the wife's Iddat,¹ consequent upon a revocable repudiation.

Notes.


Art. 259. Where the condition depends on a fact, to which the wife can alone testify, her declaration holds good only in respect of that which concerns her personally.

Notes.

SECTION IV.—REPUDIATION SUBJECT TO WIFE'S CONSENT.

WIFE'S POWER TO REPUDIATE HERSELF (TAFWEEZ).

(Arts. 260—265.)

Art. 260. The husband himself can pronounce repudiation to his wife, and can confer upon her the power of pronouncing it herself. This concession, can be accorded to her by an express authority to repudiate herself at her discretion, but when once made, it cannot be withdrawn by the husband, without the wife's consent.

¹ See Art. 310.
Notes.


A Mahomedan husband can confer upon his wife the power of pronouncing repudiation to herself.—Ashraf Ali v. Ashad Ali, 16 W. R., 260 (1871); Badarannissa Bibi v. Mafiattala, 7 B. L. R., 442 (1871); Hamidoollah v. Faizunnissa, I. L. R., 8 Cal., 327 (1882); Nuruddin v. Chenuri, 3 Cal. L. J., 49 (1905).

See Mymounissa v. Mohabuth Ally, 2 Hay, 404 (1863).

Art. 261. Where a husband confers upon his wife the power of choosing between the maintenance or dissolution of the marriage, she must come to a decision at the same meeting, however long it may last, at which she receives the power, or at the moment she is informed of it if she was absent.

But, if before disclosing her intention, the wife leaves the meeting, or busies herself with another matter, she loses the right of disposing of her person, unless the husband has given her the power to make known her intention whenever she pleases, or has fixed for her a period in which to decide.

In the first case, she can decide at will for or against repudiation, in the second case she loses this right at the expiry of the fixed period, even though she was only informed of the matter after expiry of such period.

Notes.


Art. 262. Where a wife on whom her husband has conferred a discretionary power, decides upon the dissolution of the marriage, and at the same meeting replies that she wishes for a repudiation, a single irrevocable repudiation operates, even though the husband should have wished two or even three.

Notes.


Art. 263. Where a husband proposes repudiation to his wife by pronouncing the express formula "Repudiate thyself", and she there and then repudiates herself, a revocable repudiation takes effect.

Notes.

Art. 264. When a wife goes beyond the proposal of her husband and pronounces more repudiations than she was authorized to pronounce, no repudiation whatever takes effect. Thus, if only permitted one single repudiation, she pronounces a triple repudiation, no repudiation at all takes place. But if permitted three repudiations, and she pronounces one only, that one repudiation shall take effect.

Notes.

Art. 265. When a wife does not adhere to the form of repudiation indicated by her husband, the repudiation does not become void, but is confined within the limits of the husband's proposal. Thus, if she pronounces an irrevocable repudiation when only authorized to repudiate herself by revocable repudiation or vice versa, the repudiation proposed by her husband is to take effect.

Where the husband gives his wife liberty to separate herself from him whenever she pleases, any modification of the right so allowed her, renders the repudiation she pronounces void, whether the modification relates to the form or number of the repudiations.

Notes.
Tahtavi, Vol. 2, pp. 147, 148.


SECTION V.—REPUDIATION DURING ILLNESS.

(Art. 266—272.)

Art. 266. When a husband's life is endangered through illness, even though he be not confined to bed, and he is prevented from attending to his business away from home, he is unable to repudiate his wife, without being suspected of a design to defraud her of her share in his inheritance. Nor can he during such illness dispose of more than a third of his property by legacy or gift.¹

Notes.
Tahtavi, Vol. 2, pp. 165, 166.

¹ See Art. 405.
On the repudiation during illness Bachelor, J., observed as follows:—

"The fact of a valid divorce being thus established, it becomes material to consider whether it was pronounced during the husband's death-illness or not. For the sake of brevity I shall use the word 'sickness' as referring only to death-sickness and the word 'health' will serve to denote the absence of death-sickness, this usage being also in conformity with the language of the books. First, then, what is meant in Mahomedan law by this sickness or marz-ul-maut? Baillie, in discussing the subject under the head of divorce, says:—"it is correct to say that, when a man is unable to go out of his home for necessary avocations, he is sick, whether he can stand up in the house or not!" This is developed in later passages, but since they depend upon an underlying legal principle, I must pause to explain what that principle is, so far as I can collect it from the approved authorities. For in such a matter as this it appears to me that my only course is to abide by the accepted authorities, adhering to whatever clear principles may be discernible. In this particular instance both the principle and the reason upon which it is grounded seem to be unmistakeable. They will be found generally in discussions upon the opinions of Shafei, the Imam-ul-Motlebi, of whom Hamilton writes that "His decisions in civil and criminal jurisprudence are seldom quoted by the doctors of Persia or India but with a view to be refuted or rejected." (Hamilton, Vol. 1, p. 28, Discourse). The references are all throughout to the four Volumes (edition of 1791.) Shafei, who maintains what may be called the common law position in these matters, held that whether a man's death took place before or after the expiration of the Iddat, his divorced wife was left without any right of inheritance, because the conjugal relation was cancelled by the supervening divorce. But this view was rejected on what approximates to the equitable principle that the cause of the wife's right to inherit is in the death-illness, and as the husband designs to defeat it, his device ought to return to himself by postponing the effect of his act till the expiration of the Iddat, to prevent the injury which would otherwise fall upon her. (Baillie, page 278).

So repudiation by a man in his last illness is always referred to as repudiation by a faar or evader, and the principle appears to be the perfectly intelligible doctrine that a wife's slowly accrued
rights shall not be suddenly defeated by the caprice of the husband while labouring under such mental infirmity as usually accompanies the approach of death. These observations must be applied when I come to deal with the question of the effect of this divorce upon the plaintiff's rights. But I am obliged to notice them here since they are germane also to the question of the meaning of death-illness. Thus we read Hamilton's Hedayn, Vol. 1, page 283:—"If a husband, being in a besieged town or in an army, repudiate his wife by three divorces, she does not inherit of him, in the event of his death, although that should happen within her Edit: but if a man engaged in fight, or a criminal carrying (?) being carried) to execution, were in such situation to prononcée three divorces upon his wife, she inherits where he dies in that way, or is slain: for it is a rule that the wife of a faar (or evader) inherits of him, upon a favourable construction of the law; and his evasion cannot be established but where her right is inseparably connected with his property, which is not the case, unless he be (at the time of pronouncing divorce) sick of a dangerous illness (appearing from his being confined to his bed, and other symptoms) or in such other situation as affords room to apprehend his death: but it is not established where he pronounces divorce in a situation in which his safety is more probable than destruction." Baillie (pages 280-81) has very much the same description. "Evasion," he says, "may also be established by other causes which come within the meaning of disease, if death be imminent; but if the chances are in favour of escape, the person is to be accounted as one in health. So that one is not an evader though he were surrounded by the enemy, or in the line of battle, or in a place abounding with beasts of prey, or on board ship, or in prison under sentence of retaliation or stoning; because in all these cases a way of escape may be found by some means or other." I pause here to remark, first, that these are strong cases, and secondly, that if the principle is to be applied loyally, it must count for something whether the divorcer himself is conscious of the likelihood of death or is not so conscious. The same subject occurs again in Baillie's Chapter on Gifts, where I see no reason to suppose that the death-illness discussed differs from the death-illness in case of repudiation. And here we read that "the most valid definition of death-illness is, that it is one which it is highly probable will issue fatally, whether, in the case of a man,
it disables him from getting up for necessary avocations, out of his house or not, such as, for instance . . . . . when he is a merchant, from going to his shop." This appears to be the definition in the Fatawa-i-Alamgiri, and I may say briefly that other relevant authorities appear to follow the same lines. It would follow that what is meant by death-illness in Mahomedan law is an illness which does in fact cause death, which disables the sufferer at the given time from pursuing his ordinary avocations, and which raises in his mind some apprehension of the probability of death. So where the illness is of long duration, but there is no immediate probability or apprehension of death, it is laid down that that is not a death-illness but is to be regarded rather as an indication merely of altered constitution or physical habit. Indeed upon examining the books I seem to find that the only certain test of death-illness laid down is that a man shall not be able to stand praying—no doubt rather a rough test adopted in days when medical diagnosis was itself rough, but indicating pretty clearly the rigorous meaning which Mahomedan jurist attached to the phrase marz-ul-maut.

The Hedaya contains what is called a rule for ascertaining a death-illness, and this will be found in Book LII, Chapter 2 of Hamilton, Volume 4, page 506. Whatever may be the case in the original Arabic, it must be confessed that in the translation the passage is encumbered with much confusion, the particular being confounded with the general, and the sentence being further darkened by parentheses. But, so far as any plain meaning is to be wrung from the words, it would seem that the test is "immediate danger of death" or "apprehension of death"; and this conforms to the principle which has already been deduced. Again it is laid down by Fatawa-i-Kazi Khan that he only is to be deemed sick who is, bed-ridden and incapable of managing his affairs "because the probability from his condition is dissolution," so that if he divorces his wife, he is a jaar, i.e., a runner away, an evader. "But", we read, "a person who is decrepit or suffering from paralysis, whose complaint does not go on increasing every day, is like one in health. So also one who is wounded or is suffering from pain, but who is not by such wound or pain rendered bed-ridden, is like one in health." And then we find the instances of the man arrayed in rank against an enemy in battle or imprisoned under sentence of death, to which I have already referred.
I admit that this question is not to be decided merely upon medical principles as now ascertained among western peoples: but my examination of the authorities leads me to the conclusion that in order to establish marz-ul-maut there must be present at least these conditions:—(a) proximate danger of death, so that there is, as it is phrased, a preponderance (ghaliba) of khauf or apprehension, that is, that at the given time death must be more probable than life:

(b) There must be some degree of subjective apprehension of death in the mind of the sick person:

(c) There must be some external indicia, chief among which I would place the inability to attend to ordinary avocations. These, then, are the incidents of death-illness which, as it seems to me, are to be gathered from the authorities; and that they have commended themselves also to our British Court may, I think, be seen on reference to Fatima Bibee v. Ahmad Baksh (I. L. R., 31 Cal., 319, 1903), and the cases there cited.”—Sarabai v. Rabiabai, I. L. R., 30 Bom., 537 (1905).

Art. 267. When a man exposes himself to danger, such as he who leaves the ranks to engage in single combat, or when he is under sentence of death and acting just before his execution, or when he is on board a ship, tempest tossed and exposed to imminent peril, he is placed on the same footing with regard to repudiation as those who are sick.

Notes.

Tahtavi, Vol. 2, pp. 165, 166.


Art. 268. The impotent man, the man suffering from pulmonary phthisis, and the paralytic man, all whose infirmities grow worse day by day, are legally placed in the same situation as those who are sick. But should their infirmities become chronic and remain stationary for a whole year, without undergoing any change or
manifesting graver symptoms, all legal contracts which they enter into, and the repudiations which they make, are as valid as those of a man in good health.

Notes.


Art. 269. When a husband while suffering from a dangerous illness, or while in a critical position, voluntarily pronounces against his wife, but without her consent, an irrevocable repudiation, and dies, during the wife's Iddat, consequent upon such repudiation, the wife retains her right to inherit from him, provided that from the time she was repudiated until the moment of her husband's death, she has not lost the qualifications necessary for such inheritance.

If the husband recovers from the illness or is saved from the danger, during which he repudiated his wife, and dies subsequently from another illness or from some accident before the expiry of his wife's Iddat, she is not entitled to her share in his estate.

Notes.


Where a Mahomedan husband pronounced repudiation against his wife, and subsequently died during the period of her Iddat, Bachelor, J., observed as follows:—

"The result of the inquiry so far has been to establish that this divorce was pronounced by the husband when in health. And the divorce was the bairn talak or irrevocable divorce. Now the question is whether, an irrevocable divorce having been
pronounced in health, and the husband dying during the period of
the discarded wife’s *Iddat*, she has any claim to inherit. There
can, I think, be no doubt, and I understand, that Mr. Lowndes
does not dispute that if the divorce had been pronounced in
death-illness, the wife’s claim to inherit would survive through-
out the period of her *Iddat*. But this survival is based upon the
theory already noticed that a death-bed divorce is to be regarded
as an evasion. Clearly that principle fails where the divorcing
husband is in health and is under no greater expectation of death
than is normally incident to humanity. In that case, then,
what reason is there why the wife’s claim should subsist through-
out her *Iddat* even though she has been irrevocably divorced? I
can see none on the principle of the thing. Indeed the principle
appears to point the other way. For, take the case where a man
in perfectly good health to-day irrevocably divorces his wife, and
is killed in a railway accident a month hence. Why should she
inherit? There has been no attempt at evasion; the repudiation
has been complete and definitive; and I can discern no reason
why the husband’s estate should be damnified owing to an
unforeseen accident. So far as the principle is a guide, it seems
clear that such a wife would have no claim; and the plaintiff
stands legally in precisely the same case.”—*Sarabai v. Rabialai*,
I. L. R., 30 Bom., 537 (1905).

**Art. 270.** In the following cases a wife repudia-
ted by her husband during his last illness, is also entitled
to inherit from him provided he dies during the period
of her *Iddat*:

1. When she has asked her sick husband to
repudiate her by a revocable form, and he has repudiated
her by an irrevocable form, either by one or by a triple
repudiation.

2. When the husband and wife have been judicially
separated in consequence of an oath of imprecation.

3. When the husband has made a vow of con-
tinence against his wife, and allowed the prescribed
period to elapse without cohabiting with her.

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Cases in which a wife repudiated during her husband's last illness, is entitled to her share in his estate.
Notes.


Art. 271. In the following cases the repudiated wife has no right to her husband’s succession:

1. When the husband has been compelled to repudiate his wife under threat of death.

2. When the wife has voluntarily asked to be repudiated irrevocably.

3. When the husband, while in good health, has made a vow of continence against his wife, and, while in a state of illness, has allowed to elapse the period after which the repudiation becomes irrevocable.

4. When of her own free will, the wife has asked for a Khula repudiation or chosen to have the marriage dissolved at puberty, or has obtained a decree of separation on the ground of the husband’s impotency.¹

5. When the wife at the time of repudiation was a Christian or Jewess, even though she becomes a Muslim before her husband’s death, or when a Muslim wife abjures the faith at the time of repudiation. In the last case her return to Islam before her husband’s death, would not reinstate her in her rights to his succession.

6. When the wife has been repudiated irrevocably either during her husband’s imprisonment, even for a crime punishable with death, or while he was confined in a besieged fort, or in the fighting line, or on board a vessel before danger became imminent, or during an epidemic, or while he was suffering from an illness which did not prevent him from attending to his business out of doors.

¹ See Art. 298.
Notes.


Art. 272. Where a wife, while suffering from an illness that renders her unable to perform the household duties, brings about the dissolution of her marriage through the exercise of her right of option at puberty, and where she dies during her Iddat, her husband is entitled to his share in her estate.

Notes.


CHAPTER II.

REPUDIATION BY MUTUAL CONSENT OF HUSBAND AND WIFE IN KHULA FORM.

(Art. 273—297.)

Art. 273. When after a valid marriage, the husband and wife disagree and fear that they will not properly fulfil those duties which spring from marriage they can separate by repudiation (Talak) as well as by repudiation in Khula form.

Notes.


Khula is a species of repudiation for a consideration when the spouses do not conform to the conditions of marriage. It is legal in the sense of emancipation. It takes place by mutual
consent on a consideration paid; but is not obligatory. The Court cannot, on demand of the wife, against the assent of the husband, award separation on account of dissension. The law has fixed no specific sum as the price of emancipation. It depends on mutual assent; but to exact more than dower, in case of aversion on the part of the wife, is condemned.—*M. Abdul Wahab v. Hingu*, 5 Sel. Rep., S. D. A., 238 (1832).

A repudiation by *Khula* is a repudiation with consent, and at the instance of the wife, in which she gives or agrees to give a consideration to the husband for her release from the marriage tie. In such a case the terms of the bargain are matter of arrangement between the husband and wife, and the wife may, as the consideration, release her *dain mahr* and other rights, or make any other agreement for the benefit of the husband—*Buzul-ul-Raheem v. Luteefutoon-nissa*, 8 M. I. A., 379 (1861).

According to Mahomedan law a *Khula* is valid even though it may be granted under compulsion. The conditions, however, which nullify a *Khula* are those which are repugnant to the nature of the contract.—*Vadake Vitil Ismal v. Beyakutti Umah*, I. L. R., 3 Mad., 347 (1881).

**Art. 274.** In order that a *Khula* repudiation may be valid, the husband must have reached his majority and be in full possession of his mental faculties, and such repudiation must be pronounced during the subsistence of the marriage or during the wife’s *Iddat*.

*Notes*


**Art. 275.** A *Khula* repudiation can validly take place before or after consummation of the marriage, and without payment of compensation by the wife.

*Notes.*


1 See Art. 310.
Husband can pay compensation of greater amount than dower.

Art. 276. The husband can legally repudiate his wife in Khula form by paying compensation of a greater amount than that which he paid as dower.

Notes.


Clavel, Vol. 1, p. 220.

See Sale's Koran, Chap. II, p. 27.

Art. 277. All things capable of being settled as dower can be offered as compensation for a Khula repudiation.

Notes.


Art. 278. A Khula repudiation with or without compensation is equivalent to an irrevocable repudiation, according to the intention that the husband attaches to it. It can be validly pronounced by the husband without the necessity of a judicial decree.

Notes.


Art. 279. When it is the husband who first proposes a Khula repudiation in consideration of compensation to be paid by the wife, the validity of the repudiation and the right to enforce the payment of the compensation, depend upon the wife's consent being voluntary, and upon her being fully aware of the nature of the transaction.
Once the proposal is made, it cannot be retracted by the husband until the wife has declared her intention, which must not be deferred beyond the meeting at which she is informed of the proposal.

**Notes.**


**Art. 280.** When it is the wife who first proposes a Khula repudiation to the husband offering him compensation for her release, she can retract before her husband has declared his acceptance, which must be expressed at the same meeting. Any acceptance made by the husband subsequently would not be valid.

**Notes.**


**Art. 281.** Where a husband repudiates his wife in Khula form, conditionally upon her voluntarily agreeing to pay a specified amount of compensation other than the dower, she is bound to fulfil her undertaking. Khula repudiation thus pronounced cancels all debts between husband and wife arising from the dissolved marriage, and when Khula repudiation occurs before the marriage has been consummated, the wife loses all right to any balance of dower or to any arrears of maintenance, clothing, or Mutah.¹

¹ See Art. 90.
On the other hand, if the husband has made advances for his wife's maintenance, he is not entitled to recover the amount advanced for the period still to run, nor to claim any part of the dower already paid.

**Notes.**


**Art. 282.** Where a husband pronounces *Khula* repudiation against his wife without any compensation, the respective claims of husband and wife are not cancelled, and they can sue each other for the payment of any debts which may be due.

**Notes.**


**Art. 283.** Where a wife has received her full dower and consents to her husband repudiating her conditionally upon her surrendering the dower, she is bound to return it. If she has not received the dower the husband is released from its payment, whether the repudiation takes place before or after the consummation of the marriage.

When the full dower has been paid and the husband consents to repudiate his wife on the understanding that she returns a portion of the dower, she will only return such portion if the marriage has been consummated, and the half of such portion if the marriage has not been consummated.
If the dower has not been delivered to her, the husband in both cases is completely released.

**Notes.**


**Art. 284.** Unless there is an agreement to the contrary, the husband at the time of Khula repudiation is not released from the duty of providing his wife with maintenance and lodging during the period of her Iddat.¹

**Notes.**


**Art. 285.** Where the articles constituting the compensation made by the wife, perish before delivery, or where the husband is ousted of them, the wife, if possible, is bound to substitute articles of the same nature, or to pay their value.

**Notes.**


**Art. 286.** Where a husband consents to repudiate his wife in Khula form in consideration of her undertaking to nurse their child during its two years of suckling, or to keep and maintain the child for a fixed period at her own expense, after having weaned it, she is bound to carry out such undertaking.

If before the expiry of the suckling period or the time agreed upon for keeping the child, the husband takes

¹ See Art. 310.
back his wife by a fresh marriage contract, or if she runs away leaving behind the child, or if she dies, or if the child dies, the husband can claim the cost of the child’s suckling and its maintenance for the unexpired period, unless at the time of Khula repudiation, it was agreed that the husband should have no claim against the wife, in case of her or the child’s decease, before the expiry of the period agreed upon.

The same rule applies when the wife has undertaken to suckle or maintain a child with which she believes herself pregnant, or bears a child which dies before expiry of the fixed period.

Notes.


See Sale’s Koran, Chap. II, pp. 27, 28.

Art. 287. Where a wife obtains a Khula repudiation, on the undertaking to keep her children born of the dissolved marriage until they are of age, she can keep the daughter until that age but not the son.

If she marries a second time, her former husband can withdraw his children from her keeping, in spite of an agreement made to the contrary, and can claim the necessary cost of their keep for the unexpired period.

Notes.


Art. 288. The husband’s stipulation to keep his children with him during the period of Hazanah is void, in spite of Khula repudiation being valid, and the

1 See Art. 371.  
2 Or Custody of the Child, see Art. 380.
mother during the full period of Hazanah is not to be interfered with in the exercise of her rights as a mother, unless she forfeits such rights, in which case the father must pay the expenses of Hazanah and maintenance, if the child is destitute of means.

Notes.

Art. 289. Where a wife owes a debt to her husband, the latter cannot appropriate such debt towards the amount he owes for the child's maintenance.

Thus where a wife has asked for or accepted a Khula repudiation, on condition that she suckles or maintains her child by the husband who is repudiating her, and then finds herself destitute, she can have recourse to the husband, who in spite of her undertaking can be compelled to provide for the child's maintenance. He can, however, recover the sums thus advanced if the wife's position improves.

Notes.

Art. 290. A father can obtain a Khula repudiation of his minor daughter from her husband.

If he obtains the repudiation in consideration of compensation payable by the minor herself to her husband, or in consideration of her returning her dower, the repudiation takes effect, but the payment of the compensation or the return of the dower are binding neither on the wife nor on the father.
But if the father obtains a Khula repudiation in consideration of his personally undertaking to return the dower, or of paying compensation, the repudiation takes effect, and the father is liable for the amount of such compensation, or if the repudiation is made in consideration of dower, the wife is entitled to claim it from her husband, who may sue the father for its recovery.

Notes.


Art. 291. Where a husband makes a direct offer of Khula repudiation to his minor wife, making it a condition that she pays him some specified compensation, the repudiation will take effect, provided she consents and has attained the age of reason and is able to understand the nature of the repudiation, but the payment of the compensation is not binding on the wife, and her right to the dower still remains intact.

Where a wife, having reached the age of reason, agrees to be repudiated by her husband in consideration of compensation, such repudiation operates as a simple revocable repudiation, and she preserves all her right to the dower.

Notes.


Art. 292. In no case can a father consent to Khula repudiation in the name of his minor son, nor can the father’s ratification render valid a repudiation pronounced by the minor son himself.

Notes.


Art. 293. A Khula repudiation by an adult wife, who is legally incompetent, is valid, but payment of any compensation that she agrees to pay is not binding upon her.

Where a husband, in consideration of compensation, repudiates his wife who is legally incompetent, such repudiation will effect a simple revocable repudiation.

Notes.


Art. 294. A wife in her last illness can validly offer a Khula repudiation with compensation. If she dies during the period of her Iddat, her husband is entitled to whichever be the smallest of the three following amounts, viz.:—the share of her estate devolving upon him, or the amount of compensation agreed upon, or the third part of the deceased’s estate.

If she dies after the expiry of Iddat, her husband shall get whichever is smaller in amount, the compensation, or the third of the deceased’s estate.

Notes.

1 See Art. 553.
If she recovers from her illness, her husband is entitled to the whole of the amount of compensation agreed upon.

Notes.
Baillie, Bk. 3, Chap. 8, p. 320; Zaidu-nil-Ambani, Vol. 1, p. 413.

Art. 295. Where an agent is authorized by a wife to consent to a Khula repudiation, he is not directly responsible to her husband for the compensation which she agrees to pay, unless he personally undertakes to pay the amount, or becomes surety on the wife's behalf.

Notes.

Art. 296. Compensation can be paid at the time of Khula repudiation, or can be made payable at a more or less distant date.

Notes.

Art. 297. When the marriage is void, the husband is bound to return any sum received by him by way of compensation for repudiating his wife in Khula form.¹

Notes.

¹ See Art. 227.
CHAPTER III.

SEPARATION ON ACCOUNT OF THE HUSBAND'S IMPOTENCY.

(Art. 298—302.)

Art. 298. Where a wife discovers that her husband is impotent and not in a condition to fulfil the duty of marriage, she has the right to demand before a Judge a tafrīk or formal separation, provided that at the time of marriage contract, she was ignorant of her husband's condition.

However long her silence, after she has discovered her husband to be impotent, the wife does not forfeit this right, either before or after her recourse to law.

Notes.


See A (the wife) v. B (the husband), I. L. R., 21 Bom., 77 (1896).

Art. 299. When a wife brings an action against her husband alleging him to be impotent, and demanding a separation, the judge, if the husband admits the impotency, must grant him a postponement of the separation for one full lunar year. This postponement includes the month of Ramazan, the menstrual periods of the wife, and the time during which the husband is absent on a pilgrimage or any other journey; but it is not to include the period of the

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1 The ninth month of the Mahomedan year which is observed as a strict fast from dawn to sunset of each day in the month—Hughes Dictionary of Islam.
illness of either party when such illness prevents cohabitation.

The year is to commence from the date of the wife's action, but should her husband be ill, or a minor, or in *Ihram*,¹ the year is to commence from his recovery from illness, from his coming of age, or from the time he lays aside the pilgrim's dress.

**Notes.**


**Art. 300.** If, at the end of the year, the wife still complains of the lack of cohabitation on the part of the husband, and insists on separation, the judge shall call upon the husband to repudiate her. In case of his refusal, the judge shall pronounce a separation, which operates as a valid repudiation.

**Notes.**


**Art. 301.** If the husband before or after the judicial postponement has been granted denies the truth of the allegation of the wife, the judge shall appoint two trustworthy matrons to examine her.

If the matrons state that she is not a virgin, the husband's sworn declaration shall be accepted. This holds good whether the wife, before he married her, was virgin

¹ The pilgrim's dress or mantle.
or not, and even where she maintains that her virginity was lost through an accident.

If the husband takes the oath, the wife cannot proceed further against him. If he refuses the oath, or if the matrons declare that the wife is still a virgin, the judge, where the husband has denied the allegation before postponement was granted, shall grant the postponement referred to in the previous Article. Where he admits the allegation, the wife, at the same sitting, can declare her option, either of upholding the marriage, or of having it dissolved. If she chooses separation, the judge shall pronounce it immediately.

Should she change her mind and elect to remain with her husband, or leave the court during the hearing of the case her right of option ceases, and she can no longer complain against her husband’s impotency.

Notes.

Art. 302. Separation on account of impotency, creates no prohibition of marriage, and the parties can marry again under a new contract either during or after the period of Iddat.¹

Should either the husband or wife die during the period of Iddat, the survivor cannot inherit from the deceased.

Notes.

¹ See Art. 310.
CHAPTER IV.

SEPARATION ON ACCOUNT OF APOSTASY.

(Art. 303—309)

Art. 303. If either the husband or the wife should apostatize, both of them being Muslims, the marriage is immediately dissolved and separation must take place. In this case there is no need for a judicial decree.

Notes.

Tahtavi, Vol. 2, p. 84.


Art. 304. Separation for apostasy only creates a provisional prohibition, which ceases with the cause that produces it.

If the apostate returns to Islam, he can validly renew the marriage tie with the wife, without being compelled to renew the marriage contract. If it is the wife who becomes an apostate, she shall return to the faith and renew the marriage receiving a small dower.

Notes.


Art. 305. If both husband and wife abjure the faith of Islam at the same time, or do so successively, without it being possible to determine which of them abandoned the religion first, and should they in like
manner return to Islam, the marriage remains undis solved. It is only dissolved when one returns to Islam before the other.

Notes.


Art. 306. If apostasy takes place after consummation of marriage, the wife is entitled to the full dower, whether it is the husband or the wife who becomes an apostate.

Notes.


Art. 307. When apostasy precedes the consummation of the marriage, and it is the husband who becomes an apostate, the wife is entitled to half the stipulated dower, or to Mutah if no dower was stipulated, and to maintenance for the period of Iddat. If it is the wife who becomes an apostate, she is entitled neither to half the dower, nor to Mutah.

Notes.


Art. 308. If the husband abjures Islam, and dies before the expiry of the period of Iddat incumbent

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1 See Art. 90.  
2 See Art. 310.
on his wife, she is entitled to claim the share of his estate devolving upon her, whether his apostasy took place during his last illness or while he was in good health.

**Notes.**


**Art. 309.** If the wife abandons Islam during her last illness and dies before the expiry of her period of *Iddat*, her Muslim husband can inherit from her. But should she apostatize while in good health and die before returning to Islam, her husband cannot inherit from her.

**Notes**


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**CHAPTER V.**

**IDDAT OR TERM OF PROBATION. MAINTENANCE OF THE WIFE DURING IDDAT.**

(ARTS. 310—331.)

**SECTION I.—WIVES SUBJECT TO IDDAT.**

**Art. 310.** *Iddat*\(^1\) or term of probation while it lasts is an impediment to marriage.\(^2\) It is incumbent on every wife separated from her husband after actual consummation of the marriage, whether such marriage is valid or radically void. It is also incumbent after a regular\(^3\) or irregular retirement with the husband, so long as the marriage is valid. It is incumbent, whether the separation is due to a revocable repudiation\(^4\), or to an

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\(^1\) Retreat.

\(^2\) See Bk. I, Chap. III.

\(^3\) See Art. 227.
irrevocable repudiation,¹ perfect or imperfect, or to a repudiation or judicial separation pronounced in consequence of the husband's impotency,² or his oath of imprecation,³ inferiority of dower,⁴ exercise of option at puberty, or to the annulment of a marriage that is void, or the husband's death, even where he dies before consummation in the case of a valid marriage.

Notes


Iddat is defined in the Hedayah to be the term of probation incumbent upon a woman in consequence of the dissolution of marriage after carnal connection; the most approved definition of iddat is the term by the completion of which a new marriage is rendered lawful—In the matter of Din Muhammad, 1. L. R., 5 All., 226, per Mahmood, J. (1882).

Art. 311. The duration of Iddat consequent upon repudiation,⁵ is three full periods of her courses, for a Muslim wife or a Kitabiah⁶ married to a Muslim husband, provided she has reached the age of puberty,⁷ and is not pregnant, and is separated from her husband after actual or presumed consummation of a valid marriage.

The period of Iddat is the same for a wife who has been repudiated, or who has become a widow, after cohabitation by mistake, or in consequence of the

¹ See Art. 239
² See Art. 298.
³ See Art. 335.
⁴ See Art. 32.
⁵ See Art. 217.
⁷ See Art. 495.
annulment after consummation, of a marriage which is void.

Notes.


**Art. 312.** For every wife who is not subject to menstruation, whether this is due to her not having reached the age of puberty or to advanced years, and for every young wife, who has attained the age of puberty and is not subject to menstruation, the duration of *Iddat* is three months.

When *Iddat* commences on the first day of the month, the three months are to count by the appearance of the moon even when the number of days is less than thirty.

Notes.


See Sale's Koran, Chap. LXV, p. 454.

**Art. 313.** Where a young wife is repudiated¹ before her menstruation has commenced, and her courses appear before the three months incumbent on her are over, she must commence a fresh *Iddat* counted by her courses. Where menstruation occurs after the three months have expired, she is not obliged to observe another *Iddat*, and the marriage she may contract is valid.

¹ See Art. 217.
Notes.


Art. 314 Where a woman has had her courses for several days, after which, either through illness or for any other cause, they disappear for a year at least, she must observe Iddat1 until three months after her change of life, that is, after she has reached the age of fifty-five years, which is fixed as the age at which a woman ceases to menstruate.

Notes.


Art. 315. Where a woman has forgotten the time of her courses by reason of an unceasing menstrual discharge, she must wait seven months before re-marrying, counting from the date of repudiation.

Notes.


Art. 316. The period of Iddat of a pregnant woman ends with delivery, provided the child when born is partly formed. This is the case whether the retirement was consequent upon her husband's death, or upon dissolution of the marriage by repudiation.

Notes.


See Sale's Koran, Chap. LXV, p. 454.

1. See Art. 310.
Art. 317. The period of *Iddat* for a widow who is not pregnant and whose marriage remains valid until her husband’s death, is four months and ten days, whatever may be her age, her religion, or the circumstances of her marriage, and whether the latter was consummated or not.

Notes.


Marriage with a woman within four months and ten days from her husband’s death is invalid—Dec., Mad. S. D. A., 157 (1855).

Art. 318. Where a husband has repudiated his wife under a revocable form of repudiation and dies before the end of the period prescribed for her *Iddat*, such *Iddat* is cancelled and the woman must commence a fresh *Iddat* for widowhood, whether the repudiation occurred while the husband was in good health or during his last illness.

Notes.


Art. 319. Where during his last illness, the husband repudiates the wife against her will under an irrevocable form, and dies during the wife’s *Iddat*, thus admitting her to his succession, she is bound to observe the longer of the two periods of *Iddat* consequent upon repudiation or widowhood, which is four months and ten days, during which she must be subject to three full periods of her courses.

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1 See Art. 310.  
2 See Art. 227.  
3 See Art. 239.
Art. 320. Where a husband, after repudiating his wife under an imperfect irrevocable form, contracts a new marriage with her during her *Iddat*, and then repudiates her a second time, he is liable to her for a full dower, and she must commence a fresh retirement.

Notes.


Art. 321. *Iddat* legally commences from the date of repudiation when the marriage is valid, or from the date of the decree annulling the marriage, or from the date of the voluntary separation of the parties, when the marriage is radically void, or from the day of the husband's death.

When the wife does not become acquainted with the fact of her repudiation or her husband's death until after the periods prescribed for *Iddat* have expired, she is released from the necessity of observing *Iddat* and is free to marry a second time.

Notes.


Art. 322. *Iddat* whether consequent upon repudiation or widowhood, must be observed in the husband’s house.

Where repudiation or the husband’s death occurred, while the wife was away from the husband’s house, she must return to it immediately, nor must she leave it unless obliged to do so, unless she cannot pay the rent, or the house ceases to be habitable, or she has good reason for fearing that her property may be lost if she remain in her husband’s house.

In the event of any of these cases occurring, the widow is at liberty to remove to some neighbouring dwelling, and the repudiated wife to some dwelling in the locality indicated by the husband. The repudiated wife should only leave her lodging in case of necessity. The widow can go out to procure what is necessary, but must not pass the night away from the house.

Notes.


See Sale’s Koran, Chap. LXV, p. 454.

Art. 323. *Iddat* is not incumbent on the wife repudiated before actual or presumed consummation of the marriage, nor upon the wife whose marriage is radically void, and has been cancelled after a mere retirement,¹ however regular, with the husband.

Notes.

Bahrr-ul-Rayek, Vol. 4, p. 139.


See Sale’s Koran, Chap. XXXIII, p. 348.

¹ See Art. 82.
SECTION II.—WOMEN ENTITLED TO MAINTENANCE DURING THE PERIOD OF IDDAT.

(Art. 324—331.)

Art. 324. No dissolution of marriage, proceeding from the husband, releases him from the obligation to pay for the wife's maintenance during her period of Iddat, however long its duration. Thus, in the following cases the wife, during Iddat, is entitled to maintenance:

1. When, pregnant or not, she is repudiated under a revocable or irrevocable, imperfect or perfect form.

2. When the marriage is dissolved by reason of an oath of imprecation, or a vow of continence, or when the wife is repudiated in Khula form, unless at the time of such Khula repudiation she renounces her right to maintenance.

3. When, after conversion to Islam, she is separated from her husband, consequent upon her husband's refusal to accept that faith.

4. When the husband on attaining puberty, exercises his right of option and dissolves the marriage.

5. When the marriage is dissolved by reason of her husband's apostasy.

Notes.


1 See Art. 217.
2 See Art. 273.
3 See Art. 335.
4 See Art. 126.
5 See Art. 245.
6 See Arts. 48, 49.
7 See Art. 303.
According to Mahomedan law a marriage is accounted to subsist during the period of *Iddat* with respect to various of its effects, such as obligation of alimony, residence, and so forth; and hence it may be lawfully accounted to continue in force with respect to the woman’s inheritance, but as soon as the *Iddat* is accomplished, a further procrastination is impossible, because the marriage does not then continue in any shape whatever. Where, therefore, a man repudiates his wife, her subsistence and lodging are incumbent upon him during the term of *Iddat*, whether the repudiation be of revocable or irrevocable kind—In the matter of *Din Muhammad*, I. L. R., 5 All., 226, per Mahmood, J. (1882).

See *Shah Abu Ilyas v. Ulfat Bibi*, I. L. R., 19 All., 50 (1896); Section 488 of the Code of Criminal Procedure (Act V of 1898).

**Art. 325.** Where a marriage is dissolved and the wife is in no way to blame for the dissolution, she does not lose her right to maintenance. Consequently during the wife’s *Iddat*, after a dissolution of marriage, consequent upon her exercise of the right of option at puberty, the husband is obliged to provide his wife with maintenance. This is also the case when the marriage is dissolved by reason of the inferiority of dower or by reason of the husband’s inequality or impotency.

**Notes.**


**Art. 326.** A wife forfeits her right to maintenance during the period of her *Iddat*, when she is to blame for the dissolution of the marriage. Thus, maintenance is not due to the wife when, after real or presumed consummation, the marriage is dissolved on account of

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1 See Arts. 48, 48. 2 See Art. 298. 3 See Art. 52. 4 See Art. 310.
her apostasy. She is entitled only to a residence, provided she does not leave the same during her \textit{Iddat}.

Notes.


\textbf{Art. 327.} Where a marriage is dissolved and the wife is to blame for its dissolution, she loses her right to maintenance and cannot recover it even when the cause which led to the dissolution has ceased to exist. Thus, if a wife apostatizes and returns to Islam during her \textit{Iddat}, her return does not entitle her to maintenance. Nevertheless a wife, repudiated for being rebellious, can claim maintenance if she returns to her husband's house.

Notes.


\textbf{Art. 328.} A child wife who has not yet attained puberty and who commences an \textit{Iddat} by months, but becomes subject to menstruation before the period is completed, receives maintenance during the additional \textit{Iddat}, which she is obliged to observe for the three full periods of her courses. The same applies to a wife who during the period of \textit{Iddat}, passes two periods of her courses, but then ceases to menstruate owing to illness or any other cause. Should the courses re-appear before her change of life, she is entitled to

\begin{itemize}
  \item [1] See Art. 310.
  \item [2] See Art. 171.
\end{itemize}
maintenance until three menstrual periods have expired.

**Notes**


**Art. 329.** A wife whose maintenance has not been fixed by the judge or by her husband, forfeits her right to maintenance, if she does not lay claim to it during the period of her *Iddat*, or within one month of its expiry.

**Notes.**

Fatawa-i-Kazi Khan, Vol. 1, p. 201.

Baillie, Bk. 6, Chap. 1, p. 452; Zaidu-nil-Ambani, Vol. 1, p. 455.

**Art. 330.** Where the wife is in *Iddat*, the maintenance, if fixed by an order of the judge or by mutual agreement, is not lost when the period of *Iddat* expires without any claim having been made.

**Notes.**


**Art. 331.** A widow is not entitled to maintenance, even though she is pregnant.

**Notes.**


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1 See Art. 310.
BOOK IV

CHILDREN.

(Art. 332—434.)

CHAPTER I.

PATERNITY AND FILIATION.

(Art. 332—364.)

SECTION I.—CHILDREN BORN OF A VALID MARRIAGE.

(Art. 332—340.)

Art. 332. The shortest period of gestation recognised by law is six months, the longest is two years and the usual period is nine months.

Notes.


Art. 333. When a child is born six full months at least after the celebration of a valid marriage, the paternity is established from the husband, but the paternity of a child, born within six months of the celebration of the marriage, is only established from the husband when he formally acknowledges the child.
Art. 334. Should the husband deny the legitimacy of the child which his wife bears after six full months of marriage, the child is not to be held illegitimate, unless such denial is made under the conditions laid down in the following Articles, and until the husband and wife have appeared before a judge and have taken the oath against each other, upon which the judge has made an order for their separation.

Notes.
Sharh-i-Vikaya, Vol. 2, pp. 143, 150.
See Notes to Art. 350.

Art. 335. To enable both husband and wife to demand the oath of lian or imprecation, the following conditions are necessary:

The marriage must have been validly contracted and must still subsist, or if it is dissolved, the dissolution must have taken place under a revocable form¹ and the wife’s period of Iddat² must not have expired. The husband and wife must both be capable of actually giving testimony before a judge, that is, to say, they must both be Muslims, of sound mind, adult, not dumb, and must not have been fined or have suffered corporal punishment for a penal offence; lastly, it is necessary that the wife hitherto has borne a virtuous character.

¹ See Art. 217. ² See Art. 310.
If, while fulfilling these conditions, both husband and wife comply with the formalities necessary for the oath the judge will immediately pronounce their separation, declare the child illegitimate and order it to be left in the mother’s custody.

If the married parties refuse to take the oath, or if both or one of them should be incapable of taking it, the paternity of the child shall in all cases be established from the husband. Where the husband retracts before or after taking the oath or before judicial separation takes place, he is liable to a fine or imprisonment, and the judge will declare the child legitimate.

**Notes.**


**Art. 336.** A husband, in accordance with the custom of the locality, can only disown a child, either on the day of his birth, or at the time of purchasing the articles necessary in view of its birth, or during the period of rejoicing. On the other hand if the husband is absent, he must disown the child immediately he is informed of its birth.

**Notes.**


Art. 337. In the following cases, a child is not declared illegitimate, even though the husband and wife have complied with the formalities necessary for the oath of imprecation, and the judge has pronounced their separation:

1. When the child is disowned after expiry of the prescribed periods.
2. When the child is disowned after having been formally or tacitly acknowledged by the husband.
3. When the child dies before the decree of separation, whether it is disowned before or after its death, or before or after the oath has been taken.

When, after judicial separation and declaration of child’s illegitimacy, the wife bears another child conceived at the same time. In this case the paternity of both the twins is established from the husband, and the declaration of illegitimacy is cancelled.

5. When the child is disowned after a judicial decree establishing its paternity.

6. When either husband or wife should die, after the child is disowned but before the decree of separation.

Notes.


Art. 338. A child declared illegitimate by the judge is excluded from all right of inheritance, and forfeits its right to maintenance.

Notes.


Art. 339. Where a father acknowledges the child of his dead and disowned son, such acknowledgment is valid, and the father, though liable to a judicial penalty, can inherit from his son.

The acknowledgment of the child of a dead and disowned daughter, is not valid, and the father cannot inherit from the daughter.

Notes.
Bahrr-ul-Rayek, Vol. 4, p. 130.

Art. 340. Separation consequent upon a reciprocal oath of lian, constitutes an irrevocable repudiation.¹

The marriage is deemed to exist until the judge has pronounced the separation of the married parties, and should one die before the order is pronounced, the other, if capable, would inherit from the deceased: but the husband who has demanded the oath of lian is forbidden to have any communication or dealings with his wife.

So long as they remain capable of giving testimony before a judge, the husband and wife whose marriage has been dissolved by a reciprocal oath cannot marry each other again. If both, or either of them, should lose the capacity to give such testimony, their union would be lawful whether it takes place during or after the period of the wife's Iddat.

Notes.

¹ See Art. 239.
SECTION. II.—CHILDREN BORN OF A VOID MARRIAGE.

(Art. 341-343.)

Art. 341. When a wife, whose marriage is radically void, bears a child before voluntary or judicial separation, and at a date full six months after marriage, counting from the consummation and not from its celebration, paternity is established from the husband, even without his formal acknowledgment and without his being able to disown the child.

Where the child is born after judicial or voluntary separation, paternity cannot be established from the husband, unless it is born within the period of two full years from the annulment of the marriage.

Notes.


See Section 112 of the Indian Evidence Act (I of 1872).

Art. 342. Where a child, born after cohabitation by mistake, arising either in respect of the wife's lawfulness, or by reason of a defect in the marriage contract, is acknowledged, it is legitimate.

Notes.


Art. 343. Where a woman, pregnant by illicit intercourse is married by her seducer, the paternity of the child, if born at least six full months from the
date of the marriage,\(^1\) is established from the husband, who cannot disown it.

If the child is born within the above mentioned period, the paternity is not established from the husband unless he acknowledges the child, without declaring it to be illegitimate.

**Notes.**


**SECTION III.—CHILDREN BORN TO REPUDIATED WIVES, OR TO WIDOWS.**

*(Arts. 344—347.)*

**Art. 344.** When an adult wife repudiated under a revocable form\(^2\) bears a child before having announced the termination of her *Iddat*,\(^3\) the paternity of the child is established from the husband. Where the marriage was dissolved under an irrevocable form of repudiation,\(^4\) imperfect or perfect, and the wife, without having announced the termination of her *Iddat*, bears a child, paternity is established from the husband, without his acknowledgment being necessary and without his being able to disown the child.

**Notes.**


**Art. 345.** Where a widow, or a wife repudiated under any form of repudiation\(^5\) whatever, has announced the termination of *Iddat*,\(^6\) and the announcement in each

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\(^1\) See Art. 333.  
\(^2\) See Art. 227.  
\(^3\) See Art. 217.  
\(^4\) See Art. 310.  
\(^5\) See Art. 239.  
\(^6\) See Art. 310.
instance, is justified by the time elapsed since the dissolution of the marriage, the paternity of a child born by either woman, is established, provided that the child is born within six full months of the said announcement, or within two years of the dissolution of the marriage.

Should, however, the birth take place within six months of the announcement, but at the end of, or after, two years from the dissolution of the marriage, the paternity cannot be established either from the deceased or the repudiating husband.

Notes.


See Section 112 of the Indian Evidence Act (I of 1872).

Art. 346. Where a young wife, before being subject to menstruation, is repudiated after consummation of the marriage and, not having declared herself to be pregnant at the time of repudiation or announced that her *Iddat* has terminated, bears a child within a period of nine full months from the day of her repudiation, the child is held to be legitimate; but this is not so if the child is born at the end of, or after, nine full months.

Where, however, she has announced the termination of her *Iddat*, and bears a child within six full months of the said announcement and within nine months of her repudiation, the paternity of the child is established from the husband, but this is not so when the child is born at the end of, or after, six full months from the said announcement.

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1 See Art. 310.

2 See Art. 217.
CHILDREN BORN TO REPUDIATED WIVES. 193

And where before menstruation, she claims to be pregnant at the time of repudiation and bears a child, paternity shall be established from the husband if the child is born within two years of the dissolution of marriage under an irrevocable form,¹ or within the twenty-seven months of its dissolution under a revocable form.²

Notes.


Art. 347. Where, before menstruating the young wife is left a widow and not having declared herself pregnant at her husband’s death, bears a child before having announced the termination of her Iddat, the paternity is established from the deceased husband, provided the child is born within a period of ten months and ten days from the husband’s death, but this is not so if the child is born at the end of, or after, that period.

If, however she claims at her husband’s death to be pregnant, the paternity of the child she bears is established from the deceased husband, provided the child is born within the period laid down in the preceding Article.

Notes.


See Section 112 of the Indian Evidence Act (I of 1872).

¹ See Art. 239.
² See Art. 227.
Where a married woman claims to have given birth to a child.

Art. 348 When, during the subsistence of the marriage, a married woman claims to have given birth to a child, whose birth or identity is denied by the husband, the testimony of a trustworthy Muslim midwife is sufficient to establish its birth and identity.

Notes.


See Section 112 of the Indian Evidence Act (1 of 1872).

Art. 349. While observing Iddat, either consequent upon her husband's death or upon a revocable or irrevocable repudiation, if a woman asserts that she bore a child within two years of the dissolution of the marriage, and the birth is denied by the husband or his heirs, such birth can only be proved by the declaration of two trustworthy male witnesses or by that of one male witness and two female witnesses of good reputation, unless the husband or his heirs had previously admitted that the woman was pregnant or unless the signs of pregnancy were plainly manifest.

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1 See Art. 310.  
2 See Art. 227.  
3 See Art. 259.
ACKNOWLEDGMENT OF CHILDREN.

Notes.


Art. 350. When a man acknowledges as his son, a child of unknown parentage, and the difference between their ages renders the relationship possible, the man’s declaration is by itself sufficient to establish the paternity, whether or not the child gives its formal consent having reached the age of reason, or whether the acknowledging party makes the declaration while in a state of good health, or during his last illness.

Such acknowledgment produces the same effects as does lawful paternity, and entitles the child so acknowledged to maintenance and to paternal care, and gives it the right to a share with the other heirs in the estate of the person who acknowledges it, and in that of the latter’s father, even though the latter and the other heirs do not acknowledge the child’s filiation.

If, after acknowledging a child, the man dies and the child’s mother claims to have been his wife and that the child was born of their marriage, she is entitled to her lawful share in the estate of the deceased, provided always that its maternity is established and that the woman is a Muslim.

But if the heirs do not acknowledge her as their father’s wife, or if they dispute the fact of her being a Muslim, she cannot inherit unless she can establish her claim by trustworthy evidence.

† See Art. 565.
The same rule will apply if either the maternity of the child or the woman’s faith is unknown, even though the heirs offer no opposition.

Notes.


Where a Mahomedan cohabited with a woman as man and wife, and recognised a girl as his, according to Mahomedan law, such child is entitled to inheritance, provided her parentage be not commonly imputed to another—Khairat Ali v. Zahuran, 5 Sel. Rep., S. D. A., 19 (1830).

Where there is a clear and open declaration of paternity, the onus of showing that marriage was impossible is on the other side. An acknowledgment of paternity will itself raise the presumption of marriage between the person who makes it and the mother of the child—Rook Begum v. Walagowkhir Shah, 3 W. R., 187 (1865).

Mahomedan law is scrupulous in bastardizing the issue of any connection, in which it can be shewn by presumption that there has been cohabitation and acknowledgment of paternity—Roshun Jahan v. Syed Enaet Hossein, 5 W. R., 4 (1866).

The presumption of legitimacy from marriage follows the bed, and whilst the marriage lasts, the child of the woman is taken to be the husband’s child; but this presumption follows the bed, and is not antedated by relation. An antenuptial child is illegitimate. A child born out of wedlock is illegitimate; if acknowledged he acquires the status of legitimacy under Mahomedan law. Where, therefore, a child really illegitimate by birth becomes legitimated, it is by force of acknowledgment, express or implied, directly proved or presumed—Ashrufood Dowlah v. Hyder Hossein, 11 M. I. A., 94 (1866).

The acknowledgment of a Mahomedan child confers on it the status of a legitimate son, and on its mother to whom the
ACKNOWLEDGMENT OF CHILDREN.

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declaration also extends that of a lawful wife—Wise v. Sundaloonissa, 7 W. R., 13, P. C. (1867).

According to Mahomedan law the acknowledgment of the father renders the son or daughter a legitimate child and an heir, unless it is impossible for the son or daughter to have been so—Oonda Beebee v. Syud Shah Jonab, 5 W. R., 132, per Peacock, C. J. (1866).

Where a Mahomedan acknowledges a person to be his daughter, he must be taken to mean his legitimate daughter unless the contrary appears—Fuzeelun Beebee v. Omdah Bebee, 10 W. R., 469 (1868).

An acknowledgment of a child is valid, first, when the age of the parties admits of the party acknowledged being born of the acknowledger; secondly, when the descent of the acknowledged has not been established from another; and thirdly, when the acknowledged, supposing it able to give an account of itself, confirms the acknowledger in his acknowledgment. A child, therefore, born out of wedlock, if acknowledged, acquires the status of legitimacy—Nujeeb-oonissa v. Zumeerun, 11 W. R., 426, per Kemp, J. (1869).

An acknowledgment by a Mahomedan father renders a son or daughter a legitimate child and heir—Wuheedun v. Wusee Hossein, 15 W. R., 403 (1871).

The legitimacy or legitimation of a child of Mahomedan parents may properly be presumed or inferred from circumstances, without proof either of marriage between the parents or of any formal act of legitimation—M. Ismal Khan v. Fidayat-un-Nissa, I. L. R., 3 All., 723 (1881).

Where a Mahomedan lived and cohabited with a woman, and a son was born in his house, who was acknowledged and recognised by him as his son, held, that such acknowledgment gave the son the status of an heir capable of inheriting as being of legitimate birth—M. Azmat Ali Khan v. Lalli Begum, I. L. R., 8 Cal., 422; L. R., 9 I. A., 8 (1881).

The acknowledgment and recognition of children by a Mahomedan as his sons gives them the status of sons capable of inheriting as legitimate sons—Sadakat Hossein v. Mahomed Yusuf, I. L. R., 10 Cal., 663; L. R., 11 I. A., 31 (1883); Muhammad Allahadad v. Muhammad Ismail, I. I. R., 8 All., 234, per Petheram, C. J. (1886).
According to Mahomedan law a child really illegitimate by birth, becomes legitimated by force of an acknowledgment, expressed or implied, directly proved or presumed—Abdul Razak v. Aga Mahomed Jaffar Bindanim, I. L. R., 21 Cal., 666; I. R., 21 I. A., 56 (1893).


Where there is no evidence of treatment tantamount to acknowledgment of children, it is impossible to distinguish the cohabitation from a cohabitation between a man and his concubine—Masit-un-nissa v. Pathani, I. L. R., 26 All., 295 (1904).

The doctrine of acknowledgment is not applicable to a case in which the paternity of a child is known, and it cannot be called in to legitimatize a child which is illegitimate by reason of the unlawfulness of the marriage of its parents—Azizunnissa Khatoon v. Karimunnissa Khatoon, I. L. R., 23 Cal., 130 (1895).

See Liaqat Ali v. Karimunnissa, I. L. R., 15 All., 396 (1893); Dhan Bibi v. Lalon Bibi, I. L. R., 27 Cal., 801 (1900).

Unless there is an absolute bar or impediment to a valid marriage, acknowledgment has the effect of legitimation where either the effect of the marriage or its exact time with reference to the legitimacy of the child's birth, is a matter of uncertainty. There can be no doubt that the doctrine of acknowledgment is an integral portion of Mahomedan family law, and the conditions under which it will take effect must be determined with reference to Mahomedan jurisprudence, rather than the Evidence Act—Fazilatunnissa v. Kamarunnissa, 9 C. W. N. 352 (1904).


See section 50 of the Indian Evidence Act (I of 1872); Notes to Art. 148.
Art. 351. Where a woman who is neither married nor observing *Iddat*, acknowledges as son, a child of unknown parentage whose age renders such relationship possible, her acknowledgment shall be recognised so far as she is personally concerned, whether or not the child gives its formal consent to the acknowledgment on reaching the age of reason.\(^2\)

This acknowledgment entitles the mother and the child so acknowledged to inherit from each other provided they have no other heirs.

Notes.


Art. 352. Where a child, of either sex, and of unknown parentage, acknowledges a man as father or a woman as mother, and if the difference in the respective ages renders the relationship possible, the child's declaration, supported by the formal assent of the party acknowledged, is sufficient to establish the paternity or maternity as the case may be. Such an acknowledgment renders the child liable for the performance of all the duties due towards a father or a mother, and makes it binding upon either of the latter as the case may be, to provide for the child's maintenance, to watch over its education, and to fulfil the other duties incumbent on parents.

On the death of either parent or child, the survivor is entitled to his or her share in the estate of the deceased.

\(^{1}\) See Art. 310.  \(^{2}\) See Art. 565.
Notes.


Art. 353. The acknowledgment of a man, whose parentage is unknown, as brother, is only binding on the acknowledging party and does not affect the latter's brothers or other co-heirs.

Notes.


See Shahebzadi Begum v. Himmut Bahadur, 4 B. L. R., A.C., 103 (1869); 13 B. L. R., 182, P. C. (1873).

Art. 354. A child of known parentage cannot be validly acknowledged. Such an acknowledgment does not entail the obligation of paying costs of Hazanah1, nor does it create prohibition of marriage, nor on the death of one party does the survivor inherit from the deceased.

Notes.


See Sale's Koran, Chap. XXXIII, p. 341.

Art. 355. Paternity, filiation, fraternity and all other relationship can be established by the testimony of two trustworthly male witnesses, or by that of one male and two female witnesses.

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1 Or custody of the child, See Art. 380.
FOUNDLINGS.

Notes.

See Sections 50, 51 of the Indian Evidence Act (1 of 1872).

SECTION V. FOUNDLINGS (LAKEET).
(ARTS. 356—564.)

Art. 356. An abandoned child whether illegitimate or not, deserves the compassion of its fellow creatures, and whosoever finds such a child and leaves it to its fate or, after receiving and sheltering it, subsequently abandons it, fails in his duty.

Notes.


Art. 357. Every foundling is held to be a Muslim even when found by a person who is a non-Muslim, unless it is discovered in a quarter exclusively inhabited by Jews or Christians.

Notes.


Art. 358. Without lawful reasons, no one, not even a judge, is entitled to remove a foundling from the person who finds and shelters it.

Where two persons of different religious persuasion discover a foundling, preference shall be given to the Muslim. If neither are Muslims and if both claim the child and are of a similar condition in life, the judge will decide to whom the child shall be entrusted.
Art. 359. Property found on the child is the child's own. The person sheltering the child, if so authorized, may use a portion of such property for its maintenance; any sum he himself pays cannot be recovered without an order from the judge.

Notes.

Art. 360. Any person sheltering a foundling must educate it and have it taught a suitable trade or profession. Such person is justified in making the child accompany him wherever he goes, and in receiving gifts and remunerations made in the child's favour.

Notes.

Art. 361. Where a foundling is acknowledged while alive, a mere declaration is sufficient to establish paternity, even when it is made by a Christian or Jew.

Notes.

Property on the foundling is the child's own.

Responsibilities of a person sheltering a foundling.

Acknowledgment of a foundling that is living.

Property on Art. 359.

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Notes.
Art. 362. Where two persons, neither of whom originally received and sheltered the child, acknowledge paternity in respect of a foundling, failing proof to the contrary, the prior claim will be admitted.

Where the two claims are made simultaneously, the claimant who can indicate some distinguishing mark on the child's body, shall have preference, in default of stronger proof by the other party.

Notes.

Art. 363. Where a foundling is acknowledged as her son by a married woman, the maternity can only be established by the husband giving his formal assent to her acknowledgment, or by the woman proving that the child was the issue of her union with the husband. If necessary she can establish the child's identity by the deposition of a midwife.

Where a woman is not married, the declaration of two men, or that of one man and two women, is necessary to establish her claim to the maternity of a foundling.

Notes.

Art. 364. Where the foundling is destitute and acknowledged by nobody, and where the person who discovers the child will not be burdened with its maintenance and education, and on proof that when it was found nothing was known of its parents, the State\(^1\) becomes responsible for its maintenance and education.

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\(^1\) *Raiil-ul-mal* or public treasury.
CHAPTER II.

THE DUTIES OF PARENTS TOWARDS THEIR CHILDREN.

(Art. 365—407.)

**Art. 365.** It is the duty of every father to attend to the education of his child, and in accordance with his own condition in life and the child’s aptitude, to see that it is taught a trade or profession. He must protect his child’s interests, and where it has no means of its own, he is bound to maintain the child, if a boy, until he can earn his own living, if a girl, until she is married.

The mother, on her part, must see that her child is properly cared for, and in certain cases must herself suckle the child.

**Notes.**


**SECTION I.—SUCKLING (RAZAAT)**

(Art. 365—374.)

**Art. 366.** A mother is bound to suckle her child in three cases:

1. When neither the father nor the child can afford to pay for a wet-nurse, and no one can be found to suckle the child gratuitously.

2. When no other nurse than the mother is obtainable.
3. When the child refuses to take the breast of any other woman.

Notes.


Baillie, Bk. 6, Chap. 2, p. 455; Hamilton's Hedayah, Vol. 1, Bk. 4, Chap. 15, s. 4, p. 146; Zaidu-nil-Ambani, Vol. 2, p. 45.

Art. 367. Where a mother refuses to suckle a child and there is no obligation on her part to do so, the father must procure a wet-nurse who will suckle the child at its mother's residence.

Notes.


Baillie, Bk. 6, Chap. 2, p. 455; Hamilton's Hedayah, Vol. 1, Bk. 4, Chap. 15, s. 4, p. 146; Zaidu-nil-Ambani, Vol. 2, p. 46.

Art. 368. A mother who suckles her own child during the subsistence of her marriage with the child's father or during the period of Iddat\(^1\) consequent upon a revocable repudiation,\(^2\) is not entitled to remuneration for so doing. Should, however, a husband engage his wife to suckle his child by another bed, she would be entitled to remuneration.

Notes.


Hamilton's Hedayah, Vol. 1, Bk. 4, Chap. 15, s. 4, p. 146; Zaidu-nil-Ambani, Vol. 2, p. 46.

Art. 369. A wife, who is irrevocably repudiated and who suckles her own child, during the period of Iddat\(^3\) consequent upon such repudiation\(^3\) by the child's father, is entitled to remuneration.

\(^1\) See Art. 310.  \(^2\) See Art. 227.  \(^3\) See Art. 239.
Suckling after expiry of Iddat.

Notes


Hamilton’s Hedayah, Vol. 1, Bk. 4, Chap. 15, s. 4, p. 146; Zaidu-nil-Ambani, Vol. 2, p. 36.

See Sale’s Koran, Chap. LXV, p. 55.

Art. 370. When the period of Iddat has expired, the repudiated mother, unless she demands higher remuneration, is entitled to preference over a strange nurse.

When such nurse consents to suckle the child gratuitously or for a salary lower than is customary, while the mother claims the full amount usually paid in such cases, the child will be confided to the strange nurse who must suckle it at its mother’s residence.

Notes.


Art. 371. When a mother who is under no obligation to suckle her child, is engaged to do so, she is entitled to remuneration, even though she has made no actual contract to that effect with the child’s father for a period extending to two years.

Notes.


See Sale’s Koran, Chap. II, pp. 27, 28.

Art. 372. Where remuneration for suckling is compounded for, it is equivalent to a contract for hire.

Where a mother compounds for the suckling of the child by accepting a certain sum of money, such

1 See Art. 286.
transaction is void if entered into during the subsistence of the marriage or during the period of *Iddat*¹, consequent upon a revocable repudiation²; if entered into during, or subsequent to, *Iddat* consequent upon an irrevocable repudiation³, perfect or imperfect, the transaction is valid, and both the contracting parties must abide by their stipulation.

**Notes**


**Art. 373.** Remuneration due to the mother for suckling is not lost by the father’s death. It constitutes a debt due to the mother, and in respect of which she stands on an equal footing with the other creditors of the estate.

**Notes.**


**Art. 374.** A hired wet-nurse, upon expiry of her agreement, can be compelled to renew it if the child refuses the breast of any other nurse. She is not bound to reside in the house of the child’s mother, unless there be an agreement to that effect.

**Notes.**


Baillie, Bk. 6, Ch. 2, p. 455; Zaidu-nil-Ambani, Vol. 2, p. 50.

**SECTION II.**—**FOSTERAGE, AND THE IMPEDIMENTS TO MARRIAGE ARISING THEREFROM.**

(**Arts. 375—379.**)

**Art. 375.** Fosterage creates an impediment to marriage and arises when a child is suckled by a woman other

¹ See Art. 310.  
² See Art. 227.  
³ See Art. 239.
than its mother before it is two years old, even if suckling takes place after the child is weaned.

One drop of milk sucked by a child from the breasts of a woman or poured into the child’s mouth, or injected into its nostrils, provided the drop is swallowed, is sufficient to create an impediment to marriage, even if the milk is drawn from the breast of a dead woman.

Notes.


Art. 376. Every woman who suckles an infant, boy or girl, during the two years’ period fixed for suckling is regarded in the same light as the child’s mother, while her husband is looked upon as the child’s father.

All the legitimate children, begotten or to be begotten by the foster mother and by the foster father, shall be regarded as the brothers and sisters of the child to whom the woman acts as wet-nurse.

Notes.


Art. 377. Fosterage induces the same impediment to marriage as blood relationship or affinity. Thus a man
is forbidden to marry his foster mother, foster grandmother, foster daughter or foster granddaughter, his full foster sister or his half foster sister, his foster niece either by his paternal or maternal aunt, and the wife of his foster son or of his foster father.

Notes.


Art. 378. Where a man has two wives, one adult with whom he has consummated marriage, and the other an infant, and the former suckles the latter, during the two years’ period of suckling, both the marriages are thereby annulled and a perpetual impediment is created to a remarriage with either of the women.

Notes.


Art. 379. Fosterage is proved by the testimony of two men, or of one man and two women of known integrity.

As soon as the impediment is proved, the judge will dissolve the marriage, and order the separation of the married parties. Where the separation takes place before consummation of the marriage, the husband is not liable for dower, but if the marriage has been consummated, the husband pays whichever is the smaller, the stipulated or the proper dower.
During the period of *Iddat* the wife is entitled to neither lodging nor maintenance.

**Notes.**


**SECTION III.—HAZANAH OR CUSTODY OF THE CHILD.**

(Arts. 380-393.)

**Art. 380.** Every mother, provided she fulfils the necessary conditions, is entitled to the custody of her child, of either sex, during the subsistence of the marriage or after its dissolution, and to bestow upon it such attention as its infant years demand.

**Notes.**


See Sections 8, 24 of the Guardian and Wards Act (VIII of 1890). Section 24 is as follows:—

"A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires."

Where a woman was repudiated by her husband, and the repudiation was not revoked, held, that according to Mahomedan law the custody of the infant daughter should remain with her mother until she attained the age of puberty—*Hamid Ali v. Imtiazan*, I. L. R., 2 All., 71 (1878).

*1 See Art. 310. 2 See Art. 382.*
It is clear according to Mahomedan law, that the mother is of all persons best entitled to the custody of infant children. She forfeits this right on her marrying a stranger—*Beedhun Bibee v. Fuzloollah*, 20 W. R., 411, per Kemp, J. (1873).


Art. 381. Unless the father or the guardian is apprehensive that the child is likely to be taught some other faith than Islam, the mother or any other person entrusted with the custody of the child, even though a Christian woman or a Jewess, is entitled to retain such custody, until the child has attained years of discretion in matters of religion.

Notes.


Art. 382. In order to exercise the right of custody in respect of a child, a woman whether she is the mother or a relation, must be adult, of sound mind, trustworthy, virtuous, and in a position to protect the child and watch over its education. She must not be an apostate, nor must she be married to a stranger, unless he be related to the child within the prohibited degrees.¹

Notes.


Art. 383. A woman entrusted with the custody of a child, whether she is the child’s mother or a relation, how such right is forfeited.

¹ See Art. 22.
loses her right to such custody if she enters into a marriage contract with a man who is not related to the child within the prohibited degrees.¹ Should she forfeit her right to the custody of a child, this right passes to one of her female relations possessing the necessary qualifications. If no such relation exists, the father or the guardian, can claim the custody of the child; but the right thus forfeited is revived upon the disappearance of the cause that led to its forfeiture.

Notes.


The mother loses the right of custody of an infant on her marrying a stranger—Beedhun Bibee v. Fuzloollah, 20 W. R., 411, per Kemp, J. (1873).

Where a girl, the issue of a Christian marriage, lived under her Christian mother’s protection up to the age of fourteen years, and her mother became a Mahomedan and married another man, she was ordered to be removed from the guardianship of her mother, notwithstanding the girl’s wish to remain with her mother, and placed under a Christian guardian—Helen Skinner v. Sophia Evelina Orde, 10 B. L. R., 125, P. C. (1871).

Discretionary power of Courts to give or refuse to give to the mother the possession of an illegitimate infant discussed—2 Str., 271 (1814).

A divorced Mahomedan mother not shown to be of bad character is entitled to the guardianship of her daughter up to the age of nine years—Morris Sel. Dec., S. A., Bom., Part II, 29 (1849).

A guardian appointed under the will of the putative Mahomedan father of an illegitimate child, has no claim to the custody of such child against the mother—5 Dec. N.-W. P., 39 (1850).

¹ See Art. 22.

Art. 384. In default of the mother, the custody of the child devolves on the mother's maternal line in preference to her paternal line, the nearer relation excluding the more remote. Thus, should the mother to whom in the first place the custody of the child was entrusted, die or marry a stranger, or should she be incompetent to retain custody of the child the right passes to her mother, and failing the mother to the following relations:—

The maternal grandmother, the paternal grandmother, full sister, uterine sister, consanguine sister, full sister's daughter, uterine sister's daughter, full maternal aunt, uterine maternal aunt, consanguine maternal aunt, consanguine sister's daughter, brother's daughter, full paternal aunt, full paternal uterine aunt, consanguine paternal aunt, mother's maternal aunt, father's maternal aunt, mother's paternal aunt, father's aunt.

Notes.


Art. 385. For the custody of children women are to be preferred to men.

Failing, however, the abovementioned female relations capable and competent to exercise the right of custody of a child, the right passes to the father's relations
following the order of succession. It thus falls in the first place to the child’s father, then to its grandfather, to its full brother, to its consanguine brother, to its full brother’s son, to its consanguine brother’s son, to its full uncle, and then to its consanguine uncle.

Where in the case of the father’s relations there are two of the same degree, preference shall be given to the elder or to the most virtuous.

Notes.


Art. 386. Failing a male paternal or *Asab* relationship, or if he be of unsound mind, profligate or untrustworthy, the child is to be entrusted to a uterine relation within the prohibited degrees of relationship in the following order:—to the maternal grandfather, then to the uterine brother, to his son, to his uterine paternal uncle, to his full maternal uncle, to his consanguine maternal uncle, or to his uterine maternal uncle. The daughters of uncles or aunts are only entrusted with the custody of girls; and the sons of uncles and aunts are only entrusted with the custody of boys.

Where a girl has no other relation than a male cousin, the judge may place her in his custody, provided he be trustworthy; otherwise the judge will entrust the child to some woman deemed to be a fit and proper person.

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*1* Agnate.  
*2* Zowvil Arham.
Notes.


The brother of the mother of an infant girl, whose parents are dead, is entitled, according to Mahomedan law, to the custody of her property in preference to a woman, who is not connected with the minor by any relationship—In the matter of *Imam Bukhsh*, I. L. R., 9 Cal., 599 (1883).

A Mahomedan grandmother is entitled to the custody of a girl, where her mother has forfeited guardianship by reason of her marrying a stranger—*Fuseehun v. Kajo*, I. L. R., 10 Cal., 15 (1883).

Where a girl has not attained the age of puberty, the maternal grandmother is her proper guardian, in preference to her paternal uncle—*Bhoocha v. Elahi Bux*, I. L. R., 11 Cal., 574 (1885).

Art. 387. When a woman whose duty it is to take custody of the child, refuses to fulfil this duty, she can be compelled to do so, if she is unmarried and there is no other relation competent to do so, or if the relation next in order refuses the responsibility.

Notes.


Art. 388. The expenses of the child’s custody are separate from those of maintenance and suckling. The father, however, is equally responsible for them if the child has no means of its own, but if it has means of its own, the father is neither bound to pay
for its custody, nor for its suckling, food, clothing or lodging.

Notes.

Art. 389. Where a mother is entrusted with the custody of her child, either during the marriage, or during the period of Ḥaddat¹ consequent upon a revocable repudiation,² she is not entitled to any remuneration. But if she is entrusted with the custody of the child after the marriage is irrevocably dissolved, or when she is married to a relation of the child within the prohibited degrees,³ she is entitled to remuneration.

Notes.

Art. 390. Where both the father and the child are without means, and there are no relations within the prohibited degrees, who will gratuitously undertake the child’s custody, the mother, in spite of her refusal to take charge of the child without remuneration, can be compelled to do so and to attend to its education.

Notes.
Zaidu-nil-Ambani, Vol. 2, p. 76

Art. 391. For a boy the right of custody ceases at the age of seven years, and for a girl at the age of nine years.

¹ See Art. 310. ² See Art. 227. ³ See Art. 22.
At these ages the father can claim and withdraw the child, and in case of refusal, the person who has custody of the child can be compelled to give up the child. On her part, if she wishes to give up the child, she can compel the father to withdraw him.

When the child is a boy and has neither father nor grandfather, he must be placed in the charge of a near paternal male relation, but if a girl she can only be placed in charge of a male relation, who is within the prohibited degrees of marriage.

Where the child has no paternal male relation, it must be left in the charge of the person in whose custody it is, unless the judge can find a more capable or trustworthy person as a guardian.

Notes.


The mother is, according to Mahomedan law, the proper person to have charge of an infant son under the age of seven years—*Futteh Ali Shah v. Fuzeelutunnissa*, W. R. Sup. Vol., 131 (1864).

It is perfectly clear, according to Mahomedan law that the mother is entitled to the custody of a child, if a boy, he is to remain in that custody till seven years, and if a girl till puberty—In the matter of *Tayheb Ally*, 2 Hyde, 63 (1864).

According to the Shia School of Mahomedan law, the custody of a female child rests with the mother only up to the seventh year—*Raj Begum v. Reza Hossein*, 2 W. R., 76 (1865).

According to Mahomedan law a paternal uncle has no legal right to the guardianship of the property of the minors in preference to the mother, while it is admitted that the mother has the preferential right to the custody of their persons—*Alimodeen Moallem v. Syfoora Bibee*, 6 W. R., 125 (1866).
A Mahomedan mother has the right to the custody of the person of her minor son up to the age of seven years—In the matter of Ameeroonissa, 11 W. R., 297 (1869).

The right to the care and custody of a Mahomedan girl belongs not to the husband, but to her mother until she attains the age of puberty—In the matter of Khatija Bibi, 5 B. L. R., 557, per Norman, J. (1870).

Although the mother's custody of an infant wife who has not attained puberty may be legal, custody by the husband is not necessarily illegal under Mahomedan law—In the matter of Mahin Bibi, 13 B. L. R., 160 (1874).

Where a Mahomedan woman sued for the custody of her minor sister as her legal guardian, held, that although she would be, prima facie entitled to the guardianship of her younger sister, yet her own bad character and manner of life must be held to disqualify her according to Mahomedan law—Abasi v. Dunne, I. L. R., 1 All., 598 (1878).

According to the Shia School of Mahomedan law, a mother is entitled to the custody of her daughter, unless she has committed some act of impropriety—In the matter of Hosseinibegum, I. L. R., 7 Cal., 434 (1881).

According to Mahomedan law the effect of the contract of marriage is to place the wife under the dominion of the husband, but notwithstanding the marriage the right to the care and custody of a girl belongs not to the husband but to her mother, until she attains the age of puberty—Nur Kadir v. Zulaikha Bibee, I. L. R., 11 Cal., 649 (1885).

Under Mahomedan law, a mother's title to the custody of her children remains until they attain the age of seven years—Idib v. Amir, I. L. R., 8 All., 322 (1886).

A Mahomedan father governed by the Shia School of Mahomedan law, is entitled to the custody of his children after they have attained the age of seven years. The mother would be entitled to the custody of a girl only until she was seven years—Jadli Begum v. Mahomed Amir Khan, I. L. R., 14 Cal., 615 (1887).

A Mahomedan mother is entitled to the custody of her daughter in preference to the father until the girl attains the
age of puberty— Kurban v. King-Emperor, I. L. R., 32 Cal., 444, per Harington, J. (1904).

See Muchoo v. Arsoon Sahoo, 5 W. R., 235 (1866); In the matter of Saithri, I. L. R., 16 Bom. 307 (1891); In the matter of Joshy Assam, I. L. R., 23 Cal., 290, per Sale, J. (1895); Mokoond Lal Singha v. Nobodip Chunder Singha, I. L. R., 25 Cal., 881 (1898).

Art. 392. While the custody lasts, neither the child's father nor any other guardian, can take the child away from the place in which the custodian resides without her consent.

But if the custodian marries a stranger and if there be no other female relation of the mother competent to be entrusted with the custody, the father can withdraw the child. On the other hand if the custodian's right, or the right of any of her relations revives, the father must immediately return the child to the former custodian or competent relation.

Notes.

Art. 393. During the period of Iddat\(^1\) consequent upon repudiation, a mother can in no instance remove the child entrusted to her care from the place in which the father lives.

After the expiry of her Iddat, she cannot remove the child to any great distance from the place in which the father lives, without the latter's consent; such as from one town to another town, or from a village to a town, or from one village to another, unless she was

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\(^1\) See Art. 310.
born in the place to which she wishes to transfer the child.

But if she was not born in the place to which she wishes to remove the child, or if she was born but not married there, she cannot remove the child without the father's consent, unless the place be at such a distance as to enable the father to visit the child and return the same day before nightfall.

Notes.


Art. 394. No person having the custody of a child other than the mother, can in any case remove it from the place in which the father lives without his consent.

Notes.

SECTION IV.—THE DUTIES OF A FATHER WITH REGARD TO THE MAINTENANCE OF HIS CHILDREN.

(Art. 394—407.)

Art. 395. Every father is bound to provide food, raiment, and lodging for his child if without means, whether it be a boy or a girl. In the case of a boy the obligation lasts until he is able to provide for his own needs by his labour, in the case of a girl until she is married.
KATHBH’S DUTIES TOWARDS CHILDREN.

Notes.


Art. 396. A father is obliged to maintain his adult son if he be without resources, crippled, or suffering from an infirmity that renders him unable to work for his own livelihood. He is also responsible for the maintenance of his adult unmarried daughter, if she is without resources, even though she has no infirmity.

Notes.


Art. 397. A father is alone responsible for the maintenance of his children, who are without means of their own, unless he himself is poor and also infirm or suffering from a malady which prevents him from carrying out his obligation. The maintenance of the children then devolves upon those relations, whose duty it is to maintain the children in the case of the father’s death.

Notes.

Art. 398. A father who is poor, but who does not suffer from any infirmity or malady, cannot be released by reason of his poverty from the duty of maintaining his children. It is his duty to provide for them by his labour. If he refuses to work for them, although capable of doing so, he can be compelled under penalty of imprisonment. Should the proceeds of the father’s labour be not sufficient to satisfy the needs of his children, or should he fail to find work, the nearest relations in easy circumstances shall be called upon to make up the deficiency.

Notes.
Baillie, Bk. 6, Chap. 12, p. 456; Zaidu-nil-Ambani. Vol. 2, p. 84.

Art. 399. Where a father is destitute, the mother, if she has the means, becomes responsible for the maintenance of her children. Whether it be the mother or any other relation who advances the money for maintenance, the sums advanced remain a debt against the father, to be recovered when he is in easier circumstances.

Notes.
Baillie, Bk. 6, Chap. 2, pp. 457, 458; Zaidu-nil-Ambani, Vol. 2, p. 84; Clavel, Vol. 1, p. 299.

Art. 400. Where a father is dead or held to be so, and leaves a minor child without means, or an adult child who is infirm, and in either case having ascendants in easy circumstances, if the latter be all related in
the same degree to the deceased but cannot all inherit from him, the ascendant who would inherit is responsible for the maintenance. Thus, if a child has a paternal grandfather and a maternal grandfather, both in easy circumstances, it is the duty of the former to provide for his grandchild's maintenance.

Where the ascendants can all inherit from the deceased, they are all bound, proportionately to their respective rights in the estate to share in providing for the child's maintenance. Thus, if the child has a mother and a paternal grandfather, the latter is liable for two-thirds and the mother for one-third of the maintenance.

Notes.


Art. 401. Where a father is dead or held to be so, and leaves a minor child without means, or an adult child who is infirm, and there are in either case ascendants and collateral relations, who cannot all inherit from the deceased, the nearest ascendant is alone liable for the maintenance, whether he or a collateral relation is the sole heir. Thus, if a child without means, has a paternal grandfather and a full brother or a maternal grandfather and an uncle, in either case it is the grandfather who will bear the expenses of maintenance.

If the ascendants and collateral relations can all inherit from the deceased, they must bear the cost of the child's maintenance between them in proportion to their respective shares in the inheritance. Thus, if a child has a mother and a full brother, or a full nephew
or a full uncle, the mother will pay one-third and the male paternal relation two-thirds of the maintenance.

Notes.


Art. 402. Where a father is missing and leaves behind him children to whom maintenance is due and also leaves property in his house of such nature as may be used for maintenance, the judge can order maintenance out of such property. If the absent father leaves property in deposit, or has a debt due to him, the judge can order payment of the maintenance out of the deposit or debt, provided that either can be made use of for such a purpose, and the depositary or creditor respectively admits the deposit or the debt.

A child without means can also take what is necessary for its subsistence out of property left by its absent father, provided that such property can be made use of for maintenance.

Notes.


Art. 403. A father is not responsible for the maintenance of the wife of his minor son, who is without means, unless he has undertaken to be so. He can nevertheless be ordered to provide for her maintenance,
which he can recover from the son, when his position in life improves.

Notes.


A Court is not competent to award to a Mahomedan daughter-in-law a monthly allowance for maintenance against her father-in-law—Meer Ubdool Kureem v. Fukhroonisa, 3 S. D. A., 60 (1820).

Art 404. When a minor son becomes old enough to earn money by his labour, his father can set him to work or can have him taught a trade which will enable him to earn his own living. A father can employ his son's earnings in providing for the latter's maintenance, and if there is any surplus, can lay it by, and hand it over to the boy on his attaining majority.

Notes.


Art. 405. Where a mother complains of the inadequacy of the sum allowed by the father for her child's maintenance or of the father's refusal to pay for maintenance, the judge shall fix the amount and order it to be paid to the mother for the benefit of the child.

Notes.


Art. 406. A mother can validly come to an agreement with the father as to the sum due for the maintenance of their children. Should the sum agreed upon exceed that which the children require, the surplus need not be returned to the father, but if the sum agreed upon be insufficient, the father must raise it to the necessary amount.

Notes.


Art. 407. A debt for maintenance decreed by a judge in favour of a child without means, is not extinguished if left unclaimed for one month or more, even when the child's mother has borrowed money for its maintenance without first obtaining an order from the judge.

Notes.


CHAPTER. III.
MAINTENANCE OF PARENTS BY THEIR CHILDREN.

(Arts. 408—414.)

Art. 408. Children of either sex, minor or adult if in easy circumstances are responsible for the maintenance of poor parents and grandparents, whether they are infirm or able to earn their own living.
MAINTENANCE OF PARENTS.

Notes.


See Sale’s Koran, Chap. XXXI, p. 336.


Art. 409. Where a father is infirm or ill and unable to take care of himself, his child must pay for the maintenance of a servant, in order that his wants may be attended to.

Notes.


Art. 410. No child is obliged to maintain its mother if she has married a second time, as this obligation rests entirely upon her husband; but if the second husband be in embarrassed circumstances, or be absent and have left no property the child, if in a position to do so, must maintain its mother and recover the amount from the husband when he returns or becomes solvent.

Notes.


Art. 411. The maintenance of a poor father is not incumbent on a child who is also poor, unless the latter is able to work for its living while the father is...
infirm and unable to do so. The poor mother is held in
the same light as the infirm father, even though she
suffers from no infirmity.

Notes.

Baillie, Bk. 6, Chap. 3, p. 462; Zaidu-nil-Ambani, Vol. 2,
p. 102.

Art. 412. Where an absent child leaves behind him
any property or a debt which is due to him, the judge
can order that the destitute parents of the absent child
shall be maintained out of such property or debt,
provided it can be made use of for such a purpose.

Notes.


Art. 413. The maintenance of the aged, the
crippled and the sick who are without means and without
relations falls upon the bait-ul-mal.¹

Notes.


Art. 414. The obligation of children to maintain
their poor parents, is irrespective of their shares in the
inheritance of their parents and is based on their
condition in life. Thus a son and a daughter, both in
a condition to provide maintenance, must each contribute
one-half.

¹ Or the public treasury.
In the same manner two sons in easy circumstances, one of whom is a Muslim and the other a Christian or a Jew, must each provide one-half of the maintenance.

Grandchildren of either sex related in the same degree must contribute equally to the maintenance of their ascendants.

Notes.


CHAPTER IV.

MAINTENANCE OF RELATIONS OTHER THAN ASCENDANTS AND DESCENDANTS.

(Art. 415-419.)

Art. 415. The liability to maintain a poor relation in need of assistance is distributed among his relations within the prohibited degrees, in proportion to the shares they would take in his inheritance.

The law makes no difference between claims for maintenance made by minors of either sex, or male adults who are infirm and unable to earn their livelihood, and between claims made by adult females enjoying good health and able to work.

Notes.


Art. 416. Difference of religion does away with the obligation of maintenance, unless the claimant is the wife, an ascendant or a descendant of the party liable for the maintenance and is a non-Muslim. Thus a Muslim is in no way liable for the maintenance of his non-Muslim brother and vice versa.

Notes.


Art. 417. The uterine relation outside the prohibited degrees is free from any obligation to provide maintenance so long as there exists a relation with whom marriage is prohibited. Where there are two relations, one of whom is within the prohibited degree and the other not, payment of the maintenance is incumbent upon the former and not upon the latter.

Notes.


Art. 418. Where there are several relations, all of the same degree and all in easy circumstances, maintenance is incumbent upon those who are entitled to inherit, in proportion to their shares in the inheritance.

Thus if there is a paternal and also a maternal uncle both in easy circumstances, the former must bear the whole cost of his nephew's maintenance as he would inherit from the nephew to the exclusion of the maternal uncle. A paternal uncle must also bear the

1 See Art. 22.
cost of maintenance to the exclusion of a paternal aunt. Where there is a maternal uncle and also a maternal aunt, the uncle provides two-thirds and the aunt one-third of the maintenance.

Should the person in need of maintenance have three sisters, the full sister must contribute three-fifths of the maintenance, the consanguine sister one-fifth, and the uterine sister one-fifth. Should there be three brothers, the uterine brother is responsible for one-sixth, and the full brother for the remainder of the maintenance, the consanguine brother being totally exempted.

Notes.


Art. 419. A debt for maintenance due to relations other than ascendants or descendants is extinguished if not paid within one month of its becoming due, unless the debt has been contracted under an order of the judge, in which case it can be recovered from the deceased debtor's estate if not discharged in his lifetime.

Notes.


CHAPTER V.

PATERNAL AUTHORITY (VILAYAT).

(Art. 420—434.)

Art. 420. A father is guardian of the person and property of his children of either sex, be they minors,
or of age and legally incompetent,\(^1\) including minors entrusted to the custody of their mother or her relations. He has also the power to give such children in marriage.

**Notes.**


The position of a Mahomedan widow in respect of her deceased husband's estate, is ordinarily nothing more or less than that of any other heir, and even in case of minority of her children, she cannot exercise any power of disposition with reference to their property, because she cannot act as their guardian in respect of such matters. Under certain limitations she may act as guardian of the person of her children till they reach the age of discretion, but the interest of their property never vests in her without special appointment by the ruling authority, in default of other relations who are entitled to such guardianship—*Sitaram v. Amir Begum*, I. L. R., 8 All., 324 (1886).

As to the duties, rights, and liabilities of Guardians, see Chap. III of the Guardian and Wards Act (VIII of 1890).

**Art. 421.** The guardianship of the father continues to exist to its full extent, over the person and property of a lunatic child, even after its attaining the age of puberty.\(^2\) It ceases, however, when the child reaches the age of puberty and is in full possession of its mental and intellectual faculties, but revives as soon as the child subsequently becomes insane.

**Notes.**


**Art. 422.** A father of known integrity and business capacity, can deal with the property of his minor or incapable children, by selling or otherwise disposing

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\(^1\) See Art. 553.  
\(^2\) See Art. 566.
of it, or by making a suitable use of it in trade or commerce, or by laying it out in merchandise with a view to its increase, and can also entrust his powers to an agent.

The father as guardian has also the power to let out or hire the services of his male child, and to lease or lend all real and personal property including lands, animals and every thing else belonging to the children subject to his authority.

Notes.


A sale by a Mussalman of his children's lands, he having declined their guardianship, was held to be null and void—Syed Ashruj'ali v. Mirza Quasim, 3 Sel. Rep. S. D. A. 65 (1820).

A deed executed by the mother on behalf of minors, while the father was alive is not binding on the minors—1 Dec. N.-W., 112 (1846).

According to Mahomedan law, a sale by a guardian of the landed property of an infant, is not permitted otherwise than in case of urgent necessity, or very clear advantage to the infant—Bakshan v. Madai Koereti, 3 B. L. R., 423, per Norman, J. (1869).

The question of legal necessity does not necessarily arise in cases of sale under Mahomedan law, though it properly forms an element for consideration when the conduct of a guardian is called in question. That law looks to the benefit of the minors, and permits the guardian to dispose of the property, if it be for the benefit of the minor—Syedan v. Syed Vilayet Ali Khan, 17 W. R., 239 (1872).

Where two Mahomedan widows sold a portion of the real estate belonging to the minor daughter of their deceased husband, to satisfy certain decrees, held, that if the minor was in possession, and was not a party to, or properly represented in the suits in which the creditors obtained decrees, then she cannot be bound by the decrees, nor by the sale subsequently effected, and according to Mahomedan law, she is entitled to recover her share on the payment by her of her share of the debts, for the satisfaction of
which the sale was effected—*Hamir Singh v. Zakia*, I. L. R., 1 All., 57, F.B. (1875).

Where a Mahomedan lady was in possession of certain property on her own account and on behalf of certain minors, who were her orphan nephew and niece, and she sold the same to satisfy certain debts and for other necessary family purposes and wants for the benefit of the minors, held, that according to Mahomedan law and the principles of equity, justice and good conscience, the sales were binding upon the minors—*Hasanali v. Mehdi Husain*, I. L. R., 1 All., 533 (1877).

No greater powers can be exercised by a *de facto* guardian who has not legally completed his right to manage a minor's estate than can be exercised by a guardian duly appointed under Act XL of 1858—*Abhassi Begum v. Rajroop Koonwar*, I. L. R., 4 Cal., 33 (1878).

Although, according to Mahomedan law, an uncle cannot be the guardian of the property of a minor, yet there is nothing to prevent him from representing his minor nephew, as next friend in a suit, under the Code of Civil Procedure—*Abdul Bari v. Rash Behari Pal*, 6 C. L. R., 413 (1880).

A Mahomedan guardian is at liberty to sell the property of his ward, where he has no other property and the sale of it is absolutely necessary for his maintenance—*Husein Begam v. Zia-ul-nisa*, I. L. R., 6 Bom., 467 (1882).

Where the mortgagors of certain shares of a Mahomedan infant were not the guardians of the property, such shares would not be bound by the mortgage executed by persons who had no power to bind the infant—*Bhunath Dey v. Ahmed Hosain*, I. L. R., 11 Cal., 417 (1885).

According to Mahomedan law, a guardian is not at liberty to sell a minor's immovable property, the title to which property is not disputed except under certain circumstances; but where a father executed a deed of sale of immovable property of his minor son for his benefit and in his interest held, that the father was entitled to execute such a deed—*Kali Dutt Jha v. S. Abdool Ali*, I. L. R., 16 Cal., 627; L. R., 16 I. A., 96 (1888).

To authorize a sale by the guardian of a Mahomedan minor, there must be an absolute necessity for the sale or else it must
be for the benefit of the minor. Mahomedan law makes no provision for mortgages, as such transactions were, strictly speaking, unlawful, as they involved the payment of interest on money borrowed. As, however, mortgages do exist among Mahomedans, and between Mahomedans and other sects, they must be governed by the same principles as apply to sales—Hurbai v. Hiraji, I. L. R., 20 Bom., 116 (1895).

The mother not being the legal guardian of her minor child, according to Mahomedan law, cannot do any act relating to the property of the minor so as to bind him—Baba v. Shivappa, I. L. R. 20 Bom 199 (1895).

A minor is not liable for acts of a person who has no authority to act as his guardian and mortgage his property—Nizamuddin v. Anandi Prasad, I. L. R., 18 All., 373 (1896).

The mother is not the natural guardian of her children according to Mahomedan law. She is entitled to the custody of the person of her minor children, but she has no right to the guardianship of their property or to bind their estate unless specially authorized by the Judge to do so—Moyna Bibi v. Banku Behary Biswas, I. L. R., 29 Cal., 473; 6 C. W. N., 667 (1902).

A Mahomedan mother is not the legal guardian of the property of her minor children, and she cannot do any act relating to their property so as to bind them, and a sale or mortgage made by her cannot as such bind the minor children.—Pathummbi v. Vittil Ummachari, I. L. R., 26 Mad., 734 (1902).

A sale of property made by a de facto Mahomedan guardian of a minor girl, for the benefit of such minor is binding upon her—Majidan v. Ram Narain, I. L. R., 26 All., 22 (1903).

Any one having the care of the person or property of a minor, may enter into a contract on his behalf, where the profit is clear and certain or where it would be manifestly for the benefit of the minor. A de facto guardian, such as the mother, who is not the natural guardian of a minor can, under Mahomedan law, alienate his property for legal necessity and for his benefit—Mafuzzul Hosain v. Basid Sheikh, 4 Cal. L. J., 485, per Rampini, J. (1906).

See Sitaram v. Amir Begum, I. L. R., 8 All., 324 (1886); Abdul Sarang v. Puttee Bibi, I. L. R., 29 Cal., 738 (1902).
Art. 423. Where a father consents to the sale, loan or lease of his child’s movable or immovable property, or to any purchase made for the child’s benefit, and the child thereby incurs a slight loss, the transaction is valid and cannot be rescinded by the child upon attaining its majority. Where, however, great loss is incurred through a sale, loan or lease, the transaction is null and void, and consequently cannot be ratified by the child upon attaining majority.

The child, on attaining its majority, can cancel the unexpired agreement made by its father for the hire of its services if the child prefers not to abide by it. If, however, the unexpired agreement be for the loan or lease of its property the child, on attaining its majority, cannot cancel such agreement.

Notes.

Art. 424. Where a father who is known to be a bad administrator, sells as guardian immovable property belonging to his minor or incapable child, the child upon attaining its majority can cancel such sale, unless the price amounts to double the value of the property sold.

Notes.

Art. 425. Where a father misapplies the property of his minor children, and is deemed incapable of properly preserving such property, the judge can appoint another guardian who will be entrusted with the management of the entire property of the children.
Notes.


**Art. 426.** A father, on his own account, can validly buy property from, or sell his own property to, his minor or incapable children.

Where he buys their property, he is only released from the payment in respect of such purchase by delivery of the price to a guardian, appointed by the judge, who will hand it back to the father in the name of the child.

Where the father sells property of his own to his child, the mere fact of the sale does not in itself constitute a legal presumption of his having taken possession on the child's behalf, and should the property suffer any loss before actual delivery, the father is alone responsible.

Notes.


**Art. 427.** A father as guardian, can pledge his own goods in the interests of his child and can take the goods of his child as a security. He can pledge his child's goods as a security for a debt owed him by such child, or for a debt of his own.

Where the goods of the child, given as a security for the father's debt, perish, the latter is responsible for the loss up to the amount of his debt and not for the surplus when the value of the goods pledged exceeds that of the debt.
Notes.

Art. 428. A father can neither lend the property of his minor child, unless it be to a trustworthy person, nor can he borrow such property himself, nor make a gift of it by way of exchange.

Notes.

Art. 429. A father as guardian, cannot agree to the assignment of a debt belonging to his son, though not contracted by the latter, unless the solvency of the assignee is superior to that of the son.

Notes.

See Chapter VIII of the Transfer of Property Act (IV of 1882).

Art. 430. A father has no claim against his minor child, who is without means, for the value of such articles as a father is bound to provide for his child. On the other hand the father can claim the value of articles which he has provided, though not bound to do so, provided that when furnishing such articles he stated before witnesses that it was his intention to recover them from the child.

Notes.
**Art. 431.** Where a father, before his death, specifies which is his son’s property, the latter upon reaching his majority can himself, or if a minor by his guardian, claim such property if it exists, or if not its value.

**Notes.**


**Art. 432.** Where a child on reaching majority sues the father for recovery of property which the latter states has perished or was spent in maintaining the child during its minority, the father’s sworn declaration shall be accepted, provided that the amount spent on maintenance was reasonable.

**Notes.**


**Art. 433.** In order to maintain himself and the mother, wife, and children of an absent child, the father, who is in straitened circumstances, can sell the movable property of such absent child if the latter has attained his majority. If the absent child is a minor or insane, the father can sell its movable and immovable property. This power does not extend to the child’s mother or any other relation or even to the judge.

**Notes.**


**Art. 434.** On the father’s death the guardianship of the person of his minor or incapable children devolves upon the paternal grandfather, and then on the child’s male paternal relations as mentioned in Article 35.
The guardianship of the property of his children devolves:—(1) upon the executor, if any, appointed by the father, even if such executor be an entire stranger to the family; (2) upon the executor, if any, of such executor; (3) the paternal grandfather; (4) his executor, if any. Failing these, the guardianship devolves upon the judge or on any person appointed by him.

Notes.


Under Mahomedan law, in default of paternal relations, who, by blood, have authority to act as guardians to minors, the ruling power is the guardian—Ushrf-oon-nissa v. Nujeeba Banoo, 7 Sel. Rep., S. D. A., 65 (1848).
BOOK V.

GIFTS (hiba): WILLS (WASA'YA): EXECUTORS (WASI):
INHIBITION (HAJR): MISSING PERSON (MAFKOOD).

(Articulate 435-581.)

CHAPTER 1.

GIFTS INTER VIVOS.

(Articulate 435-464.)

SECTION I.—REQUISITE CONDITIONS FOR THE VALIDITY
OF A GIFT.

(Articulate 435-439)

Art. 435. A gift is complete by the declaration of
A gift made by the donor and its acceptance on the part
of the donee. The taking possession of the property by
the donee is equivalent to its acceptance.

Notes.

Kauz-uz-Dakaiq, p. 302; Fatawa-i-Alamgiri, Vol.
5, pp. 228, 230.

Hamilton's Hedayah, Vol. 3, Bk. 30, Chap. 1, p. 482; Zaidu-

Gift (hiba), in its literal sense, signifies the donation of a
thing from which the donee may derive a benefit; in the language
of the law, it means a transfer of property, made immediately;
and without any exchange.—Hamilton's Hedayah, Vol. 3, Bk. 30,
p. 482.
Section 122 of the Transfer of Property Act (IV of 1882) defines gift as follows:—Gift is the transfer of certain existing movable and immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

See Chapter VII of the Transfer of Property Act (IV of 1882).

A deed of gift by a Mahomedan lady in favour of a minor who had been adopted as a son into her family was sufficient to give legal validity to the gift notwithstanding that the father of the child was alive at the time—Banoo Beebee v. Chand Beebee, 2 Sel. Rep. S. D. A., 230 (1816).

Where a certain deed was not in the form of a hibanamah but the donor had given the property in question to the donee, held, the gift was good and valid according to Mahomedan law—Moohummud Umeer Khan v. Jumadar Bucha Bhaee, 2 Borr. Bom. S. A., 200 (1822). See 2 Borr. 665, Bom. S. A. (1823).

The legal objection of indefiniteness raised against a deed of gift made according to Mahomedan law, under which the donees have been in joint possession for a period of upwards of twelve years is not maintainable—Syud Shah Basit Ali v. Syud Shah Imamooddeen, 3 Sel. Rep., S.D.A., 234 (1822).


A prior deed of dower, which settled only a fixed sum upon the wife, would not, according to Mahomedan law, debar the husband from making a gift of his real property in favour of others—Suffuronisa v. Ayesha, 6 Sel. Rep., S. D. A, 215 (1837).

Where a Mahomedan by a deed of gift declared that he had adopted a son who was to succeed to his property and title, held, that the deed of gift was not accompanied by delivery of possession and seizin by the donee and the gift was consequently inoperative according to Mahomedan law—Jeswunt Sing-Jee v. Jet Sing-Jee, 3 M. I. A., 245 (1844).
Where a Mahomedan executed a *hiba* in favour of his wife containing various conditions limiting her power over the property given, held, that the conditions rendered the gift void—*Chand Khan v. Beluk Khuna Bibi*, Dec. S. D. A., 105 (1850).

A gift by a Mahomedan lady in favour of her children without the consent of any one of them is valid—*M. Zuheerul Huq v. Butoolun* 1 W. R., 79 (1864).

A gift under Mahomedan law cannot depend upon a contingency or be postponed; seizin must be immediate—*Roshun Jahan v. Enaet Hossein*, 5 W. R., 4 (1866).

Under Mahomedan law a widow may give away her property by way of gift to whomsoever she pleases, but if she delays the gift till upon her death-bed, such gift would operate to a limited extent only—*Luteefoonisa v. Syed Rajaor Rahman*, 8 W. R., 84 (1867).

Where a deed of gift intimated that the donee had been a kind and attentive son and had enabled his father to redeem certain property, held, that such reference did not constitute a *hiba-bil-ewaz*, according to Mahomedan law—*Ussud Ali Khan v. Olfut Beebee*, 3 Agra H. C. R., 237 (1868).

Where Section 24 of Act VI of 1871 provides that where in any suit or proceeding there arises any question regarding “succession, inheritance, marriage or caste, or any religious usage or institution, the Mahomedan law shall form the rule of decision,” it means that such law shall, in the cases mentioned, be strictly and exclusively applied, but in regard to all other cases, such as gifts, Mahomedans shall not be deprived of their own law, but such law shall be applied rather in the spirit than in the letter, according to “Justice, equity and good consience”—*Shumshoot-nissa v. Zohra*, 6 N. W., P. H. C. R., 2, *per* Stuart, C. J. (1873).

Where a Mahomedan lady made a gift of certain property of which she was not in actual possession, held, that though she could sell the property she could not make a valid gift of it according to Mahomedan law—*Mohinuddin v. Manchershah*, I. L. R., 6 Bom., 650 (1882).

According to Mahomedan law, a declaration made by a person in an instrument of gift making the grantee owner of the
grantor's share in her husband's property cannot create a proprietary right in the said share after the grantor's death—Kuvarbai v. Mir Alam Khan, I. L. R. 7 Bom., 170 (1883).

Where a deed of gift stated that the donor's father always protected her and that she gave him a certain property in full confidence that he would continue to do so, held, that the instrument, if not a simple gift, was at any rate "a gift on stipulation," which equally required that seizin should be given to the donee under Mahomedan law—Mogulsha v. Mahamad, I. L. R., 11 Bom., 517 (1887).

In a gift seizin is necessary and absolutely indispensable to the establishment of proprietary right under Mahomedan Law—Meherali v. Tajudin, I. L. R., 13 Bom., 156, per Sargent, C. J. (1888).

The rule of Mahomedan law in regard to hiba is that the gift must not be implied. It must be express and unequivocal, and the intention of the donor must be demonstrated by his entire relinquishment of the thing given, and the gift is null and void where he continues to exercise any act of ownership over it—Bara Saib v. Mahomed, I. L. R., 19 Mad. 343 (1896).

Where a testator before his death handed over to his widow certain deposit notes of the Bank of Bengal, held, that it was quite clear that the effect of handing the notes was not to transfer the debts or to give the widow the dominion over them or to enable her to recover the money secured by the notes, though such act was evidence of an intention to make a transfer of the same. In the circumstance the gift was incomplete and no legal effect could be given to it—Aga Mahomed Jaffer Bindanim v. Koolsom Beebee, I. L. R., 25 Cal., 9 P. C. (1897).

Art. 436. For the validity of a gift the donor must be of sound mind and owner of the property which is given.

Notes.


According to Mahomedan law a gift on a death-bed is viewed in the light of a legacy, and therefore no person can make a gift of any part of his property on his death-bed to one of his heirs, it not being lawful for one heir to take a legacy without the consent of the rest—Ashadoola v. Shaeba Jhasors, 2 Hay, 345 (1863).

A deed of gift, such as a tumleeknamah, executed by a Mahometan lady, at a time when she was suffering from her last and fatal illness, cannot operate save as a will. Further if a will or death-bed gift be made in favour of one who is an heir of the deceased, the will or gift so far as it relates to that heir, will be inoperative without the consent of the other heirs—Ashruffunnissa v. Azeemun, 1 W. R., 17 (1864).

Where a Mahomedan executed a deed of gift when he was labouring under a sickness from which he never recovered, and which proved fatal to him, such gift took effect only to the extent of a third of his property—Kureemun v. Mullick Enaet Hossein, W. R., Sup. Vol. 221 (1864); Molk Enaet Hossein v. Kureemoonissa, 3 W. R. 40 (1865).

The term marz-ul-maut is applied under Mahomedan law not only to diseases which actually cause death, but to diseases from which it is probable that death will ensue, so as to engender in the person afflicted with the disease an apprehension of death in order to guard against acts done by a person afflicted with a disease which may disturb his calm judgment, that law has provided that the person afflicted with the disease shall be deemed incompetent to make a gift of his property until after the expiration of a year from the date on which he was attacked with the disease—Labib Beebee v. Bibbun Beebee, 6 N. W. P., H. C. R., 159 (1874).
The provisions of Mahomedan law applicable to gifts made by persons labouring under a fatal disease do not apply to a so-called gift made in lieu of a dower-debt, which is really in the nature of a sale—Ghulam Mustafa v. Hurmat, I. L. R., 2 All., 854 (1880).

Where a Mahomedan suffered from a certain sickness for more than a year and while in full possession of his senses and without any immediate apprehension of death, made a gift, held, that according to Mahomedan law such gift was valid—Muhammad Gulshere Khan v. Mariam Begam, I. L. R., 3 All., 731 (1881).

Under Mahomedan law, the acts of disposition by a person suffering from an illness which induces the apprehension of death, and which eventually causes death, have only a qualified effect given to them—Wazir Jan v. Altaf Ali, I. L. R., 9 All., 357 (1887).

A death-bed gift is not valid unless the heirs give their assent and possession is taken—Sharifa Bibi v. Gulam Mahomed, I. L. R., 16 Mad., 43, per Wilkinson, J. (1892).

A careful study of the principles enunciated in the most authoritative Hanifa works would show that in determining whether the donation of a person suffering from a mortal illness comes within the doctrine applicable to marz-ul-maut gifts, several questions have to be considered; viz.—(1) Was the donor suffering at the time of the gift from a disease, which was the immediate cause of his death? (2) Was the disease of such a nature or character as to induce in the suffering person the belief that death would be caused thereby, or to engender in him the apprehension of death? (3) Was the illness such as to incapacitate him from the pursuit of his ordinary avocations or standing up for prayers, a circumstance which might create on the mind of the sufferer an apprehension of death? (4) Had the illness continued for such length of time as to remove or lessen the apprehension of immediate fatality, or to accustom the sufferer to the malady? The limit of one year mentioned in the law books does not lay down any hard-and-fast rule regarding the character of the illness; it only indicates that a continuance of the malady for that length of time may be regarded as taking it out of the category of a mortal illness—Hassarat Bibi v. Golam Jaffar, 3 C. W. N., 57 (1898).

According to Mahomedan law a death-illness (marz-ul-maut) is one which it is highly probable will end fatally whether the sick person has taken to his bed or not, or whether in the case of a man,
it disables him from rising up for necessary avocations out of the house or not, or whether in the case of a woman it does or does not disable her from necessary avocations within doors. Such illness is to be considered death-illness when a man cannot pray standing. But where the malady is of long standing, and there is no immediate apprehension of death, the illness is not a death-illness, so that a gift made by a sick person in such circumstances, if he is in the full possession of his senses, is not invalid; and where the malady had lasted a year, it should be considered of long continuance—Fatima Bibee v. Ahmad Baksh, I. L. R., 31 Cal., 319, per Rampini, J. (1903).

Art. 437. The ownership of the property is only transferred to the donee by actual and complete delivery of possession.

If the property is already in possession of the donee and he has accepted the gift, ownership is transferred to him by the mere transaction and a fresh delivery is not necessary.

Notes.


In a hiba-bil-evaz or gift for consideration, seizin of the donee is not necessary according to Mahomedan law—Meer Nujeeb-ullah v. Kuseema, 1 Sel. Rep., S. D. A., 13 (1795).

According to Mahomedan law a real transfer of property by a Mahomedan in his life-time, reserving not the dominion over the corpus of the property, nor any share of dominion over the corpus, but simply stipulating for and obtaining a right to the recurring produce during his life-time, is a complete and valid gift—Umjad Ally Khan v. Mohumdee Begum, 11 M. I. A., 517; 10 W. R., 25, P. C. (1867).


According to Mahomedan law the word *tamlik* means assignment of ownership. *Tamliknamah* is said to be applicable alike to a deed of sale or gift, and gifts are said to be of two kinds, *tamlik* and *iskat*, the last properly applicable only to mere rights, and gifts by *tamlik* is restricted by the definition to *ayn* or specific things. The term *tamlik*, therefore, applies to those gifts in which an assignment of ownership over corporal property is possible, and that is only a term for a kind of gift on which the law applicable to gift is binding—*S. Kasum v. Shaista Bibi*, 7 N.-W. P., H. C. R., 313 (1875).

Where the subject-matter of the gift was not transferred to the donee during the life-time of the donor, who made the gift during his death-illness (*marz-ul-maut*), held, that the possession of the donee, who was manager of the donor, was not such possession as would render the gift valid according to Mahomedan law—*Valayet Hossein v. Maniran*, 5. C. L. R., 91 (1879).

By Mahomedan law, a gift cannot be valid unless it is accompanied by possession, and it cannot be made to take effect at any future definite period—*Yusuf Ali v. Collector of Tippera*, I. L. R., 9 Cal., 138, *per* Garth, C. J. (1882).

In dealing with questions of Mahomedan law of gift, it should not be forgotten that works of very ancient authority were promulgated many centuries ago in Bagdad, and other Mahomedan countries, under a very different state of laws and society from that which now prevailed in India; and that although the British Courts did their best here in suits between Mahomedans to follow the rules of Mahomedan law, it was often difficult to discover what those rules really were, and still more difficult to reconcile the differences which so constantly arose between the expounders of Mahomedan law, ordinarily current in India, namely, Abu Hanifa and his two disciples.

The rule of Mahomedan law, that no gift could be valid unless the subject of it was in the possession of the donor at the time when the gift was made, though undoubtedly laid down in several works of more or less authority, must, so far as it related to land,
have relation to cases where the donor professed to give away the possessory interest in the land itself and not merely a reversionary right in it. Of course the actual seizin or possession could not be transferred, except by him who had it for the time being. What was usually called possession in this country, was not actual or khas possession, but the receipt of the rent and profits. Lands, therefore, let out on lease, could be made the subject of a gift under Mahomedan law.

The rule of Mahomedan law, that a gift of an undivided share in property was invalid, on the ground of Musha or confusion on the part of the donor, and that a gift of property to two donees, without first dividing their shares, applied only to such properties which were capable of division or partition—Mullick Abdool Gufoor v. Muleka, I. L. R., 10 Cal., 1112, per Garth, C. J. (1884).

According to Mahomedan law of gift, a request to attorn to the donee is sufficient delivery and possession of the property—Shaik Ithram v. Shaik Suleman, I. L. R., 9 Bom., 146 (1884).

The principles of Mahomedan law prohibit indefinite gifts and gifts in futuro exclude the validity of such to take effect at an indefinite future time—Chekkonekutti v. Ahmed, I. L. R., 10. Mad., 196 (1886).

Where possession is transferred by a donor to a donee in pursuance of a deed of gift previously executed, the provisions of Mahomedan law are satisfied.—Anvari Begam v. Nizamuddin, I. L. R., 21 All., 165 (1898).

Mahomedan law requires that the donor should be in actual or at least constructive possession and that he should give actual or at least constructive possession to the donee.—Ismal v. Ramji, I. L. R., 23 Bom., 682 (1899).

Where a Mahomedan did not execute any formal transfer of a certain property to his wife but merely presented a petition to the Revenue Court, in which he stated he had transferred his rights and interests to his wife, held, that it was not a valid gift according to Mahomedan law—Mumtaz-un-nissa v. Tojail Ahmad, L. R., of 28 All., 264 (1905).

A Mahomedan holder of property may in his life-time give away the whole or part of his property if he complies with certain forms; but it is incumbent upon those who seek to set
up such a transaction to show very clearly that those forms have been complied with. It may be by deed of gift simply, or by deed of gift coupled with consideration. If the former, unless accompanied by delivery of the thing given, so far as it is capable of delivery, it is invalid. If the latter (in which case delivery of possession is not necessary) actual payment of the consideration must be proved and the bonâ fide intention of the donor to divest himself in presenti of the property, and to confer upon the donee must also be proved—Chaudhuri Mehdi Hasan v. Muhammad Hasan, 10 W. N., 706, P. C. (1906).

See Section 129 of the Transfer of Property Act (IV of 1882).

Art. 438. Any owner, capable of disposing of his property, can give the whole or part of it to an ascendant, a descendant, a collateral relation, or a stranger even of a different religion, provided always that the conditions requisite for the validity of a gift are fulfilled.

Notes.


Art. 439. A gift may consist of the usufruct of property in favour of the donee, during his lifetime with the condition that the property is returned to the donor or to his heirs, should the donee die first.

A donatio mortis causa is void and of no effect. Things thus given become the property of the donor's heirs, but can be left with the donee by way of loan.

Notes.


Where the quantity of the consideration in a gift is undefined and unknown, the deed is inoperative according to Mahomedan law—Aiman Bibi v. Ibrahim, 5 Sel. Rep., 355 (1833).
Where a gift of the whole property is made in favour of only one donee, according to Mahomedan law, specification of the property is not requisite—*Saheebun v. Khoda Buxsh*, 6 Sel. Rep., S. D. A., 51 (1835).

It is quite clear that under Mahomedan law, a *donatio mortis causa* is not effectual as a gift, but only as a will and that to render a gift valid it must be accompanied by delivery of possession—*Meer Ashruff Ally v. Nusebun Bebee*, 2 Hay, 163 (1863).

According to Mahomedan law a gift of property which is not to take effect till the death of the donor is null and void. The courts in this country have invariably applied in practice the Mahomedan law to a variety of cases other than those coming under the denomination of inheritance, marriage and caste and whenever they administered Mahomedan law to Mahomedans, they administered justice according to equity and good conscience—*Zohoroooddeen v. Baharoolla*, W. R., Sup. Vol., 185 (1864).


Where a deed of gift expresses in plain language the specific shares of the property and that the gift was made in lieu of the whole dower, there can be no room for doubt as to the meaning and intention of the contracting parties in regard to the particular subjects either of the gift or of the consideration—*Sahiba Begum v. Atchamma*, 4 Mad. H. C. R., 115 (1868).

Where the interest of each of the donees is not defined by an instrument, the gift is bad according to Mahomedan law—*Sayad Valimia v. Gulum Kadr*, 6 Bom. H. C. R., 25, *per* Couch, C. J. (1869).

Where a Mahomedan made a gift of certain villages in favour of his sister-in-law and declared that she might manage the said villages for herself and apply their income to meet her necessary expenses and pay the Government revenue, held, that the gift was a *hiba-bil-ewaz* or gift for a consideration, and the villages belonged to her absolutely—*M. Faiz Ahmed Khan v. Ghulam Ahmad Khan*, 1. L. R., 3 All., 490; L. R., 3 I. A., 25 (1881).

Where a Mahomedan made a gift of a house to a certain person for the purpose of residence, held, that the meaning of such
a conveyance being perfectly clear the donee took the property absolutely. Where the Sunni law is distinct and the Shia law is silent on a subject; the intention in the latter system is to adopt the Sunni rule to Shias—\textit{Nasir Husain v. Sughra Begam}, I. L. R., 5 All., 505, \textit{per} Stuart, C. J. (1883).

Where there was a gift in effect of a portion of the future revenues of certain villages to the extent of Rs. 4,000 \textit{per annum}, it was held to be invalid according to Mahomedan law. A gift cannot be made of any thing to be produced in future although the means of its production may be in the possession of the donor. The subject of the gift must be actually in existence at the time of the donation—\textit{Amtul Nissa v. Mir Nurudin}, I. L. R., 22 Bom., 489, \textit{per} Farran, C. J. (1896).

\textbf{SECTION II. PROPERTY THAT MAY BE LAWFULLY GIVEN.}

(\textbf{Arts. 440—446.})

\textbf{Art. 440.} The gift of an undivided share in any property, not by its nature divisible, transfers the ownership by delivery of possession provided the undivided share is known and specified (\textit{Musha}).

Property is held to be indivisible when it admits of no division or when division would render it altogether unfit for use, or unfit for the use for which it was destined before division.

\textbf{Notes.}


It is a well known maxim of Mahomedan law, that to render a gift valid it is necessary that the subject of it be defined, and distinct and separated from all other property not intended to be conveyed or which cannot lawfully be conveyed by gift—\textit{Meer Ubdool Kureen v. Fukhroonisa Begun}, 3 Sel. Rep., S.D.A. 60(1820).

According to the Shia School of Mahomedan law, the gift of undivided property is valid—*Kasin Ali v. Muhammad Hosen*, 5 Sel. Rep., S. D. A., 253 (1832).


One of two sharers can, under Mahomedan law, give over his share to the other even before partition—*Ameena Bibee v. Zeifa Bibee*, 3 W. R., 37 (1865).

Where a deed of gift executed by a Mahomedan purported to give to one of his sons one-third of his property, and which was without consideration and unaccompanied by delivery of possession and intended to operate after the donor’s death, held, that it was invalid according to Mahomedan law—*Khujooroonissa v. Roushun Jehan*, L. R., 3 I. A., 291 (1876).

A defined share in a landed estate is a separate property to the gift of which the objection, under Mahomedan law, regarding gift of joint and undivided property, does not apply—*Jivan Bakhsh v. Intiaz Begam*, I. L. R., 2 All., 93 (1878).

A gift of part of a thing which is capable of division is not valid unless the said part be divided off and separated from the property of the donor, but a gift of part of an indivisible thing is valid according to Mahomedan law—*Kasim Husain v. Sharif-un-nissa*, I. L. R., 5 All., 285 (1883).

Where the object of the gift is an undivided moiety of a house, which had not been partitioned and the donee is not a co-sharer but a third person, such gift is invalid under Mahomedan law—*Emnabai v. Hajirabai*, I. L. R., 13 Bom., 352 (1888).

According to Mahomedan law, where there are three sharers of a certain property, one may give his share to either of the other two before division.

Where a gift authorizes the donee to take possession of the property, and the donee subsequently takes possession of it, the gift is valid, although the donor was not in possession at the time when the gift was made—*Mahomed Buksh Khan v. Hosseini Bibi*, L. R., 15 I. A., 81; I. L. R., 13 Cal., 684 (1888).
The doctrine relating to the invalidity of gift of *Musha* under Mahomedan law is wholly unadopted to a progressive state of society, and ought to be confined within the strictest rules; but possession taken under an invalid gift of *Musha* transfers the property according to the doctrines of both the Sunni and Shia Schools—*M. Mumtaz Ahmad v. Zubaida Jan*, I. L. R., 11 All., 460, P. C. (1889).

The validity of a gift was not a question regarding succession, inheritance, marriage or caste, or any religious usage or institution, and therefore the rules of Mahomedan law with regard to gifts are not necessarily the rules by which the Madras Courts should decide such a question.

The rule of Mahomedan law with regard to *Musha* is that a gift of an undivided share in a subject capable of division is not good because it would lead to confusion—*Alabi Koya v. Musa Koya*, I. L. R., 24 Mad., 513 (1901).

**Art. 441.** The gift of an undivided share in any divisible property, in favour of even a co-parcener does not transfer ownership in spite of delivery of possession, unless the share given is divided and separated from that part which is not given, nor must the part which is not given be immediately joined to the other part, nor must it be occupied by other property of the donor. Property is held to be divisible, when it admits of division, without depreciation, and when it can be used after division in the same way as before.

**Notes.**


According to Mahomedan law a gift of a portion of any landed property without distinct allotment of it, and delivery of
possession to the donee, is invalid—Azemodin v. Fatima Beebee, 1 Sel. Rep., S D.A., 31 (1799).

To render a gift valid, it is necessary that the property given be divided off from the shares of co-parceners, and complete possession be given—Kishwar Khan v. Jewun Khan, 1 Sel Rep., S. D. A., 33 (1799).

Where a Mahomedan lady made a gift of certain undivided shares of her property, which was under a mortgage, in favour of a person, and the produce of the shares was applied during her lifetime after the gift just as it had been before the gift, viz., part to her creditors and part to the maintenance of the donor herself, held, that there was no such surrender and delivery of the property given to the donee as is requisite to make a valid gift according to Mahomedan law—Khader Hussain Sahib v. Hussain Begum Sahiba, 5 Mad. H. C. R., 114 (1869).

The general rule of Mahomedan law is that anything which is capable of division, when given to two persons, should be divided by the donor at the time of the gift, or immediately subsequent thereto and prior to the delivery to the donee, in order that the objection of confusion (Musha) may be avoided, and full and complete seizin obtained—Nezam-ud-din v. Zaheda Bibi, 6 N. W. P., H. C. R., 338 (1874).

Where there is a bona fide intention on the part of the father to make a gift in favour of his minor son, the law will be satisfied without change of possession, and will presume the subsequent holding of the property to be on behalf of such minor.

The principle of the rule of Mahomedan law that the gift of Musha, or an undivided part in property capable of partition, was invalid, does not apply to definite shares in Zamindaries, which are in their nature separate estates, with separate and defined rents—Ameeroonissa v. Abedoonissa, L. R., 2 I. A., 87 (1874).

Where possession was changed in conformity with the terms of a gift, that change of possession would be sufficient to support the gift, even without consideration according to Mahomedan law—Kamarunissa Bibi v. Hussaini Bibi, I. L. R., 3 All., 266, P. C. (1880).

Possession is necessary to make a gift perfect, where the nature of the transaction was such that possession is possible.
Accordingly, where the right to receive pension was assigned over by a deed to the donee, held, it was a valid gift.

Where the donor's interest was separate, the principle of Musha or undivided part, was not applicable—Sahib-un-nissa Bibi v. Ha'iza Bibi, I.L.R., 9 All., 213, per Edge, C. J. (1887).

Mahomedan law relating to Musha ought to be confined within strictest rules. It does not apply to gifts of definite shares of Zamindaries or to a definite share of the moneys in the hands of the Accountant-General—Ebrahimhaji v. Fulbai, I.L.R., 26 Bom., 577 (1902).

Art. 442. Where the property given is by nature joined to any other property of the donor, and the donor occupies either property and the property is capable of being divided, the gift is only valid when the donor has made the division and given delivery of possession to the donee, or the latter, authorized by the donor, has effected the division and taken possession.

Where the property given is joined to any other property of the donor, and is occupied, the gift is void, unless such property has first been separated from the property not given.

The gift is valid if the property given is occupied by property not given, and ownership is transferred by delivery of possession even without separation.

The donee who receives undivided property, given to him while it is occupied and not separated, cannot validly dispose of it. He is responsible for any loss occasioned by his own action, by accident or by use. The donor or his heirs can dispose of or recover such undivided property, even when the gift is made in favour of a relation within the prohibited degrees.¹

¹ See Art. 22.
Notes.


In Mahomedan law, a necessary condition of gift is, that property given be not attached to, or included in, the property of another (so as to be undefined); and if it be land, that the partition be determined by known boundaries; in which case alone gift is perfect—Jafier Khan v. Hubshee Bebee, 1 Sel. Rep., S. D. A., 16 (1796).

According to Mahomedan law, divisible property must either be divided at the time when gift thereof is made to two persons, or the donor must, immediately after the gift has been made and before the property has been actually made over, divide and present it to the donees, in order that the objection of confusion (Musha) may be avoided and full and complete seizin obtained, which is essential to the validity of a gift—Khanum Jan v. Jan Beebee, 4 Sel. Rep., S. D. A., 266 (1827).

A deed of gift, comprising Zamindari and other property, of which the donor was in receipt of rent and profits, was held to be a valid gift in favour of the donee according to Mahomedan law—Sajjad Ahmad v. Kadri Begam, I. L. R., 18 All., 1 (1895).

Art. 443. That which is not considered to have a separate existence cannot be made the subject of a valid gift, such as the flour in growing wheat, the oil in sesame, and the butter in milk.

Notes.


Gift of an undivided share in divisible property is only valid when made with the consent of all the co-owners.

Art. 444. Any gift of an undivided share in property capable of partition although still in an undivided state is valid, so long as the gift is made in the name of all the co-owners.

Such a gift cannot be made in favour of two persons in easy circumstances, unless there is a previous partition specifying the share of each donee. This class of gift however is valid if made in favour of two poor persons.

Notes.


Art. 445. A creditor can validly make a gift of his debt to the debtor. Such a gift is complete without acceptance on the part of the donee, unless the latter actually refuses to be released from the debt.

Notes.


Art. 446. Any gift of a debt in favour of anybody except the debtor is void, unless it is an assignment of a debt or a legacy, or consists in powers given to the donee to recover such debt and to keep what he so recovers.
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Notes.


See Section 131 of the Transfer of Property Act (IV of 1882).

SECTION III.—PERSONS CAPABLE OF RECEIVING A GIFT.

(Art. 447—449.)

Art. 447. A gift made in favour of a minor by the latter's executor or guardian is complete by the mere act of giving.

Where the donor is the father or the mother or any other person having authority over the child, possession of the gift may be taken on the minor's behalf by such person.

Where the gift is composed of divisible property it must be actually in the possession of the donor or in deposit, or with a partner; it must not be in the hands of a mortgagee, pledgee or person holding it wrongfully.

A gift made to an adult is only valid when it is received by the donee during the donor's lifetime either in person or by an agent.

Notes.


A gift made by a father to a son not of age, although possession of the subject given be not delivered to the son, is valid, according to Mahomedan law, on the presumption, that the father was trustee for his minor son—Newazee Feraush v. Atlussee, 1 Sel. Rep., S. D. A., 41 (1800).
The general rule of Mahomedan law, no doubt, requires that, to make a gift valid and effectual, the intention to give should be demonstrated by a relinquishment of the thing given and an acceptance thereof by the donee. This is the rule between strangers. A gift of property by a father to his minor son is not governed by the above rule. A seizin by the guardian of a minor is sufficient for the minor and if the guardian is himself the donor and in possession of the property, no formal delivery and seizin is required—Wajeed Ali v. Abdool Ali, W. R., Sup. Vol. 121, per Morgan, J. (1864).

By Mahomedan law, it is not necessary that possession should follow so as to complete a gift to an infant child—Gyaz-ood-deen v. Fatima, 1 Agra H. C. R., 238 (1866).

A deed of gift executed by a Mahomedan lady in favour of certain persons standing in a fiduciary relation to her is not valid—Bujabai v. Isemil Ahmed, 7 Bom. H. C. R., 27 (1870).

Where there is on the part of the father of a minor a bonâ fide intention to make a gift to the minor, the provisions of Mahomedan law are satisfied without actual change of possession and it would be presumed that the subsequent holding of the father is on behalf of the minor—Hussain v. Mira, I. L. R., 13 Mad., 46 (1889).

According to Mahomedan law a father can make a valid gift in favour of his son with a reservation by the donor for himself, but where the donee does not become the exclusive owner of the property, the gift is invalid—Ibrahim Ali Khan v. Ummat-ul-Zohra, I. L. R., 19 All., 267, P. C. (1896) ; L. R., 24 I. A., 1.

Where a Mahomedan executed a deed of gift in favour of her niece and subsequently sought to have it cancelled on the ground that possession of the subject of the gift was not given, held, that in the absence of fraud there was no reason to cancel a deed which had no existence in Mahomedan law—Umrao Bibi v. Jan Ali Shah, I. L. R., 20 All., 465 (1898).

Where the uncle of a minor Mahomedan girl relinquished in her favour a certain share in a property to which he was
entitled, and the Collector undertook the responsibility of management of the minor's property, held, that relinquishment of such share was not a mere gift according to Mahomedan law but a transfer of property, supported by consideration which was valuable—Mahammadunissa Begum v. Bachelor, I. L. R., 29 Bom., 428 (1905).

Where the donor was an aunt of the donee, and the donee had been brought up and treated by her as a son, and the intention of both the donor and donee was that the donor should continue to reside with the donee, and under the circumstances it would have been a mere empty formality for the donor to have left the house and removed therefrom all her goods and chattels for the purpose of completing the gift and then immediately to have returned to it, and where the donor in the most clear and emphatic language divested herself of all her interest in the property the subject-matter of the gift, held, that according to Mahomedan law the gift was a complete and perfect gift—Humera Bibi v. Najm-un-nissa, I. L. R., 28 All., 147 (1905).

Art. 448. Any person having legal authority over a minor may take possession of a gift made by a stranger in the minor's favour.

When a minor has reached the age of reason, he can validly receive a gift even though his father is alive.

Notes.


By Mahomedan law a gift by a father of property in favour of his son was complete without delivery. It became the son's from the date of the transaction, and if possession had not been delivered, there would have been a right to take it, or during his minority any member of his family could have done so for him—Hussain Khan Bahadur v. Nateri Srinivasa, 6 Mad. H. C. R., 356 (1871).
Art. 449. After the celebration of marriage, a husband can receive a gift made in favour of his minor wife even though she has a father living. He cannot, however, validly do so before the celebration of the marriage, nor after she has attained her majority.

Notes.


SECTION IV.—REVOCATION OF GIFTS.

(Art. 450-464.)

Art. 450. A donor can revoke a gift either wholly or in part, even when he has renounced the right of revocation, except in the cases mentioned in the following Articles.

Notes.


As to donor’s right to revoke a gratuitous allowance for life given to a stranger—1 Mad. Dec. 118 (1814).

Art. 451. Revocation is not lawful where there is an increase of the thing given of such nature as to be united to it, and which enhances the value of such gift.

Where the increase is not united to the gift, there is no obstacle to revocation, whether such increase is
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derived directly from the gift or not. The same rule
applies in the case of a rise in value of the thing given.

Notes.


Art. 452. The death of one of the parties to the
gift after delivery of possession bars the right of
revocation.

Notes.


Art. 453. The right of revocation is also forfeited
when the donee has definitely disposed of the gift; but
it continues to exist when no definite disposal has
taken place. Where the donee has sold a part of the
property constituting the gift, the donor can revoke
the remainder.

Notes.


Art. 454. A gift made by the husband and accepted by the wife either before or after the celebration of the marriage is irrevocable, nor can it be revoked after the marriage is dissolved.

A wife can give the husband a house containing furniture belonging to her, and although the house is thus occupied with goods belonging to her, the gift is valid.

Notes.


Where a Mahomedan husband made a hiba-bil-ewaz in favour of his wife, gave her possession of the property, when he was not in debt, nor did he intend to defraud creditors, held, the gift was valid according to Mahomedan law—Doe dem Ramunoo v. Bibe Jeenut, 1 Fulton, 152, per Peel, C. J. (1843).

A wife may, according to Mahomedan law, hold property independent of her husband, and as a husband may make a valid gift to his wife, it can only be necessary that a gift should be accompanied with such a change of possession as the subject is capable of, and as is consistent with the continuance of the relation of husband and wife—H. H. Azim-un-Nissa Begum v. Clement Dale, 6 Mad. H. C. R., 455 (1868).

In order to render a gift by a Mahomedan husband to his wife in lieu of dower valid, it was necessary that it should be accompanied with such a change of possession as the subject was capable of, and as was consistent with the continuance of the relations of husband and wife. Transfer of seizin is unnecessary in a hiba-bil-ewaz or gift for consideration. Where a transaction by way of hiba-bil-ewaz is shown to be a real transaction and it is unaffected by undue influence, fraud or the like, all that has to be shown to support the transaction, is the actual passing of consideration agreed to be given—Muhammad Esuph v. Pattamsa, I. I. R., 23 Mad., 70 (1899).
REVOCATION OF GIFTS.

The acts essential for giving validity to a hiba or gift according to Mahomedan law are tender, acceptance, and "seisin," but the manner in which seisin is to be effected must be considerably modified, to suit the peculiar relations recognised as existing between husband and wife in the Mahomedan community. The property of each is separated and independent of the other; either can make, and both are encouraged by law to make, gifts to the other, in order "to promote mutual affection," and so strongly is this principle inculcated that retraction of such a gift is not allowed, although in many other cases it is lawful. A wife can make to her husband a valid gift of the house in which both are residing, although it contains her separate property, and though both continue to reside in it afterwards. Upon principle a husband is equally at liberty to bestow upon his wife the house in which both are living, and in which they afterwards continue to reside, provided he has power to make the gift, and do make it bonâ fide and not in contemptation of fraud upon creditors or others. The only difficulty is to comply with the exigency of the law, which requires "seisin" or exclusive possession to be given. If a husband with full power to give executes a deed of gift, and in accordance with its provisions hands over symbolical possession of a house or property by keys, &c., and also to mark more strongly the bonâ fides of the intention, actually goes out of the house before witnesses in order to leave it and all within it in the full and exclusive possession of his wife, no further act is necessary to give effect to that gift consistently with exercising his other legal rights as a husband. A wife has at that time the power afforded to her of taking and keeping exclusive possession of the gift, and of continuing to reside in the house, but Mahomedan law gives the husband the right, and moreover makes it his duty to reside with his wife.

The "seisin" under Mahomedan law appears to be analogous to the livery of "seisin" as formerly existing in England, and to have been effected much in the same way as by a delivery of a sod or twig of the land, or the ring or hasp of a door, in the name of "seisin." In Coke on Littleton 57a it is laid down "If the deed be delivered in the name of 'seisin' of the land, or if the feoffor (or donor) saith to the feoffee (or donee) take and enjoy this land according to the deed, or enter into this land, and God give you joy, these words do amount to a livery of "seisin."
The relation of husband and wife, and his legal right to reside with her and to manage her property, rebut the inference which in the case of parties standing in a different relation would arise from a continued residence in the house after the making of the hiba, and in the husband generally receiving the rents accruing to that house—Amina Bibi v. Khatija Bibi, 1 Bom. H. C. R., 157, per Sausse, C. J. (1864).

Art. 455. Every gift made in favour of a relation within the prohibited degrees, whether Christian or Jew, subject to Muslim authority or not, or living in a Muslim State or elsewhere is irrevocable.

Notes.


Where a Mahomedan made a remission of rent for three years, such remission would be complete at the termination of each year respectively; in other words, delivery of the gift was made to the donee, and Mahomedan law, although allowing revocation of gifts at any time before delivery, is precise as to the impossibility of revoking a gift after delivery without the consent of the donee—Enaet Hossein v. Khoobunnissa, 11 W. R., 320 (1869).

Art. 456. The right of revocation is forfeited if the gift is lost while in the donee’s possession, whether such loss is occasioned by any act of the donee, by accident, or by use. Where there is a partial loss, the right of revocation exists over the remainder.

1 See Art. 22.
Notes.


Art. 457. Where, after a gift is made, the donee offers some specified compensation (ewaz) which the donor accepts, the latter can no longer revoke the gift: Provided that the compensation offered is not a part of the gift itself.

Notes.


Where a Mahomedan lady in exchange for certain ornaments made a gift of half of her property in favour of a person, on condition that the latter should not alienate it but leave it to two other persons named in the hibanamah, held, that according to Mahomedan law the gift by her of the property in consideration of the ornament, amounted to a sale; that such sale was good and valid and could not be vitiatted by the conditions specified in the deed of conveyance—Mirza Beebee v. Toola Beebee, 4 Sel Rep., S. D. A., 425 (1829).


A revocation of a gift without consideration is valid according to Mahomedan law unless the donee made additions to the subject of the gift or transferred the possession to another—

A hiba-bil-ewaz or a gift for consideration made in contemplation of marriage is valid under Mahomedan law—Kulsoon v. Ameerunnissa, 1 Hyde, 150 (1862).

According to Mahomedan law a hiba-bil-ewaz is different from an out-and-out sale and gift. It partakes of the character of both, and where there is sufficient consideration, it is valid—Solah Bibee v. Keerun Bibee, 16 W. R., 175 (1871).

The fundamental conception of a hiba-bil-ewaz in Mahomedan law is that it is a transaction made up of two separate acts of donation, that is, it is a transaction made up of mutual or reciprocal gifts between two persons, each of whom is alternately the donor of one gift and the donee of the other.

For the validity of a gift under Mahomedan law, possession of the gifted property by the donor at the time of the gift, or at least at some time, so as to enable him to deliver possession to the donee, is a condition indispensable—Rahim Bakhsh v. Muhammad Hasan, I. L. R., 11 All., 1, per Mahmood, J. (1888).

Art. 458. Where the donor is deprived of the compensation made in respect of a gift, he can revoke the whole gift, if it exists in kind and there be no increase or other impediment that prevents revocation.

Where the donee is deprived of a gift, he can recover the compensation he gave, if it exists in kind. In case of its loss he can claim something of like nature, or he can claim the value of the gift.

Notes.


Art. 459. Where a person has made a gift of property belonging to another, which perishes while in the donee's possession, and the owner demands return of the property and the donee pays him compensation for the same, the latter cannot recover the compensation he has paid from the donor.

Notes.

Art. 460. In no case can a father pay compensation out of the property of his minor child, who is the donee.

Notes.

Art. 461. A gift made in favour of a poor man and taken possession of by him is irrevocable.

Notes.

Art. 462. A gift is rescinded either by a mutual agreement between the parties concerned, or by the judge. If the donor seizes the thing given without either a decree or the donee's consent, he is answerable to the donee for any loss occasioned by his own act, accident or use.
After the donor has obtained an order for revocation from the judge and has given notice thereof to the donee, the latter becomes liable for any loss occasioned to the gift while it is in his possession.

Notes.


Art. 463. When a gift is made, subject to compensation being given and such compensation is fixed at the time the gift is made, the gift is only valid when delivery has been made on both sides; such a gift is invalid when the objects comprising the compensation are not separated though capable of being so.

This reciprocal delivery in each case transfers the ownership, and the transaction is equivalent to an exchange, and is subject to the laws governing sales. Such transaction can therefore be annulled for latent defects in the contract or in the objects it deals with, and either party is entitled to withdraw from it.

Where neither party makes delivery or only one does so, the right of revocation remains open to both parties.

Notes.


Art. 464. A charitable gift is subjected to the same conditions as an ordinary gift. Ownership is only transferred by delivery.

Notes.
A gift of a fund "to be disposed of in charity as my executor shall think right;" is a valid charitable bequest according to Mahomedan law—Gangbai v. Thavar Mulla, 1 Bom. H. C. R., 71 (1863).

CHAPTER II.
WILLS.

(Arts. 465—505.)

SECTION I.—THE NATURE OF A WILL: THE CONDITIONS REQUISITE FOR ITS VALIDITY: PERSONS CAPABLE OF MAKING A WILL.

(Arts. 465—481.)

Art. 465. A will is the act by which a person, while living, gratuitously transfers the ownership of his property, such transfer not to take place until after his death.

Notes.
Where a Mahomedan affixes his signature to a will as a consenting party, such will is valid under Mahomedan law—Khadejah Beebee v. Suffer Ali, 4 W. R., 36 (1865).
By Mahomedan law a will need not be in writing, and it
it is found that the deceased expressed her will, and that it was
her last will, the omission to put it into writing, will not deprive
it of legal effect—*Tameez Begum v. Furhut Hossein*, 3 N. W. P.,
H. C. R., 55 (1870).

The policy of Mahomedan law appears to be to prevent
a testator interfering by will with the course of the devolution
of property according to law among his heirs, although he may
give a specified portion, as much as a third, to a stranger. But
it also appears that a holder of property may to a certain extent,
defeat the policy of the law by giving in his lifetime the whole
or any part of his property to one of his sons, provided he
complies with certain forms. It is incumbent, however, upon
those who seek to set up such a proceeding to shew very clearly
that the forms of Mahomedan law, whereby its policy is defeated,
have been complied with—*Khajooroonissa v. Roushun Jehan*,
L. R., 3 I. A., 291 (1876).

Where a Mahomedan lady by her will directed that the
monthly allowance granted to her by Government should be paid
to certain persons after her death, held, that it was a good bequest
under Mahomedan law—*Prince Suleman Kadr v. Darab Ali
Khan*, L. R., 8 I. A., 117 (1881).

Where a Mahomedan by his will gave certain talookdari
estate to his grandson, the latter took a heritable interest in it—
*Faiz Muhammad Khan v. Muhammad Saeed Khan*, L. R., 25

Where a Mahomedan lady made a will which was not signed
by her or any one on her behalf, yet the document represented
her real will, held, that according to Mahomedan law, a will may
be made either verbally or in writing, and no special form or
solemnity for making or altering a will is prescribed—*Aulia
Bibi v. Ala-ud-din*, I. L. R., 28 All., 715 (1903).

See *Mogul Begum v. Fukeerun Beebee*, 3 N. W. P., H. C. R.,
288 (1866); *Khajoorunnissa v. Roheemannissa*, 17 W. R., 190
(1872); *Aga Mahomed Jaffer Bindanim v. Koolsom Beebee*,
I. L. R., 25 Cal., 9 P. C.; L. R., 24 I. A., 196 (1897); *Mazhar
Husen v. Bodha Bibi*, I. L. R., 21 All., 91 P. C.; L. R., 25 I. A.,
219 (1898).
Art. 466. Any person who is an adult and of sound mind can make a will.

At the time the will is made, the legatee must be actually living or at least conceived, and the object bequeathed must be susceptible of being transferred after the testator's death.

Any bequest made by a lunatic is void. A bequest made by a minor is also void, whether it is unconditional or subject to his attaining his majority.

Notes.


Where a Mahomedan made a will and made a certain testamentary disposition in favour of the lawful son of his eldest son, not then born, held, that such son born after the testator's death was, according to Mahomedan law, incapable of taking any bequest under the will.

Scott, J., observed as follows:

"The conditions of a valid bequest are that the testator is competent to make the transfer of the property, that the legatee is competent to receive it, and that the subject of the bequest is susceptible of being transferred. The second condition is obviously incapable of fulfilment by any one not in existence at the time of the testator's death; and the only relaxation of the rule is the case of a child in the womb, if born within six months from the date of the bequest. In the Code of Mahomedan law according to the Hanefite Rite, prepared by a Council of Pundits (Ulamas) from the University Mosque of El Azhar at Cairo ten years ago, and which is now in use in Egypt, this rule is thus expressed:—"Pour faire un testament il faut être libre, majeur, sain d'esprit et jouissant de son libre arbitre. Il faut en outre que le légataire soit réellement vivant ou au moins conçu et la chose léguée susceptible d'être transférée après la mort du testateur."
(Droit Mussulman, s. 531)—Abdul Cadur Haji Mahomed v. C. A. Turner, 1. L. R., 9 Bom., 158 (1884).

Art. 467. The bequests of a prodigal are only valid, when they are made in favour of the poor, or of pious or charitable institutions.

Notes.

Art. 468. Movable or immovable property can be bequeathed, as well as the use or produce of such property for a definite period or in perpetuity.

Notes.
Bahrr ul-Rayek, Vol. 8, p 459.

Where a Mahomedan by his will gave certain shares in his property to his widow and other heirs and directed that his son should continue in possession 'always' and 'for ever' and thereby restricted alienation by such heirs, held, that the right of an heir to her share in the property was clear upon the terms of the instrument and that she was entitled to recover possession of the same—Muhammad Abdul Majid v. Fatima Bibi, I. L. R., 8 All., 39, P. C.; L. R., 12 I.A., 159 (1885).

Art. 469. A person without heirs and not in debt to the full amount of his estate, can bequeath the whole or part of his property to any person he chooses.

Notes.

Where an instrument contained the words: "the ownership of the property to be in me whilst I am alive", held, that it was a
bequest by the testatrix of the whole of her property which was invalid according to Mahomedan law—*Shek Muhammad v. Shek Imamuddin*, 2 Bom. H. C. R., 50, *per* Couch, C. J. (1865).

A Mahomedan lady made a will disinheriting her nearest relations and leaving her entire property to her nephew "naslan bad naslan batnan bad batnan", held, that the devise to the nephew, under Mahomedan law, was absolutely to him, and that the words quoted simply gave him full power over the estate, and did not extend the devise to his sons in case of his death before the testator—*Oomuttoonnissa v. Areefoonnissa*, 4 W. R., 66 (1865).

According to Mahomedan law a testatrix is entitled to make a devise of her whole property—*Mahomed Altaf Ali v. Ahmed Buksh*, 25 W. R., 121 (1876).

**Art. 470.** Bequests made by a person in debt to the full amount of his estate are only valid, when the creditors release the testator or consent to the legacies.

**Notes.**


A *wasiatnamah* or will, diverting all the property belonging to the testator from his next heirs, is invalid under Mahomedan law—*S. Jumeenooddeen Ahmed v. M. Hossein Ali*, 2 W. R., 49 (1865).

**Art. 471.** A bequest in favour of an heir is only valid when assented to after the testator’s death, by the other heirs capable of disposing of their rights.

In determining whether a person is an heir or not, regard is to be had to the time of the testator’s death, and not to the time the bequest is made.

The assent once given by an heir who is not a legatee is irrevocable, and he can be compelled to deliver up the legacy he has assented to.

Where some of the heirs, who are not legatees, assent, such assent will take effect with regard to
them only and proportionately to their shares in the estate.

**Notes.**

Fatawa Sirajiah, Vol. 4, p. 423; Fatawa-i-Alamgiri, Vol. 7, p. 64.


A will made in favour of one heir, cannot take effect without the consent of the other heirs according to Mahomedan law—Syed Lutf Ali v. Syed Rahut Ali, 6 Sel. Rep., S. D. A. 190 (1837).

A Mahomedan cannot make a bequest of more than a moiety of his estate in favour of his daughter—Mahomed Mudun v. Khodesunnissa, 2 W. R., 181 (1865).

According to Mahomedan law a will which never received the requisite assent from the heirs of the testator, is inoperative to alter the right of possession of the heirs—Qadir Ali Khan v. Nowsha Begum, 2 N. W. P., H. C. R., 154 (1867).

In order to render a will valid under Mahomedan law, the assent of the heirs must be given after the death of the testator, because any assent given to the will before his death is no assent at all—Nusrut Ali v. Zeinunnissa, 15 W. R., 146 (1871).

**Art. 472.** When a person is competent to dispose of his property by will, he can bequeath one-third of it to a stranger. The validity of the bequest does not in this case depend upon the assent of the heirs. A bequest exceeding one-third of the property is only valid upon the assent, after the testator's death, of the heirs capable of disposing of their rights. Assent given by the heirs during the testator's lifetime is void.

**Notes.**


It is a well-known principle of Mahomedan law, that bequests to persons, not being legal, are restricted to a third of the

A Mussalman may freely, by his will, give his property to strangers; but to his relations in blood he has no occasion to bequeath anything, for they, the relations, are to have their respective shares according to Mahomedan law, as it is mentioned there. And if a man disposed of his property to his heirs and relations, to one more and to another less, or if the testator omit any of his relations, and after his death the heirs and relations agree to the bequests made, the will remains valid; otherwise the will is only valid for the bequests made to the strangers, and invalid for the heirs and relations of blood, who are to receive their respective shares according to Mahomedan law—Keramatul v. Nissan Bibee, 2 Morley, 120 (1817).

Where a Mahomedan bequeaths less than one-third of his property to a person, such bequest is valid under Mahomedan law—Navab Amin-ood-Dowlah v. Syud Roshun Ali Khan, 5 M. I. A., 199 (1851).

Under Mahomedan law a testatrix can dispose of only one-third of her property and the remaining two-thirds must pass to her heirs. Where the executor obtains probate of a will under the Probate and Administration Act (V of 1881), he is a mere trustee in respect of the two-thirds of the estate for the heirs of the testatrix—Navab Akbari Begum v. Nuzhat-ud-dowla, 1 Cal. L. J., 594; 9 Cal. W. N., 938, P. C. (1905).

Where a Mahomedan testator after making certain provisions for his widow and daughters divided his property between his sons and imposed certain conditions and limitations, and where the will was assented to by the heirs of the testator after his death, held, that according to the ordinary rules of Mahomedan law the gift was good as an absolute gift and the conditions and limitations were void. Life-estates and contingent interests are not recognized by Mahomedan law—Abdul Karim Khan v. Abdul Qayum Khan, I. L. R., 28 All., 343 (1906).

The Hedaya lays down that, as in the case of most other nations, the Mahomedans have to a certain limited extent permitted the disposition of property by will. The author shows that,
prima facie, such a testamentary disposition is more opposed to legal principle even than a gift to vest in future, because at the time of vesting, the property has actually passed from the donor. He, however, on the whole vindicates this limited testamentary power, because it is desirable that men should be enabled, when warned by the approach of death, to supply their deficiencies. It is then declared, that one-third of the estate is the utmost which can be diverted at the pleasure of the testator from the legal heirs, and for this a precept of the Prophet himself is quoted. His words do not encourage testamentary disposition but permit it to the extent of a third.

The commentator then considers how the consent of heirs can validate a testamentary disposition of property in excess of one-third, and the doctrine is: "Their consent indeed during the life-time of the testator is not regarded, for this is an assent previous to the establishment of their right; they are therefore at liberty to annul it on the death of the testator. It is otherwise where the consent is given after the event, for as this is an assent subsequent to the establishment of their right, they are not afterward at liberty to annul it." This doctrine is unquestionably a logical consequence of the impossibility of giving that which one has not and of the invalidity of a gift to take effect in future. Further, the alienation of one-third to a portion of the heirs will not be legal without the assent of the other heirs subsequently to the death of the testator, because their benefits already sufficiently secured by the law are not within the reason of the rule on which testamentary disposition is established, and such a bequest would, as the certain occasion of family dissension, be opposed to public policy—Cherachom Vittil v. Valia Pudialkel, 2 Mad. H. C. R., 350 (1865).


Art. 473 Provided there is no other heir, husband and wife can make bequests to each other. Should
there be another heir the bequest is subject to the latter’s consent.

Notes.


A Mussalman cannot make a bequest in favour of some of his heirs to the exclusion of others without their consent.—1 Mad. S. D. A., Dec., p. 254 (1820).

A Mahomedan testator cannot, under Mahomedan law, give preference to one heir over another—Hidayat Ali v. Tajan, 5 Sel. Rep., S. D. A., 335 (1833).

The rule of Mahomedan law is that a legacy cannot be left to one of the heirs without the consent of the rest—Abedoonissa v. Ameeroonissa, 9 W. R., 257 (1868).

Art 474. A bequest made in favour of a person directly responsible for the homicide or even accidental death of the testator is void, unless the heirs assent to the bequest, or the author of the crime is a minor, lunatic or the testator’s sole heir.

A person who has been the indirect cause of the testator’s death does not lose the benefit of a bequest made in his favour.

Notes.


Art. 475. A bequest made in favour of a child in its mother’s womb is valid, provided it is born alive either within six months from the date of the bequest if the father is alive, or within two years from the date of the mother’s separation existing at the date of the
bequest, and caused either by the father's death or a perfect or imperfect irrevocable repudiation.¹

If the mother bears twins and both are living, each takes one-half of the legacy. Should one of the twins die after birth, its share is divided among its heirs, and if one of them die before birth, the whole legacy falls to the survivor.

Notes.


See Abdul Cadur Haji Mahomed v. C. A. Turner, I. L. R., 9 Bom. 158, per Scott, J. (1884).

Art. 476. Bequests made in favour of mosques, charitable institutions, hospitals and schools (madrasahs) are valid. Such bequests are employed in building such institutions, in relieving the poor who frequent them, and for their maintenance and other necessary expenditure, according to custom and to the testator's wish.

Bequests can also be made for works of public utility generally. Such bequests are employed in carrying out such acts as are beneficial to the community as a whole. This would include the building of bridges, the making of roadways, the construction of mosques, assisting needy theological students, and any other works that are useful and beneficial to the public and do not tend to the benefit of private individuals.

Notes.


¹ See Art 239.
Art. 477. Difference of religion or of nationality presents no obstacle to the validity of a bequest. A Muslim can bequeath to a non-Muslim, and a legacy is also valid which is made by a non-Muslim, in favour of a Muslim.

Notes.
See Sale's Koran, Chap. LX, p. 447.

Art. 478. A bequest only takes effect after formal or tacit acceptance subsequent to the testator’s death. Acceptance during the testator’s lifetime is null and void. A legatee becomes the owner of the property bequeathed by his mere acceptance of the same after the testator’s death, and independently of taking possession.

Where the legatee neither accepts nor refuses the legacy, the property bequeathed remains in abeyance. It does not become the property of the heirs of the legatee, until the latter has either signified his acceptance or refusal, or until he dies, but if the legatee dies after the testator, without expressing his intention, the legacy devolves upon his heirs.

Notes.
Art. 479. A testator can revoke a bequest either expressly or by any act to the object of the bequest occasioning a change in its name, and substantially modifying its nature and the use to which it was destined.

Where there is an increase to a bequest of such a nature that the property bequeathed cannot be disposed of without the increase, or where the object of the bequest is subsequently disposed of by the testator, the bequest is thereby revoked.

Revocation also takes place where the testator joins the object of a bequest to some other property from which it cannot be separated or can only be separated with difficulty.

Notes.


Art. 480. Denial of a bequest does not constitute its revocation, any more than the plastering or demolition of a house which has been bequeathed constitutes revocation.

Notes.


Art. 481. A testator is not responsible for the loss of the object of a bequest while it is in his possession.

Where the object bequeathed is lost while in the possession of one of the heirs, the latter is not responsible for such loss, provided it is accidental. Loss occasioned to the object bequeathed by the testator's
use thereof is equivalent to revocation. The heirs on the contrary are responsible for any loss resulting from their use, whether the loss happens before or after acceptance.

Notes.

SECTION II.—RIGHTS OF THE LEGATEE.

(Art. 482–487.)

Art. 482. A testator, leaving heirs him surviving can only validly dispose of one-third of his property by way of bequest. Should he make a bequest in excess of one-third and should the heirs not assent, the legatee is only entitled to a third of the testator’s whole property, provided the latter made the bequest while in good health.

Notes.

A Mahomedan can alienate only one-third of his property by will, and the other two-thirds must pass to his heirs—Ruzia Begum v. Aka Moolumuul Ibrahim, 1 Sel. Rep., S. D. A., 199 (1806).

Under Mahomedan law, the consent of heirs, in respect of a bequest to a stranger, need not be express, but it may be signified by conduct showing a fixed and unequivocal intention—Doulatram v. Abdul Kayum, 1. L. R., 26 Bom., 497 (1902).

Art. 483. Where a testator has bequeathed to two different persons two legacies, equal in amount, which together exceed one-third of his property and the heirs do not assent to the two dispositions, the two legatees are entitled to equal shares in one-third of the estate.

Where there are two legacies of unequal amount and one exceeds a third of the estate, this third part
is still to be divided equally between the two legatees each taking half.

**Notes.**

Hedaya, Vol. 4, p. 646; Tahtavi, Vol. 4, pp. 322, 323.


**Art. 484.** Where a testator bequeaths an unspecified share, the amount of which is subject to variation, the heirs are at liberty to allow the legatees such portion as they please. If the testator has no heir, the legatee is entitled to one-half of the estate and the other half falls to the *bait-ul-mal.*

**Notes.**


**Art. 485.** Where a testator has bequeathed one-third of his property to two specified persons capable of inheriting, and at the time the bequest was made, one of them was dead or was proved to be missing, the third part so bequeathed will devolve in full upon the legatee who is living and present.

Where one of two legatees dies before the testator his share lapses and the other legatee shall only be entitled to one-half of the third of the estate, and where the testator states that he bequeathes a third of his property to two persons, whom he names, and one of them is found to have been dead at the time of the bequest, the survivor is only entitled to one-sixth.

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1 Or the public treasury.
Art. 486. Where a testator bequeaths a definite object or something specified and essentially divisible, as for example, the third of his money in specie, or of his flock of sheep, or of his garments all of the same quality, and if two-thirds of the object of which the bequest forms part perish, the legatee is entitled to the full remaining third, so long as it is less than one-third of the total property left by the testator.

Should the testator bequeath something not essentially divisible, such as one-third of his cattle or one-third of his garments which are of different kinds, and should two-thirds of the object of which the legacy forms a part perish, the legatee is only entitled to a third of the remaining third which has not perished.

Art. 487. Where a testator bequeaths a specified sum of money and his estate consists in specie and money due, the legacy is to be paid out of a third of the available specie, provided that this third is larger than or equal to the legacy. Where the legacy exceeds a third of the specie available, the legatee takes this third and as the money-debt is recovered, he takes one-third of each sum recovered until the legacy is fully paid.
Section III.—Bequests of Use and Produce of Property for a Limited Period.

(Art. 488—493.)

Art. 488. Where a testator bequeaths the right of residence in or the rents of his house for life or without specifying any period, the legatee during his lifetime is entitled to reside in or to let and receive the rents of the house. On the death of the legatee however the property becomes the absolute property of the testator's heirs.

If the bequest for use or produce is for a fixed period, the legatee is entitled to enjoy the bequest until the said fixed period has expired, and if the testator has bequeathed the usufruct of property for a number of years not specified, the enjoyment of the legacy shall not exceed three years.

Notes.


Art. 489. Where a testator bequeaths the use or the produce of immovable property which does not exceed the third of his estate, the legatee is entitled to be placed in possession of such property and to enjoy it in accordance with the conditions of the bequest. Where the immovable property bequeathed constitutes the testator's entire estate and the use or produce is divisible, such immovable property shall be divided into
three equal parts and the legatee shall be entitled to one-third, and the heirs to two-thirds without power to dispose of them so long as the legatee's right exists.

Where the immovable property bequeathed does not constitute the testator's entire estate though it exceeds one-third thereof, the said immovable property is to be divided in such a manner as will provide the legatee with a third of the use or produce of the whole estate.

Notes.


Art. 490. Where use, such as a right of residence, is bequeathed, the legatee cannot let the house. Where produce, such as rents, are bequeathed, the legatee is not entitled to the right of residence.

Notes.


Art. 491. Where the produce of a certain piece of land is bequeathed, the legatee is entitled to the crops standing at the time of the testator's decease, and to the crops which such land shall bear subsequently whether the legacy was given for life or without any period being specified.

Notes.

Art. 492. Where a testator bequeaths the produce of his land or garden without specifying any period, the legatee shall only be entitled to the crops standing at the time of the testator’s death and not to subsequent crops.

If the testator bequeaths such produce for life, the legatee shall not only be entitled to the crops standing at the time of the testator’s death, but also to those which may be grown thereafter. If the property bequeathed bears no fruit at the time of the testator’s death, the rule still holds good as to subsequent crops.

Notes.

Radd-ul-Muhtar, Vol. 5, pp. 483, 484.

Art. 493. The testator may bequeath the usufruct of property to one person and the property itself to another. If the land bears produce, tithes, land tax, expenditure on irrigation and other expenses necessary for the improvement of the land, must be borne by the usufructuary; but if the land is not bearing produce, these outlays and taxes must be borne by the legatee to whom the property itself has been bequeathed.

Notes.

Tahtavi, Vol. 4, pp. 334, 335.

SECTION IV.—DEATH-BED GIFTS AND TRANSACTIONS BY THE SICK.

(Art. 494—506.)

Art. 494. An unconditional gift made by a person enjoying good health is valid to the extent of the whole of his property.
Notes.
Tahtavi, Vol. 4, p. 328.


Art. 495. Bequests are valid to the extent of a third of the estate, even though bequeathed while the testator is not in good health.

Notes.
Tahtavi, Vol. 4, p. 328.


Art. 496. Transactions of a gratuitous nature by a person during his last illness are valid as bequests only to the extent of a third of his property.

Notes.
Tahtavi, Vol. 4, p. 328.


Art. 497. A gift made by a cripple, a paralytic or a consumptive person is valid in respect of the whole of his property, provided the malady has continued for one year without endangering his life: if his life is in danger the disposition is only valid to the extent of a third of his property.

Where transactions of a gratuitous nature are valid.

Where gifts made by cripples, paralytics and consumptives are valid.
Notes.


See Labbi Beebee v. Bibhun Beebee, 6 N. W. P., H. C. R. 159 (1874); Muhammad Gulshere Khan v. Mariam Begum, I. L. R., 3 All., 731 (1881); Hassarat Bibi v. Golam Jaffier, 3 C. W. N., 57 (1898); Fatima Bibee v. Ahmad Baksh, I. L. R., 31 Cal., 319, per Rampini, J. (1903).

Art. 498. Where a person during his last illness acknowledges a debt in favour of another who is not his heir, such acknowledgment is valid in its entirety, even when the debt exceeds the whole value of the property.

Notes.


Art. 499. Where a sick person acknowledges a debt in favour of an heir, such acknowledgment is void unless assented to by the other heirs. On the other hand where he acknowledges having used a deposit entrusted to him by an heir, such acknowledgment is valid.

Notes.


Art. 500. The status of heir must exist at the time the acknowledgment is made, whether such status arises from consanguinity, or any other cause existing at the time of the acknowledgment.
DEATH-BED GIFTS.

Notes.


Art. 501. Where a man in his last illness acknowledges a debt, or makes a bequest in favour of a wife, whom during the same illness he has irrevocably repudiated at her own request, she is only entitled to whichever be the lower in amount of the acknowledged debt and legacy, or of the share of the estate which would devolve upon her as an unrepudiated wife.

Where repudiation did not take place at the wife’s request, she shall have the whole of her share in the estate, however large it may be, provided her husband dies during her Iddat.

Notes.


Art. 502. Where a man is in debt to the full extent of his estate, and during his last illness remits a debt in favour of a debtor, such release is void. A release made in favour of a debtor who is also an heir is always void, whether the sick person is in debt or not.

Notes.


Art. 503. Where a wife during her last illness remits a debt in favour of her husband, such release is only valid when assented to by her other heirs.

Release of a debt in last illness is void if testator is in debt himself to the full extent of his estate.

Notes.

Where a man in his last illness acknowledges a debt made in favour of a wife whom in that illness he had irrevocably repudiated.

Where wife in last illness remits a debt.
Art. 504. A debt takes precedence over a legacy, and a legacy is payable before a share in the inheritance. A debt acknowledged by a person while in good health, or a debt established by proof, takes precedence over a debt acknowledged during the last illness, even though the latter debt be for a deposit.

Notes.


Art. 505. A person during his last illness cannot validly pay even a portion of debts, referred to in the foregoing Article, if there are other debts which take precedence over them. Creditors whose debts were before the last contracted illness are on the same footing with the wife to whom dower is due, and the creditors to whom rent is due.

Notes.
CHAPTER III.

THE EXECUTOR: HIS POWERS AND DUTIES.

(Art. 506-552.)

SECTION I.—THE EXECUTOR.

(Art. 506.) A person who has accepted the office of executor during the testator's life-time cannot after the testator's death refuse to fulfil the duties of executor, unless the testator had given him the power to renounce the executorship at any moment.

Notes.


By Section 3 of the Probate and Administration Act (V of 1881) "Executor" means a person to whom the execution of the will last of a deceased person is, by the testator's appointment, confided.

See also Section 4 of the Probate and Administration Act (V of 1881); In the goods of Hossein Ali, 1 Fulton, 339 (1843); Mohammad Alif v. Chandaree Petro, 5 Sev. S. D. A., 119 (1858).

Art. 507. A refusal to become executor, made during the life-time and with the knowledge of the testator, is valid, but if the refusal was not made known to the testator, it is not valid.
Notes.


Art. 508. A person who has declined to become executor during the life-time and with the knowledge of the testator, cannot accept such office after the testator’s decease.

Notes.

Tahtavi, Vol. 4, p. 337.


Art. 509. An executor who before the testator’s death has not expressed his intention of refusing or accepting, can do so after the testator’s decease, and can then accept the office even if he has previously declined it.

Notes.


Art. 510. Tacit acceptance of executorship is equivalent to an express acceptance. Such tacit acceptance results from any act of administration on the part of the executor, such as the sale of anything belonging to the testator’s estate, the purchase, on behalf of the heirs, of anything useful to them, or the payment or recovery of debts due to, or by the estate.

Notes.


Art. 511. A testator cannot appoint an executor and restrict him to the accomplishment of certain specified acts. Where such a restriction is made the executorship is regarded as a general one. Thus, if the deceased has appointed one person to discharge his debts and another to recover them both become general executors.

Notes.

Art. 512. A testator can appoint as executor his wife, the mother of a minor child, any other woman, or any one of his heirs. The mother or any other person can be appointed to watch over the acts of the executor acting as guardian of the children’s property.

Notes.

Art. 513. An executor appointed by the father takes precedence over the paternal grandfather. If the father appoints as executor of his son’s property the latter’s mother, and persists in this wish until his death, the paternal grandfather cannot claim the right to administer the son’s property. On the other hand if the father dies intestate, the paternal grandfather, if a man of prudence and capable of fulfilling the duties of executor, takes precedence over the mother.

Notes.
**Art. 514.** An executor should be a Muslim, of sound mind, adult, trustworthy and a man of prudence. Where a testator has appointed as executor any person not possessing these qualifications, the judge may remove him and appoint another in his place.

**Notes.**

Bahrr-ul-Rayek, Vol. 8, p. 523.


See Sale’s Koran, Chap. IV, p. 77.

Where a Mahomedan appointed a Hindu as executor, held, that though the appointment of other than a Muslim as executor to the will of the Muslim is lawful, yet it was incumbent upon the Kazi to remove him from his office; the reason why the appointment, though not perfectly correct, is said to be legal, is because his official acts, as executor, are valid according to Mahomedan law—*M. Ameenoodeen v. M. Kubeeroodeen*, 4 Sel. Rep., S. D. A., 68 (1825).

Although the appointment by a Mahomedan of a person of another religion to be his executor is valid, yet it is incumbent on the ruling power to take the trust out of his hands and appoint another. Where, therefore, a Mahomedan appointed a Christian as his executor to his last will and testament, held, such appointment was lawful—*Henry Imlach v. Zuhooroonisa Khanum*, 4 Sel. Rep., S. D. A., 382 (1828).

The appointment of an infidel executor does not invalidate the will, and further, all the acts of such an executor, and his dealing with the property under the will, until he is removed by the Civil Court, are good and valid according to Mahomedan law—*Jehan Khan v. C. K. Mandy*, 10 W. R., 185, per Phear, J. (1868).

**Art. 515.** A testator, even without the executor’s knowledge, may revoke the executorship which the latter has accepted.

**Notes.**


**Art. 516.** So long as he is trustworthy and capable of discharging his duties, an executor appointed by the testator cannot be removed by the judge. If he is not able to discharge such duties, the judge will appoint a co-executor. But where the judge considers an executor incompetent to fulfil the duties of his office, he can appoint another in his place. Should he subsequently become competent, the judge can reinstate him in his position as executor.

The executor cannot be removed on a mere complaint made by one or several of the heirs. He can only be removed when he has been proved guilty of a breach of trust.

**Notes.**

**Art. 517.** Where a man dies without having appointed an executor and leaving no heirs, the judge will appoint an executor, in the event of there being debts owing by the estate or assets to be realized, or to carry out the last wishes, if any, of the testator.

The judge may also appoint an executor, if one of the heirs is a minor, if the minor’s father is notoriously extravagant, if there is occasion to establish a right in the interests of a minor whose guardian is away in a distant country, or if the heirs persist in refusing to sell the property of the estate in order to pay the debts.

**Notes.**
Art. 518. Where the deceased, or even the judge, has appointed two executors, neither of them can validly act independently of the other, except in the following cases:

The burial of the deceased; the bringing of legal actions in the deceased's name to protect his rights; the claiming of debts due to the deceased; the payment of debts due by the deceased; the carrying out of the last wish of the deceased in favour of some poor person; the purchase of necessaries for the minor's use; the acceptance of a gift in the minor's favour; the setting of the minor to some occupation; the lending or leasing of the minor's property; the repayment of loans of specified property deposited with the deceased; the restitution of goods wrongly acquired by the deceased and of goods bought by him under a defective sale; the division with any co-owner of the deceased, of things which may be replaced by others of a like nature; the sale of any object likely to deteriorate; and the recovery of scattered property.

Whether the testator authorized his executors to act separately or conjointly, his intention must in either case be carried out.

Notes.


Art. 519. Where two executors are appointed by the testator and after the latter's death, one only accepts the executorship, the judge may appoint some other person to act jointly with him.
Where such a person is appointed, the executor takes precedence when it is a question of protecting the property of the testator, but the executor cannot dispose of any property without such person's co-operation and advice.

Notes.


Art. 520. Where the deceased has appointed an executor who in his turn has appointed an executor, the latter becomes executor for both estates, even when his appointment is only in respect of the executor’s estate. So also where the judge appoints an executor who, in his turn, appoints an executor, the latter, if the executorship is general, becomes executor for both estates.

Notes.


According to Mahomedan law, an executor is competent, on the approach of his death, to appoint a successor for the same purpose—S. Hafeez-oor-Rahman v. Khadim Hossein, 4 N. W. P., H. C. R., 106 (1871).

SECTION II.—POWERS AND DUTIES OF EXECUTORS.

(Art. 521—552.)

Art. 521. When the heirs are all minors and the estate is free from all debts and legacies, the executor has the power to dispose of the movable property.
even at a slight loss, and whether or not the heirs are in immediate need of money.

The executor can only dispose of the minor's immovable property for one of the following reasons:

1. When such immovable property can be sold at double its value.

2. When there is a debt against the estate which can only be liquidated by the sale of the immovable property, in which case the executor is empowered to sell only such portion of the immovable property as will satisfy such debt.

3. When the deceased has not indicated how legacies are to be paid and there is no sufficient movable property to meet such legacies, in which case only such portion of the immovable property as will satisfy the legacies may be sold.

4. When the minor's requirements demand the sale of immovable property, it may then be disposed of at its actual value or even at a slight loss.

5. When the up-keep of, and taxes on, the immovable property exceed its revenue.

6. When immovable property such as a house or shop is in danger of falling down.

7. When the immovable property is liable to incur any loss through the influence of a powerful man.

Trees, palms and sheds, but not the ground they stand on, are held to be movable property.

Any sale of immovable property by an executor except for one of the above-mentioned legal reasons is void, and cannot be ratified by the minor on attaining his majority.
Notes.


Section 3 of the Probate and Administration Act (V of 1881) defines minor as follows:—“Minor” means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years, and “minority” means the status of any such person.

Section 3 of the Bengal Court of Wards Act (II of 1879) defines minor as follows:—“Minor” means a person who has not completed his age of twenty-one years.

See Chapters VI, VII and XIII of the Probate and Administration Act (V of 1881).

By Mahomedan law an executor may properly sell portions of the estate of a deceased Mahomedan, if such sale be necessary for the purpose of paying debts or legacies, or otherwise in the course of a due administration of the estate—Shah Enaet Hossein v. Syed Rumzan, 10 W. R., 216 (1868).

The powers of the executor or administrator of a Cutchi Memon are generally limited to recovering debts, and securing debtors paying the same, and the same rule would seem to apply to the executor or administrator of a Khoja Mahomedan—Ahmedibhoy Hubibhoy v. Vulleebhoy Cassumbhoy, I. L. R., 6 Bom., 703 (1882); See also In the matter of Haji Ismail, I. L. R., 6 Bom., 452 (1880).

Art. 522. When the estate is free from all debts and legacies and the heirs are all adult and are present, the executor cannot dispose of any property without their consent.
He can however recover debts and validly receive any thing else which may be due. If the heirs are all adult and absent, the executor can only dispose of the movable property, and take charge of the proceeds.

When all the heirs are adult and some are present and others absent, the executor can only dispose of that portion of the movable property which falls to the share of those who are absent. He can only dispose of their shares in the immovable property for the payment of debts.

Notes.

**Art. 523.** Where there is no debt or legacy payable out of the estate, and some of the heirs are minors and some adult, the executor can dispose of the movable and immovable property falling to the share of the minors, provided that it is for any of the reasons specified in Art. 521. He cannot dispose of the shares devolving upon the heirs who are adult, unless they are absent; in which case he can only dispose of their shares in the movable property.

Notes.

**Art. 524.** When the estate is charged with debts and legacies and there is no money in cash, it is not incumbent on the heirs to pay such debts and legacies from their own funds, if the estate of the deceased is wholly absorbed by such debts. The executor, appointed by the father, can dispose of all the movable and immovable property of the estate.
POWERS AND DUTIES OF EXECUTORS.

Where there is no money in cash to pay the debts and legacies, and the debts do not absorb the entire estate, the executor, even without the consent of the heirs, can dispose of so much of the property as will suffice to pay such debts and legacies.

In providing for the payment of debts or of legacies, the executor must first dispose of the movable property: should the sum thus realized be insufficient, he can then dispose of such portion only of the immovable property as will satisfy the debts and legacies.

Notes.

Art. 525. A paternal grandfather or the executor he appoints, cannot dispose of any property of the estate, movable or immovable, to pay the deceased's debts or legacies. Either of them, however, can dispose of the said property to pay the debts due by the minor heirs.

The creditors or legatees of deceased must apply to the judge, who will order such part of the property to be sold as will satisfy their claims.

Notes.
See Section 90 of the Probate and Administration Act (V of 1881).

Art. 526. An executor appointed by a mother, cannot dispose of any property movable, or immovable, except such property as is inherited from the mother. He cannot even dispose of property inherited by the minor from the mother when there is in existence a
father or a paternal grandfather, or an executor appointed by either of them. On the other hand the executor, appointed by the mother, can dispose of her estate, if the minor has no father or paternal grandfather living, and no executor has been appointed by them.

When the mother has left no debts or legacies, her executors can only dispose of such portion of the movable property as is sufficient to purchase necessaries for the wards. When the mother has left debts or legacies her executor can sell both the movable and immovable property to satisfy such debts or legacies.

**Notes.**


**Art. 527.** An executor can apply the property of a minor in trade, on behalf of and for the benefit of the minor, and with a view to increasing the latter’s estate. He can do any thing that tends to the minor’s welfare and interest, but he cannot, on his own account, trade with the property of the minor.

**Notes.**


**Art. 528.** An executor, even at a slight loss, can sell the movable property of a minor to a person who is a stranger to the executor and to the deceased, and, on the minor’s behalf he can buy any property from such a person. He can sell nothing to an heir of the deceased, unless the sale be greatly to the advantage of the minor.
Powers and Duties of Executors.

Notes.


Art. 529. An executor can sell a minor's property and allow a reasonable time for payment, provided that the buyer is solvent, and not likely unduly to delay the payment or deny the debt when it becomes due.

Notes.

Fatawa-i-Alamgiri, Vol. 7, p. 103.

Art. 530. An executor appointed by the father, can sell his own property to the minor, and can himself buy the latter's property, provided that the transaction is greatly to the advantage of the minor.

Where the executor buys immovable property from the minor, the price paid must be double its value and if he sells to the minor, it must be half its value.

Where the executor buys movable property from the minor, the price paid must be one and a half times its value and if he sells, it must not be more than two-thirds of its value.

An executor appointed by the judge, can never buy property belonging to the minor or sell to the minor property of his own.

Notes.

Art. 531. An executor cannot pay his own debts out of the minor’s property, nor can he borrow or lend property of the minor. He cannot pledge his own goods in the minor’s interest, nor can he give the minor’s goods by way of security for his own debts. He can, however, pledge the minor’s property in order to secure a debt of the minor. He can also accept a security in respect of a debt due to the minor or to the deceased.

Notes.

Art. 532. An executor can delegate to another person all his powers of administration of the minor’s property. Such delegation terminates on the death of the executor or of the minor.

Notes.

Art. 533. An executor cannot release any debtor from a debt due to the deceased, nor can he remit part of a debt due to the latter, nor grant any extension of time to a debtor. But if the debt was contracted by himself, he can either, on his own responsibility, remit the debt in part, or grant an extension of time or even release the debtor altogether.

Notes.
Art. 534. An executor can compound a debt due to the deceased or to the minor, provided the debt cannot be proved or is not supported by witnesses and is denied by the debtor. If the existence of the debt is supported by trustworthy witnesses or if it is acknowledged by the debtor or judicially decreed, the executor cannot compound it. On the other hand, if the minor owes a debt which is not disputed or which is recognized by the judge, the executor must pay such debt in full.

Notes.

Art. 535. An admission on the part of the executor of liability in respect of a debt or legacy, is void.

Notes.
Radd-ul-Muhtar, Vol. 5, p. 496.

Art. 536. An acknowledgment by an heir of a debt due by the deceased, is only binding on such heir and he must contribute towards its payment in proportion to his share in the estate of the deceased. Thus, should an heir acknowledge a legacy amounting to a third of the estate, he must contribute a third part of his share in the estate towards the payment of such legacy.

Notes.

Art. 537. An executor must provide a reasonable scale of maintenance for his ward, neither stinting him nor being too lavish with him. Should the minor's
maintenance as fixed by the judge, be insufficient, the executor has the power to add to it.

Notes.


Art. 538  An executor who out of his own funds has paid for the maintenance of a minor who is without means, or who possesses property which cannot be utilized, cannot claim to be indemnified for such advances, unless at the time of making such payment he had declared before witnesses that he did so with a view to their recovery. In such a case the executor can claim to be reimbursed by the minor, unless he comes within the list of relations who can be made liable for the poor minor’s maintenance.

Notes.

Art. 539. Where an executor pays a debt against the deceased’s estate and the debt has been proved by the claimant, or been admitted by the heirs, the executor is alone responsible for such payment, unless he can himself furnish sufficient proof of such debt, in which case he will not be responsible.

Notes.
Art. 540. When an executor is without means, he can claim the salary usually paid in such cases, otherwise no salary is due.

Notes.

Art. 541. On attaining his majority, a minor can demand from the executor an account of his administration. The minor must pay the costs of such account.

Where an executor refuses to furnish an account of his administration, the judge may order him to do so, but shall not imprison him.

Notes.

Art. 542. Where an executor dies without specifying the property of his ward, the executor's estate is not responsible. Where the executor has specified the property, the ward upon coming of age, is entitled to claim such property, if it exists, or its value from the executor's estate if the property has disappeared.

Notes.
- Hamalvi, p. 469.

Art. 543. An executor's sworn declaration holds good in respect of all acts which fall within the scope of his duties as executor, unless the contrary be proved.

Notes.
Art. 544. With regard to acts which are outside his powers and duties, the executor's sworn declaration by itself, will not hold good: the burden of proof falls on him.

Notes.

Art. 545. Where an executor's statements are shown to be false they must be rejected.

Notes.

Art. 546. An executor's declaration shall be accepted with regard to any reasonable expenditure he has made on behalf of the minor or the deceased, except among others, in the following cases:

If he claims to have paid without an order from the judge a debt for which the deceased was liable or to have paid the same out of his own funds; if he claims that during his minority, the minor has made use of the property of another, and that the executor has compensated the owner from his own funds or from those of his ward; if he claims that he has provided maintenance for some specified person with whom the minor is prohibited from contracting marriage; if he claims to have paid the minor's land-tax during the bad season for agriculture, if he claims to have paid debts contracted by a minor authorized to engage in trade; if he claims to have paid dower out of his own funds to a woman to whom he married his ward and who is dead; or if he claims a share of the profits realized through his trading with the minor's funds under a claim of alleged partnership (muzaribhat).
In all these cases, if the minor upon attaining his majority, dispute the executor's statement, he cannot be made liable, unless the executor substantiates his claim by the evidence of trustworthy witnesses.

Notes.
See Sections 146, 147 of the Probate and Administration Act (V of 1881).

Art. 547. When a minor ward of either sex, attains his or her majority, the executor must not deliver possession of the property, unless he is satisfied that the ward is able to administer the estate properly.

Notes.
Tahtavi, Vol. 4, p. 85.

Art. 548. Where a minor attains his majority and is in full possession of his faculties, he becomes responsible for his actions. Neither his father nor the executor can interfere with the administration of his own property, unless the judge has declared him incapable of administering it.

Notes.
See Sale's Koran, Chap. IV, p. 60.

Art. 549. Where a minor upon attaining his majority shows any tendency towards extravagance, his property is not to be delivered to him until he has reached the age of twenty-five years, unless, before reaching that age, he gives proof of ability to administer and dispose of his property in a right and reasonable manner.
Executor becomes responsible for property delivered to minor who is unfit to administer.

Art. 550. Where an executor delivers property to a minor on attaining his majority, and the minor is unfit to administer such property, the executor, if aware of his ward's unfitness, is responsible for the property he has handed over.

Notes.
Radd-ul-Muhtar, Vol. 5, pp. 102, 103.

Executor not responsible for delivering property to minor who shows capacity for good management.

Art. 551. Where an executor delivers property to a minor who has not yet attained his majority but who shows capacity for good management, the executor is not responsible for any loss that occurs to the property after handing it over to the minor.

Notes.

Disputes on minor's attaining majority and fitness for management.

Art. 552. Where a minor upon attaining his majority claims to be fit to manage his own affairs, and the executor disputes such fitness, the latter cannot be compelled to deliver the minor's property, until the minor has been declared by the judge to be capable of such management.

If the executor refuses to deliver the property to the minor after the latter has been declared competent by the judge to administer his own property, and after the minor has duly called upon the executor to
make such delivery, the latter will be held responsible for any loss occasioned to the property while it is in his hands.

Notes.

Radd-ul-Muhtār, Vol. 5, pp. 102, 103.

See Chapter XIII of the Probate and Administration Act (V of 1881).

CHAPTER IV.

INHIBITION (HAJR), LEGAL INCAPACITY, THE AGE OF REASON, AND MAJORITY.

(Art. 553—570.)

SECTION I.—INHIBITION (HAJR), LEGAL INCAPACITY.

(Art. 553—564.)

Art. 553. The minor, the lunatic, the prodigal, and the bankrupt are legally incapable.

Notes.


_Hajr_, in its primitive sense, means interdiction or prevention. In the language of the law it signifies an interdiction of action, with respect to a particular person, who is either an infant, an idiot or a slave; the cause of inhibition being three, infancy, insanity and servitude—Hamilton’s Hedayah, Vol. 3, Bk. 35, p. 524.

Art. 554. The acts of a minor who has not reached the age of reason, or of a lunatic who has no lucid intervals, are null and void, and those of a lunatic in his lucid intervals, are valid.


Art. 555. The acts of a minor who has reached the age of reason, or of an adult who is insane, are radically void if they are prejudicial to their interests even though such acts were approved by the guardian.

Notes.


Mahomedan law looks to the benefit of the minor and permits the guardian to dispose of movable property, if it be for the benefit of the minors—Syedun v. Velayet Ali, 17 W. R., 239 (1872).


Art. 556. The acts of the minor who has reached the age of reason, or of the lunatic, are valid, so long as they are clearly profitable to them, even though such acts were not approved by the guardian.

Notes.


Art. 557. The acts of a minor who has reached the age of reason, or of an adult who is insane, and which may turn out either profitable or prejudicial are valid, provided they were capable of ratification and were ratified by the guardian.
Where the guardian has not ratified the act, or where it was an act which ratification could not render valid, the transaction is null and void.

Notes.


Art. 558. A minor is only civilly responsible for offences against persons or property, and is personally liable for damages. An adult lunatic is in the same position as the minor.

Notes.


Art. 559. A minor, as well as an adult lunatic, is not responsible for money borrowed, nor for any deposit entrusted to him, nor for any loan made to him, nor for anything sold to him, if such transactions are entered into without the guardian’s sanction. He is, however, responsible for the value of any deposit that is entrusted to him with the guardian’s sanction.

Notes.

Bahrr-ul-Rayek, Vol. 8, p. 89; Tahtavi, Vol. 4, pp. 82, 83.


Art. 560. Where an adult is proved to be a prodigal by the testimony of witnesses, he will be declared legally incapable by the judge. A prodigal cannot demand the avoidance of any act on the ground that it was performed in jest. He is in the same position as a minor with regard to his civil acts.

While his inhibition lasts, the prodigal's acts are only valid when authorized by the judge. All his acts entered into previous to his inhibition are valid and must produce their effects.

Notes.

Art. 561. The acts of a prodigal cannot be rendered void on the ground that they were performed in jest.

Thus, the prodigal can contract marriage, pronounce a valid repudiation, and furnish maintenance to those persons to whom it is due. He is not subject to paternal authority. He can validly make a declaration admitting a personal debt. He can validly confess to the perpetration of an offence involving a retaliating or a pecuniary penalty. He can make any charitable gift or legacy up to the third of his estate if he has an heir.

Notes.

Art. 562. A law-giver (*mufti*) who intentionally leads people astray or gives bad advice, the incompetent doctor, the bankrupt, the builder, and any person who holds the monopoly of any industry, must be prohibited from following their occupations.

**Notes.**


Art. 563. Where a guardian is satisfied that his ward understands that a sale transfers property, and that a purchase results in its acquisition, and that he can distinguish between a slight and a heavy loss, he can authorize such ward to engage in trade.

**Notes.**

Radd-ul-Muhtār, Vol. 5, pp. 102, 103, 119, 120.

Art. 564. A minor authorized to trade can buy and sell, even at a heavy loss: he can appoint an agent to buy or sell: he can give and take property by way of security: in his own interests he can consent to a contract for hire: he can take or let farm lands on lease: he can make a valid declaration admitting a debt on deposit: he can remit a portion of the purchase-price for a latent defect in the contract: he can allow grace to a debtor: and he can compound a debt with any one.

The minor who is authorized to trade cannot lend otherwise than on hire, cannot make a gift or become security for any one, nor can he contract marriage without his guardian's consent. The authorization to trade given by the guardian to his ward does not
interfere with the guardian's power to dispose of the ward's property,

**Notes.**


**SECTION II.—THE AGE OF REASON, ADOLESCENCE AND MAJORITY.**

(Art. 565—570.)

**Art. 565.** The age of reason for a child of either sex is seven years at the least; at this age the right of custody ceases for a boy.

The age of adolescence for a boy is fixed at twelve years. The girl is adolescent at nine years, and the right of custody ceases for her at that age.

**Notes.**


See Sections 2 and 3 of the Indian Majority Act (IX of 1875). See also Notes to Article 391.

**Art. 566.** The puberty of a boy is determined by the physical signs which denote that state. It is the same with the girl, regard being had to the physical signs peculiar to her sex. Failing such signs, minors of either sex are held to have reached the age of puberty on completing their fifteenth year.

**Notes.**


Art. 567. At the age of puberty guardianship ceases for both sexes. At this age also both are free to dispose of their persons. They cannot be compelled to marry unless they are insane. Nevertheless the guardianship as regards property does not necessarily cease at the age of puberty, but continues until the ward of either sex is considered fit to manage his or her own property.

Notes.
See Section 7 of the Guardian and Wards Act (VIII of 1890).

Art. 568. A minor of either sex cannot, before puberty, choose between his or her father and mother.

Notes.

Art. 569. A boy, who on reaching puberty, is capable of being left to his own discretion, can choose between his father and mother, and can even elect to live separately.

Notes.

Art. 570. A girl, who has reached puberty and is a virgin, or who, though not a virgin, cannot be trusted to her own discretion, must be placed under the guardianship of her father or paternal grandfather.
A woman advanced in years, who is still a virgin, virtuous, and possesses good sense, cannot be compelled to live with her paternal guardian. The same rule will apply even if she is not a virgin if she can be trusted to her own discretion.

Notes.

CHAPTER V.
MISSING PERSONS.
(ARTS. 571—581.)

Art. 571. A person is held to be missing in law when his whereabouts is unknown, and it is uncertain whether he is dead or alive.

Notes.

Art. 572. Where a missing person has appointed an agent for the purpose of administering and preserving his property, the authority of such agent cannot be revoked by reason of the principal’s absence.

The presumptive heirs of a missing person cannot withdraw his property from the hands of his agent or from the public treasury, even when he has no legal heirs.

An agent cannot carry out the necessary repairs of a missing person’s property without the sanction of the judge.

Notes.
Art. 573. Where a missing person has not appointed an agent, the judge shall appoint an administrator to collect his rents and debts acknowledged by his debtor and generally to administer his estate.

Notes.

Art. 574. A judge has the power to order the sale of the movable or immovable property belonging to a missing person, where such property is liable to deteriorate.

He must take charge of the proceeds of the sale and restore them to the missing person on his return, or hand them over to his heirs, after his death has been judicially declared.

He cannot sell any property belonging to a missing person when such property is not likely to deteriorate, not even for the purpose of providing maintenance.

Notes.

Art. 575. An administrator has power to provide maintenance for a missing person’s relations, who are entitled to maintenance, out of the proceeds of property sold, or debts realized.

Notes.
**Art. 576.** A missing person is presumed to be alive in regard to matters that affect him prejudicially, and are dependent on proof of his death. Thus, his wife cannot marry again, his heirs cannot divide his estate between them, the leases he has granted cannot be cancelled, nor can the judge dissolve his marriage before he has been proved to be dead.

**Notes.**


**Art. 577.** In all matters that depend upon proof of a missing person’s existence and which would benefit him or would be prejudicial to others, he is presumed to be non-existent or his existence is uncertain. Thus, he cannot receive his share in an inheritance or a legacy made in his favour, and until his existence or death has been judicially proved, the share or the legacy will be held in trust for him.

**Notes.**


**Art. 578.** A missing person is held to be dead when his contemporaries have all died; if it is impossible to discover any of the latter, the judge shall declare him dead after the lapse of ninety years from his birth.

**Notes.**


See Section 108 of the Indian Evidence Act (1 of 1872).
MISSING PERSONS. 323

Where the son and daughter of an absent Mahomedan brought a suit in respect of his property, held, that until the ascertained death of such person, or such a lapse of time as would make his age amount to ninety years, the term of a legal existence, his heirs were not entitled to claim his property. But where a person was in possession of the estate of the lost or missing man, he cannot be deprived of it until the period had elapsed, and if he was making away with it, another person should be appointed for properly administering such estate—Durvesh v. Shekun, 2 Borr. S. D. A. Bom., 24 (1820).

The authorities of Mahomedan law vary as to the limit of time, when the death of any missing person may be adjudged. Abu Hanifa and Abu Yusuf say respectively, that the presumption arises, when 120 and 100 years have passed from the date of birth. According to Zahir Rawayet, the death of coevals, is the criterion; while other jurisconsults, on the principle of convenience, assume the ninetieth year from birth. On the expiration of the period, the death of the missing person will be judicially presumed and his heritage will become partible, amongst his heirs, living at the time—Mani Bibi v. Sahebzadi, 5 Sel. Rep. S. D. A., 169 (1831).


The question whether a man be alive or dead is one simply of evidence and has no immediate connection with the devolution of property under Mahomedan law, and its determination should follow the rules of the Evidence Act (I of 1872)—Parmesshar Rai v. Bisheshar Singh, I. L. R., 1 All., 53 (1875).

On the question whether the rule of Mahomedan law, that a missing person is to be regarded as alive till the lapse of ninety years from his birth, is a rule of Mahomedan law of "succession, inheritance, marriage, or caste, or any religious usage or institutions" within the meaning of the Bengal Civil Courts Act (VI of 1871), Mahmood, J., among other things, observed as follows:

"I must quote one more passage from the Fatawa-i-Alamgiri, which explains the rule of Mahomedan Law on the subject in brief terms, and with a precision not to be found in other works.
I am all the more anxious to cite this authority because the work, which is a monument of the industry of the Mahomedan lawyers, was prepared under the orders of the Emperor Aurangzeb, and was promulgated in India as the great Code of Mahomedan Law regulating the decision of disputes in India. The book possesses high authority, not only in this country, but under the name of Tatawa-i-Hindi, it is regarded in other Mahomedan countries, like Turkey, Egypt, and Arabia itself, as an authoritative work of Mahomedan Jurisprudence. This great work summarizes the state of Mahomedan law regarding missing persons in the following terms:—A missing person is declared dead on the lapse of ninety years, and this is the accepted opinion. And in the Zahir-ur-Riwayat the term is to be estimated by the death of his coevals, and therefore when none of them remains alive he is declared dead, and this is to be determined according to the death of his coevals in his town, as is said in the Kafi. The preferable (opinion) is that the question should be delegated to the opinion of the Imam, as is said in the Tabeen.

Now, regarding these texts carefully, there can, I think, be no doubt, firstly, that the rule of Mahomedan law as to missing persons has arisen from a maxim relating to the subject of evidence, and the rule of istis-hab, which is the outcome of that maxim, cannot be regarded as a rule of succession, inheritance, or marriage; secondly, that among the great doctors of the Mahomedan law itself there is great difference of opinion as to the exact manner in which the rule of istis-hab is to be applied to missing persons; thirdly, that as to the period necessary to elapse before the presumption of death can be applied to missing persons, Mahomedan jurists themselves are far from being unanimous; fourthly, whilst some of the greatest doctors of the law would leave the fixation of period to the discretion of the judge in each individual case, others consider the preferable course to be that the matter should be determined by the Imam, that is, by the ruling authority, as distinguished from the Kazi or the Judge presiding in a judicial tribunal. These conclusions are amply borne out by the texts which I have quoted, and they convince me that the rule of Mahomedan law as to missing persons is a rule belonging purely to the domain of legal presumptions falling under the head of the law of evidence; and, I may say, with due deference, that in my opinion the reported cases which have been
cited and which tend to support a contrary opinion are not based upon a sound view of Mahomedan law. It is true that, in some of the most celebrated treatises of that law, the rule has been discussed as if it were a part of the law of inheritance and succession; but, on the other hand, the Hedaya itself and some other equally authoritative treatises have dealt with the subject in a perfectly separate chapter, obviously because the authors regarded it as too general to be classed under any particular head, applying, as it does, to all the branches of law in which the death of a missing person may happen to be the subject of investigation.

I think that in administering a mediaeval system of law it is supremely important that the Courts of Justice in British India should draw a clear distinction between the rules of substantive law and those which belong purely to the province of procedure, because, whilst under s. 24 of the Civil Courts Act the Courts are bound to administer the former branch of the law according to native laws in cases of succession, inheritance, and marriage, questions which go to the remedy, ad litem ordinationem, must be decided according to the general law of British India. The rule as to missing persons appears to my mind to be purely a rule of evidential presumption, and though before the passing of the Evidence Act there might have been perhaps some justification for the courts to apply the rule to cases of Mahomedan succession, inheritance, and marriage, the provisions of cl. (1), s. 2 of the Evidence Act leave no doubt in my mind that we are now bound, in connection with all questions of evidence, to administer the rules contained in that Act, and it follows that the present case is governed by s. 108 of the Statute."

Petheram, C. J., observed as follows:—

"The question referred to the Full Bench in this case is—

'Does the rule contained in s. 108 of the Evidence Act govern the case of a Mahomedan who has been missing for more than seven years, in cases to which, under the provisions of s. 24 of the Civil Courts Act, the Mahomedan law is applicable?' The answer really depends on the question whether the mode in which the death of the missing person is to be proved, is part of the Mahomedan law of 'succession or inheritance.' By s. 24 of the Civil Courts Act, persons of the Mahomedan and the Hindu religions respectively are given the right of being
governed in the matters therein referred to by their own law, but any other question in which they are concerned are to be dealt with under the general law of the country. Now, questions of succession and inheritance are questions as to the manner in which property shall devolve or shall be distributed upon the death of the owner either with or without a will. I do not think that they are any thing more. Then comes s. 108 of the Evidence Act, which provides that 'when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.' Now, if a man's death has been properly proved, his estate will be divided according to the law of the community to which he belongs. But the first thing to be settled is the fact of his death, and only after that has been proved can questions of inheritance arise. The rule of Mahomedan law in regard to missing persons dates from ancient times and from social conditions to which it may well have been adapted. But to apply it to the totally different conditions of the present day, when the means of communication between distant places have been so extended and improved, and when no one can hide his existence from others in the manner which was formerly possible, and to presume that a man was living ninety years from the date of his birth, though his death was practically certain, would be a piece of gross injustice. It was to benefit the people of this country by enabling proof to be given of facts which should be known, that s. 108 of the Evidence Act was passed"—Mazhar Ali v. Budh Singh, I. L. R., 7 All., 297, F. B. (1884).

It is a well-known principle of Mahomedan law that if any children of a man die before the opening of the succession to his estate, leaving children behind, these grandchildren are entirely excluded from the inheritance by their uncles and aunts. Where, therefore, a Mahomedan claimed a share in his grandfather's estate, in right of his father, who was missing for many years, held that under the provisions of section 108 of the Indian Evidence Act (I of 1872), the burden was on him to establish that his father had survived his own father—Molla Cassim v. Molla Abdul Rahim, I. L. R., 33 Cal., 173, P. C.; 10 Cal., W. N., 33 (1905).
Art. 579. Where the death of a missing person has been declared by the judge, his property shall be divided among his heirs as they exist at the time of such declaration. Any share in the inheritance or any legacy to which the missing person is entitled, shall also be delivered to his heirs.

His wife shall observe *Iddat* of widowhood from the day on which he is judicially declared dead, and after such period of *Iddat* is completed, she shall be free to marry again.

Notes.


Art. 580. If at any time a missing person is discovered to be in existence, or if he returns alive, he shall be entitled to his share in the inheritance of those of his relations who have died during his absence.

Where he returns alive after his death has been declared by the judge, such of his property as is actually in possession of his heirs shall be restored to him, but he is not entitled to any property which they have disposed of or consumed.

Notes.


Art. 581. Where the wife, heirs or debtors of a missing person claim that he is dead and offer to furnish proof in support of such claim, the judge shall appoint

\*See Art. 310.*
the absentee's agent or administrator, or failing either of the latter, a suitable person against whom the suit may be brought.

**Notes.**


APPENDIX.

BOOK I.
MARRIAGE.

اية: تأسيس الأول في النكاح

CHAPTER I.

الباب الأول في مقدمات النكاح

Article 1.

مادة 1 - واما الغالبة (من نكاح وعدة) - فقد ذهب - [رد المختار جلد ثانيا كتاب النكاح صفحة 77]


Article 2.

لومعنى الزوجة لا للملتامة إجماعا - [رد المختار جلد ثانيا كتاب الطلاق صفحة 672] لا يجوز للرجل إلا يتزوج زوجة ثانية وكذلك المعنة - [نافو عالميري]

جلد ثانيا كتاب النكاح صفحة 9


Article 3.

(مادة 2) - وي_STRUCT._ من الطلاق إذا وجبتها وكفى بها فقط - وكذا مريد

نكاحها - [رد المختار جلد خامس كتاب الطلاق والابحاث صفحة 258]


Article 4.

(مادة 3) - وإنما يصح بلغة نكاح وتاح وما - وما - وضع للباقين بين

في الحال - [رد المختار جلد ثانيا كتاب النكاح صفحة 290]

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CHAPTER II.

الباب الثاني في شروط النكاح وإمكانه واحكامه

Article 5.

( مادة 5 ) — و يعتقد ... بابجاب من احدهم ... وقبول من الآخر — [ الدور المختار جلد ثاني كتب النكاح صفحة 1 ]


كجزت ... اشار الى عدم الفرق بين ان يكون الزوجة امولا أو وليا او وكلا ... وليس مراده استقصاء اللفظ الذي تمتع للابجاع حتى يرد عليه ... إن كان عليه اين يقول بعد قراءه منك ... أو من كيانك أو من مكانك ليتم الاحتفالات ... ويقول الاخير ... قبلت لنفسي او لوكلي او ابني او موكلي — [ الدور المختار جلد ثاني كتب النكاح صفحة 285 ]


Article 6.

( مادة 6 ) — ومن شروط الابجاع والقبول انعد المجلس او حامرين وان طال ... و إن لا يخلف الابجاع القبول — [ الدور المختار جلد ثاني كتب النكاح صفحة 2 ]

فلم أوجب احدهما فقام الآخر اشتمل بعمل آخر بطل الابجاع — [ الدور المختار جلد ثاني كتب النكاح صفحة 288 ]

و مرت سماء كل من العاديين لفظ الآخر — [ الدور المختار جلد ثاني كتب النكاح صفحة 2 ]

رجل ذو امرأة بلغة العربة أو لفظ لا يعرف معناها أو ازوجت المرأة نفسها بذلك إن علموا أن هذا لفظ يعتقد بان النكاح عند الكل — [ فتاوى قاضي خان جلد اول كتب النكاح صفحة 152 ]

Article 7.

( مادة 7 ) — و شرط حضور شاهدين حزين أو حزر أو حزينين مكانيين
سامعين قومهما معاً... فهؤلاء كلاً مسلمين للكلاً مسلمين وأو ناصفين... أو
امامين أو ابني الزوجين أو ابني احدهما — [الدر المختار جلد ثاني كتاب النكاح صفحه 2 ]
[ فلا يعقد بحضرتهما الناسين والاصدقاء — [رد المختار جلد ثاني كتاب النكاح صفحه 246]
النكاح لا يعقد بشهادة... السكان الذي لا يعقل — [نقاوين مراجع في حاشية
فاضيخان باب انعقاد النكاح صفحه 208]


Article 8.

( مادة 8 ) — اما الإباد رجاً ان يوزع مقتضه فزوجها عند رجل أو إمرأة
و الحال ان الأبل حاضر لم... ولو زوج بننها البالغة العائلاً بحضره شاهد واحد جاز
ان كانت ابنته حاضرة — [الدر المختار جلد ثاني كتاب النكاح صفحه 2 ]


Article 9.

( مادة 9 ) — ولا إتلافة حاضر بل غائب بشري إعلام الشهر بما في الكتاب —
[الدر المختار جلد ثاني كتاب النكاح صفحه 1 ]
و مسورة ان يكتب إليها تخليها فإذا بلغها الكتاب حضرت الشهر وقرأت عليه
وقالت زوجته نفسها منه ان تقل ان ثلثا كتاب الى بطلتو كتبنا فاشهدوا ان زوجت نفسها
منه — [رد المختار جلد ثاني كتاب النكاح صفحه 287 ]


Article 10.

( مادة 10 ) — يعقد النكاح من الأئمة إذا كانت له إشارة معلومة —
[رد المختار جلد ثاني كتاب النكاح صفحه 290 ]


Article 11.

( مادة 11 ) — وضع النكاح بلا ذكر مهر ومع نفيه... واثن مهر مثلها... عند
وعليه هو مرت — [شرح الوقائع جلد ثاني كتاب النكاح صفحه 33-34 ]

**Article 12.**

(مادة 12) لوعقد مع شرط فاسد لم يبطل الكاح بل الشرط باطلاً ما وعلقه بالشرط — [الدر المختار جلد ثاني كتاب الكاح صفحة م]


**Article 13.**

(مادة 13) — وبطل كاح منعة ومواد — [الدر المختار جلد ثاني كتاب الكاح صفحة م]


**Article 14.**

(مادة 14) — لوعقد بلفظ المتعة وارد الكاح ... الموعد فانه لا يعقد وللحضر الشهود — [رد المختار جلد ثاني كتاب الكاح صفحة 318]

ولا يبره احدهما من مصاحب — [تقاوی عالمیکری جلد ثاني كتاب الكاح صفحة 11]


**Article 15.**

(مادة 15) نكاح الشغار وهو ان يجعل بعض كل من المراتين مرة للآخرين ... يضع موجباً لمهر المثل لكل منهما — [رد المختار جلد ثاني كتاب الكاح صفحة 318]


**Article 16.**

(مادة 16) لا يثبت في النكاح خير الروية والعيب والشرط سواء جعل الخيار للزوج أو المرأة — [تقاوی عالمیکری جلد ثاني كتاب الكاح صفحة 5]

فأنا شرط احدهما منحدهم سلامة من العيب والشلل والزمانة أو شرط صفة الجمال أو شرط الزوج عليها صفة البكاء فوجد بخلاف ذلك لا يثبت له الخيار — [تقاوی عالمیکری جلد ثاني كتاب الكاح صفحة 5]

ولا يبقي أحدهما ... عيب الآخر ... سوي المثلة والجب والبغضاء — [جامع الزمرز کتاب الكاح صفحة 5]

Article 17.

Mada' (17): The laugh... May it be a sign of security... From an era that cannot see... From the Book of the Prophet... [Ref: Radd-ul-Muhhtar, Vol. 2, pp. 279, 280, 362, 363, 388, 699, 701; Bahrr-ul-Rayek, Vol. 3, pp. 83, 84.]

Article 18.

Mada' (18): If the metaphor is in the Book of the Prophet... (and he who is a sign of it) in the Book... If the metaphor is in the Book... Even if it is in the Book of the Prophet... [Ref: Radd-ul-Muhhtar, Vol. 2, pp. 379, 380, 381; Fatawa-i-Alamgiri, Vol. 2, p. 40.]

CHAPTER III.

The third chapter is on the proper laughter and the remarks of the women... and punishments for the women... [Ref: Fath-ul-Kadir, Vol. 2, p. 31.]
Article 20.


Article 21.

(عاهدة ٢١) حُرْجُ النَّكَاحِ عَلَى نَوْعَينَ مُؤْرِيَّةٍ وَعَدَّ مُؤْرِيَّةَ فَالنَّكَاحِ نُّبِيَّ بِالنَّسِبَ وَالمُعَجَّةِ وَالصُّدُورِ ... وَإِنَّ الْمُمْرَّرَاتَ لَا عَلَى سِبْعَةَ الْقَتَادَيِّ هَذَا الْزَّيْدُ عَلَى الْعَدْدَ الْمِشْرَعِ ... وَالْجَمْعُ بَيْنَ الْأَخْتِينَ [ دقائق عالميامي جلد ثانية كتاب النكاح مفهوم ١٢٥ وَالْجَمْعُ بَيْنَ الْمُعَامَرَاتِ وَالْعَطْأَاتِ ... حَتَّى يَغْرِبَ الْمَكْرُوْحُةُ وَالْمِنْدَعَةُ وَالْعَالِمُ بَنَاتِ النَّسِبِ ... عَدَّ الْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ وَالْمُمْرَّرَاتِ دُونَ الْمَعَاوِيٍّ W. Fatawa-i-Kasi Khan, pp. 165-167; Fath-ul-Kadir, Vol. 2, p. 16; Fatawa-i-Alamgiri, Vol. 2, p. 11.

Article 22.

(عاهدة ٢٢) الْمُمْرَّرَاتِ بالنَّسِبِ ... عَامَّةُ الْمَعَاوِيَةُ نَمَّ الْرَّجُلُ وَجَدَادُهُ مِنْ قَبِلِ إِيّهِ وَاحِدَةَ وَانْعُلُ وَفَاحِدَةَ اِلْبَيْنِ اِبْنَةَ وَبْنَةِ وَانْعُلُ وَفَاحِدَةَ وَانْعُلُ وَفَاحِدَةَ وَانْعُلُ وَفَاحِدَةَ وَانْعُلُ وَفَاحِدَةَ وَانْعُلُ وَفَاحِدَةَ وَانْعُلُ وَفَاحِدَةَ وَانْعُلُ وَفَاحِدَةَ وَانْعُلُ وَفَاحِدَةَ وَانْعُلُ وَفَاحِدَةَ وَانْعُلُ W. Fatawa-i-Alamgiri, Vol. 2, p. 5; Fath-ul-Kadir, Vol. 2, p. 16; Radd-ul-Muhtâr, Vol. 2, p. 300.

Article 23.

(عاهدة ٢٣) وَحَرَمَ الْمَكْرُوْحُةُ نَيْنَ زِوْجَةَ الْمَوْطُوْلَةِ [ اِلْمَعَاوِيَةُ جَلَدُ ثانٍ كِتَابُ الْنَّكَاحِ مَفْهُومٍ ١٥٤] Fatawa-i-Alamgiri, Vol. 2, p. 3.
Article 24.

[M.]


Article 26.

[F.]


Article 27.

[F.]

CHAPTER IV.

Article 28.  
( مادة 28 ) - و ان كان الطلاق ثلثا ... لم نفعل الاه بحتى تنكم زوجا غيره  
[ قانون عالمگری جلد ثانی کتاب الطلاق صفحه 128 ]


Article 29.  
( مادة 29 ) - و حلبلي ذات النسب لايجوز نكاحها ... يجوز ان ينزوج امرأة حاملة  
من الرزق و لايطلها حتى تقضي - [ قانون عالمگری جلد ثانی کتاب النکاح صفحه ]


Article 30.  
( مادة 30 ) - لا نكاح ... خامسة في عدة الراية - [ شرح الوقاية جلد ثانی کتاب النکاح صفحه 18 ]


Article 31.  
( مادة 31 ) - ويجوز للمسلم نكاح الكذارة العربية والذمية حرة كانت امرأة ...  
[ قانون عالمگری جلد ثانی کتاب النکاح صفحه 10 ]


Article 32.  
( مادة 32 ) لا يصح نكاح عابدة كوكب لا كتاب لها ... والجوسية والوطنية ...  
[ الدار المختار جلد ثانی کتاب النکاح صفحه م ]


SECTION I.

الفصل الأول في بيان الولي وشرطه

Article 33.  
( مادة 33 ) الولي ... البالغ العاقل الوراث ولو دافعًا ... بشرط حربة ونكبلة  
و اسلام في حق مسلمة تزيد الزوج وله مسلم - [ الدار المختار جلد ثانی کتاب النکاح  
صفحة 4-6 ]

Article 34.

( مادة 34 ) — الإيرجي شرط صحة كلاً صغير و صغير و رقيق لا مكلفة. فنفذ حاجة
حرة مكلفة بلا رضا و طبيعي — [ الإدر المختار جلد ثاني كتاب النكاح صفحة 5 ]

Article 35.

( مادة 35 ) — الولي في النكاح ... العبادة بنفسه ... على ترتيب الأرب
و الحجاب — [ الإدر المختار جلد ثاني كتاب النكاح صفحة 6 ]
و أقرب الأولاد إلى المرأة البنين ثم ابن البنين، و إن سنقل ثم الأب ثم الجد أبو الأب
و أن هناك ... ثم الأخ لاب و أخ ثم الأخ لاب ثم ابن الأخ لاب و أخ ثم ابن الأخ لاب
و إن سنقل ف ثم العم لاب و أخ ثم العم لاب ثم ابن العم لاب و أخ ثم ابن العم لاب ... 
ثم صوبه العبادة — [ نزاع قومي جلد ثاني كتاب النكاح صفحة 11 ]
فقدم ابن البنت على أبيها — [ الإدر المختار كتاب النكاح جلد ثاني صفحة 9 ]

Article 36.

( مادة 36 ) — فان لم يكن عصبه فارياً للأمم ثم أم البنين أو ... ثم للبنين
ثم ابن البنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم لبنيه بنين ثم L

Article 37.

[ مادة 37 ] — ثم للسلطان ثم قاضي نص له عليه في منشوره — [ الإدر المختار
جلد ثاني كتاب النكاح صفحة 7 ]

Article 38.

( مادة 38 ) — ليس للمريض ... ان ينزلج الديم مطلقاً و إن أيديه
الاب بذلك ... ثم وكأن قريباً أو حاكم يملك بالجولا — [ الإدر المختار جلد ثاني
كتاب النكاح صفحة 9 ]
ARTICLE 39.
( مادة 39 ) — لا ولاية في نكاح ولا شيء مثل إسلام على كاذرة إلا بالسبب العام
بان يكون المسلم .. صلى الله عليه وسلم — وللأكثر ولاية على كافر مثله — [ الدراج الخلاص
جلد ثاني كتاب الكتاب صفحه 4 ]


ARTICLE 40.
( مادة 40 ) — وان زوج الصغير أو الصغرى ابعد الولاء فان كان الأقرب حاضرة
وهور من اهل الولاية توق نكاح الابعد على اجازته — [ فتاوى عالمي ليرم جلد ثاني
كتاب الكتاب صفحه 12 ]
و للولى الابعد الونوزي بغيضة الأقرب ... ما لم يتظاهر الكفو الغاطب
جره .. ولا يبطل الونوزي .. بعير الأقرب — [ الدراج الخلاص جلد ثاني كتاب الكتاب
صفحة 4 ]
و ان لم يكن من اهل الولاية .. جاز — [ فتاوى عالمي ليرم جلد ثاني كتاب
الكتاب صفحه 12 ]


ARTICLE 41.
( مادة 41 ) — إذا خططا كفاه و عضلوا الولي تثبت الولاية للقاضي نبأه
من العامل فلة الونوزي وإن لم يكن في منشوره .. فهور الكفو .. اي بامتلاكه
من الونوزي .. من كفاه يعصر المثل .. لا يبطل الونوزي — انها تنتقل الى
لا بعد بعض الأقرب اجماعا — فأردا بالابعد القاضي — اما لو انتفع من غير الكفو
إلا يكون الموه .. أقل من مور المدع فيس باعضا — [ الدراج الخلاص جلد ثاني كتاب الكتاب
صفحة 342 ]


ARTICLE 42.
( مادة 42 ) — وان وإنجح للصيرور الصغير .. ولد مستوا .. فاه .. زوج
جاز — [ فتاوى عالمي ليرم جلد ثاني كتاب الكتاب صفحه 12 ]

SECTION II.

The second chapter in small and large size, and from the small and large
and the heavy and light

Article 44.


Articles 45 & 46.

(Madâ'ah 339 - Vol. 2, p. 56).


Article 48.

Article 49.

(840)

ماده 49) — بطل خيار... من بلغت وهي بكر... بالسكون أو مختار هالة

باص النكاف... ولا يمد إلى آخر المجال... إذا بلغت وهي سلالة بنك... وعلمت

بهد بعد بلغتها فلله من الفج في حال البلاغ أو العلم... وتشمل قائمة بلغت الان وان

جاهل... فإن لها خيار البلاغ أو بأنه لا يمد... فلم تعذر بحال... — رد المعتن

جلد ثاني كتاب النكاف صفحه 335 - 336

ثم إذا اختارت واشتهى ولم تقدم إلى القانبي الشهرو الشهرين فهي على خيارها —

[فتح القدمر جلد ثاني كتاب النكاف صفحه 355]


Article 50.

(850) — إن كانت لبها... لا بطل خيارها بالسكون... وإنها بطل خيارها إذا

رضي بالنكاف صرغبا أو يوجد منها فعل يسند به على الفاح... إذا لم تعلم بالعقد ساءة

ما بلغت عن لها الخيار اذا علمت — [فناوي عالم هبري جلد ثاني كتاب النكاف صفحه 360]


Article 51.

(864) — و يعتقد الخيار العقلة العقلة البالغة برضائها و ان لم يعط عليها ولي

بكر كأثابا — [هديته جلد ثاني كتاب النكاف صفحه 293]


Article 52.

(874) — فنفذن نفاذ حركة مكافة بالرضا ولي... ونلبي إذا كان عصبة الإعراض

في تزويجها نفسها نفاذ من مهل مثلا حتى يتم صهر المثل أو يقظن القاني... و له

... إذا كان عصبة... الإعراض في غير الكفوف... و يقظن في غير الكفوف بعدد جوازة إلما... كأن

إذا كان لها ولي لم يرني به قبل العقد فلا يفيد الرضا بعدة... واما إذا لم يكن لها ولي

فهو مصحيح... وإنما تفعل في العبارة البالغة — وهي رضا الوازي غير الكفوف —

[رد المعتن جلد ثاني كتاب النكاف صفحه 333 - 334]


Article 53.

(884) — ولا يتجزى البالغة البكر على النكاف... فإن استأنفها... البالي... او وكيلة

أو رسولها أو زوجها وليها واخبارها رسولها أو نصيبي عدل فسكت عن رده مختاره أو ضعفت
CHAPTER V.

الباب الخامس في الوكالة بالなかح

Article 57.

(مادة 57) — يجوز القاضي أن يقرر على النكاح في البقرة بال焼き النكاح على نفسه — [البحر الراقي جلد ثالث كتاب النكاح صفحة 117]

Article 58.

(Emad 48) — وَلَيْسَ لَكَ النَّكَاحُ — [نَفَاقَةَ عَالِمِيَّةَ جَلَّ وَلَدَتُ الْمَكَّةَ صِفْهَةٍ 18]

لا تحترم الشهادة على الوكالة بالنكاح بل يشهد على الوكالة إذا خافت جهد الوكول اياها — [رد المعتار جلد ثاني كتاب النكاح صفحه 350]


Article 59.

(Emad 49) — لِيَسَ لِلَّوَكِيلَ أَيْنِ بَلَّ اِذْنَ لَا أَمْرْ — [رد المعتار]

جلد ثاني كتاب النكاح صفحه 350


Article 60.

(Emad 50) — فِئَة مُطَالَبَةٍ عَلَى اِنْكَاحَ بِمَهْرٍ وَتَسْلِيمَ لِمَزْوَجَةٍ — [رد المعتار جلد]

رابع كتاب الوكالة صفحه 340


Article 61.

(Emad 51) — لَوْ اَمْرَ بِعَيْنِهَا ... فِخْالَ فَلَا يَجَزَوْ — لا يَنفَذُ لِلْمُخَالَفَةِ

وفي كل موضع لا ينفذ فعلا الوكيل فلم يغفر على إجبار الوكول — [رد المعتار]

جلد ثاني كتاب النكاح صفحه 350 - 352


CHAPTER VI.

الباب السادس في الكفالة

Article 62.

(Emad 52) — الْكَفَالةُ مَعْتَدِرةً ... مِنْ جَانِبِهَا أَيْ الرِّجَالِ ... لَا ... مِنْ جَانِبِهَا

يجوز أن تكون دونه فيها — [رد المعتار جلد ثاني كتاب النكاح صفحه 343 - 349]

الكفالة هي حق الولي ... بل هي حق لها أيضا ... و اعتبارا عند إصدار العقد —

فلا ينفر زوالا بها بعد — [رد المعتار جلد ثاني كتاب النكاح صفحه 343 - 349]

Article 63.

(مادة 63) — ان المرأة إذا زوجت نفسها من كفوع اثنين على الأولى — و إل زوج
من غير كفوع لا بلزم أو لا يصح. ان غير الأب و الإجدة لزوج الصغير و المغيرة غير كفوع
لا يصح — و من شروط ان القفاءة للفروض معتبرة... أو زوجها يغير كفوع ان كان الرأي المزوج
بنفسه... إلها أو جداً... لم يعرف منها سوى الأخلاق معانة و فضفاً — و ان عرف لا يصح
النكاف — [تقواق الامكاني جلد ثاني كتاب النكاف صفحة 18] — [البحر الرايق جلد
ثالث كتاب النكاف صفحة 630! ]

و تعتبر القفاءة للروم النكاف... نسباً... هذا في العرب... و أما في العجم فعنصر
حريه و إسلاماً و دياناً... و لا... و حريه — [رد المحافظ جلد ثاني كتاب النكاف

Article 64.

(مادة 64) — الإسلام معتمر... بالناظر إلى نفس الزوج — لا الى إية و جدة...
فسلم بنفسه... غير كفوع من إموا سلم... و من إموا سلم... غير كفوع لذات ابوبين...
في الإسلام... فمن له اب و جد في الإسلام... كفوع لدن له إباء — [رد المحافظ
جلد ثاني كتاب النكاف صفحة 636] —

Article 65.

(مادة 65) — الحساب يكون كفوع للنسب — فالعالم العجمي يكون كفوع للجادال
العربي و الغلمان... لنت شرف العلم فوق شرف النسب... و العالم الفقيه يكون كفوع للغنم
الجادال — [رد المحافظ جلد ثاني كتاب النكاف صفحة 650] —

Article 66.

(مادة 66) — فن تماشى القوة على الكل و لا ان يساويها في الغني... بأن يقدر
على المبلغ و نفقة شهر لوفر عمو — والإثنان كان يكسب كل يوم تفديتها... فهو كفوع...
رد المحافظ جلد ثاني كتاب النكاف صفحة 638] —
ARTICLE 67.

(سادة) ٧٧. - loinFASTUL لا يكون كفوة فاسقة - بل يكون كفوة فاسقة بذل صالح - وذ كفوة فاسقة بذل صالح - راد المختار جلد ثانى كتب النكاح صفحة ٣٤٨.


ARTICLE 68.

(سادة) ٧٨. - أركان من العرب من أهل البلد من بعضه بنفسه تعتبر نهيل الكففة فيها ... ان العرب إذا تبعداً لا يكون أفراد إحداهما كفوة لأفراد الآخرين - بل أفراد كل واحدة إكافان بعضهم - فيضان ان العرب إذا تقاربت أو انحدرت يجب اعتبار الكففة من بقية الجهات ... وأبدان أن لا يلزم انحدارها في العروة بل القارب كاف ... ان النوجه هو استقاس أهل العرب فيدرور معه - واجب ابو يوسف رح على ف مادة أهل البلد وانهم يغذون ذلك حرفة فيعرون بالذي منها - 


ARTICLE 69.

(سادة) ٧٩. - لو زوجوها نسحا ولم يعلموا بعدم الكففة ثم علموا لا الأخبار لأحد - إلا إذا أشارتو الكففة أو أخبرهم بها وقت العقد نزوجوها على ذلك ثم ظهر انه غير كفوة كان لهم الخيار ... هذا في الكبيرة - راد المختار جلد ثانى كتب النكاح صفحة ٣٤٩.


CHAPTER VII.

الباب السابع في المهر

SECTION I.

الفصل الأول في بيان مقدار المهر وما يصلح تسمينه مهر لما لا يصلح

ARTICLE 70.

(سادة) ٧٠. - قلته عشرة دراهم ... فضة وزن سمحة مثاثيل .. مضروبة كانت أولاً بالغماً بلغ ... راد المختار جلد ثانى كتب النكاح صفحة ٣٥٦ ... ٣٥٧ - ٣٥٨ - ٣٥٩ ... يعتبر حالاً خلافًا بالنص ... على المرسوم قدر - ٣٥٩ ... ديدانة جلد ثانى كتب النكاح صفحة ٣٥٠.

Article 71.

(باد ۷۲) — الهدئا ينفع بكل ما هو من مقدم والمذاق لم يتع الصبر.
[فتاوا عالمگیری جلد ثانی کتاب الکاِّج صفحه ۳۲] ولا بد من کُنیا مما يستحق العمل
بقابلها — رد المعتطر جلد ثانی کتاب الکاِّج صفحه ۵۷۳.


Article 72.

(باد ۷۲) — إذا سمى ما ليس مبال للحال من كل وجه لا يُعم النسبي...
و كان له مهر مثل — [فتاوا عالمگیری جلد ثانی کتاب الکاِّج صفحه ۳۲]


Article 73.

(باد ۷۳) — و إن شرطوا في العقد تعجيل كل المهر يجعل الكل معلما...
و إذا كان المهر من أجمل إجلا علما فجل الاجل... و لو كان بعضه عاجل وبعضه
إجلا فاسترقت العاجل... كما جرت العادة في ديارنا... تسجيل المهر إلى غاية
علامة... صحيح... تسجيل البعض صحيح — [فتاوا عالمگیری جلد ثانی کتاب الکاِّج
صفحه ۳۲ - ۳۳]


SECTION II.

الفصل الثاني في وجوب المهر

Article 75.

(باد ۷۵) — تجب العشارة أن يسحبا اوردونوا و يُجب الأكثر منها ان يسحبا
الاکثر... بالغا ما بلغ — [رد المعتطر جلد ثانی کتاب الکاِّج صفحه ۳۵۸]


Article 76.

(باد ۷۶) — يجب مهر المثل فيما إذا لم يسم مهر او نفي ان ولي
الزوج... او سمى خصرا او خذيرها... او دابة اوردوها... لم يبين جنسها وجب
مهر المثل في الشغار... للامبار و في تعليم القرآن — [الدرالمعتطر جلد ثانی
کتاب الکاِّج صفحه ۸ - ۹]

Article 77.

(مادهٰ 77) — و الحرة مهر لآلها ... مهر إمرأة تغلبها من قوم ألها لا إمراء.

فلا نكر من قوم أهده ... ويضن بخيرها ورغمها ... و تعهد المحادثة في الأموال وقت العقد، وقام، وقام، وقام، ولام، وردا، ودعا، ونكر، ونكر، وغفر وعلما واداما ... وقدم ولد ويضن حال الزوج أيضا — فإن لم يوجد من قبيلة أهده في الأجانب إفي من قبيلة لمثل قبيلة أهده — ويشترط في ثبوت مهر أهل ... اخبار رجلي أو煙 و إمرائي ولفظ الشيداذا لم يوجد شهر عدول فالقل الزوج بعدين — [الدر المختار جلد ثاني كتاب التكاح 10 — صفحه]


Article 78.

(مادهٰ 78) — فإذا ذرو جبت بالله مهر وطلبت من الزوج ان يفرض لها مهر يفوق.[146]

فامنعت وراغتها إلى الأذناء واقت بعضا ونكر، شهد، بن ثلاثة من قوم أهده تقولوا ففي الصنف المذكور، وإنما تزروت بذلك يحكم لها الأذناء ملهم مهر ثلاثة المذكرة — [ردد المختار جلد ثاني كتاب التكاح صفحه 358] — ولو لم يفعل ذئب مته في الفتر ... وما فرض بترابها، أو بقرن قاض مهر أهل بعد العقد الثاني عن المهر — [ردد المختار جلد ثاني كتاب التكاح صفحه 365]


Article 79.

(مادهٰ 79) — ان الأب و الجد او الزوج ابنه ثم زاد في العمر ثم ... بشرط.[129]

قبلها في المجلس او قبول ولي الصغرية و معرونة قدرها و بقاء الزوجية — [ردد المختار جلد ثاني كتاب التكاح صفحه 365]


Article 80.

(مادهٰ 80) — وضح حظه أكله او بعضه منه ... إذا كان المحرر ... دراهم او دنانيرة لا يخطر في الأذناء لا يضن ... و ... ان حته أهده غير صعبه او صغيرة او كبرٍة، توقف على إجازتها ولا بد من ردها — [ردد المختار جلد ثاني كتاب التكاح صفحه 366]

SECTION III.

The third section in the text talks about the conditions for determining the phases of the moon
and the situations which require the moon to be half illuminated.

Article 81.

(Section 81) — and ... you must suspend menstruation. ... until your lunar cycle is completed.

Article 82.

(Section 82) — and menstruation has ended. ... the period ... the end of the lunar cycle.

Article 83.

(Section 83) — and the cycle ... and the lunar period. ... the lunar cycle. ... the lunar cycle.

Article 84.

(Section 84) — and you must suspend your menstrual cycle ... the lunar cycle. ... your menstrual cycle.
القضاء والرضاء... إذا لم يكن مسلمًا لها... ان الزيادة المتولدة قبل القبض تتناقص...

[منصة: صفحة 360 - 366]

وإن كان مسلمًا لها لم يبطل ملكها منه بل توقف عدوه إلى ملكة على القضاء أو الرضاء فإذا لم ينقذ... أي الزوج... بعد طلاقها قبل القضاء... والرضاء... ونفذ تصرف الوئام... قبل القضاء في الإجلاع بقلمها - [رد المعتار جلد ثاني كتب النكاح]

كتاب النكاح صفحة 360 - 366

وعليها نصف قيمة الإجلاء يوم القبض... نقص مثابة قيمته للزوج... لأن الزيادة في المهراء متصلة متولدة من الإجلاء... أو غير متولدة... أو منفصلة

[رد المعتار جلد ثاني كتب النكاح صفحة 360 - 366]

وزيد على ما مسبق... لا نصف... بالطلاق قبل الدخول... [رد المعتار جلد ثاني كتب النكاح صفحة 365 - 366.


Article 85.

(مادتان 85 و 86) - طلقت قبل الوطية... والخثار... والمراد بالطلاق فرقة جاءت من قبل الزوج وتم مشاركة صاحب المهر في سبيلها طلبتها كانت أو نصفا كالطلاق والزوجة بالعمرة والمراتب والمراتب وابناء الإسلام وثبتياء إبنها أو امرأة بشرة - تلوانها من قبلها كردتها وإبناها الإسلام وثبتياء امرأة بشرة ورضاعة... لا يجب نصف النسيم - [رد المعتار جلد ثاني كتب النكاح صفحة 366]

وعند ردتها يستردها بنفس الصل ينزا مع الزيادة... [ففع الغدير جلد ثاني كتب النكاح

[صفحة 364]


Article 86.

(ماذان 85 و 86) - وما فرض بفرضهما أو فرض قائش مهلادين بعد العقد...

[لا ينص بالطلاق قبل الدخول... [رد المعتار جلد ثاني كتب النكاح صفحة 365]

و(الطلاق) - الطلق الذي يجب فيه المتهما ما يكون قبل الدخول في نكاح لا تسود فيه سواء فرض بعدة أو كษ السمية فيها قاسيدة... و... يجب فيما لم تصم فيه السمية من كل وجه - [رد المعتار جلد ثاني كتب النكاح صفحة 365 - 366]

Article 87.

(ماده 47)، — و يجب مهر المثل في نكاح فاسد بالرطبي في القبل لا يفري كالخبرة... فلا تتقدم مقام الزيتي - [ رد المعتار جلد ثاني كتاب النكاح صفحة 379 - 380 ] أن الخبرة لم تتقدم مقام الزيتي... و في النكاح... القاسم... مهر المثل... بالغا ما بلغ ان لم يهم ما يصلي مهما (و ان لم يكن يعمر)... فلا من مهر المثل بالغا ما بلغ - [ فناء عالمية جلد ثاني كتاب النكاح صفحة 360 ] والأناقل من مهر المثل أو البسي... أن يكون دخل - [ رد المعتار جلد ثاني كتاب النكاح صفحة 382 ]


Article 88.

(ماده 48)، — المراقب إذا لجى إلى أدوات جاءة ودخل بها ذري أجر تأكلها
قالوا لا يجب على الصبي... عقر - [ رد المعتار جلد ثاني كتاب النكاح صفحة 360 ]


Article 89.

(ماده 49)، — و اكمل الزوج... غير الاب و ابنة... ان كان من كفر و بهر المثل مع و... لبما... خيار الفناء... بالبان، — [ رد المعتار جلد ثاني كتاب النكاح صفحة 360 - 361 ]

فان كانت الفناء... قبل الدخل فلا مهارها... اكتمل منها... [ البصر الرئي... جلد ثان كتاب النكاح صفحة 150 ]

قين بالطلق... للحبراز عن فناء جائت من قبل الدخل فإنها لا متعة
لما - [ البصر الرئي... جلد ثان - كتاب النكاح - صفحة 158 ]


Article 90.

(ماده 50)، — يعتبر عرف كل بلدة لاذهب لاهلها نينا لكنسي به الراقة عند الخروج...
و يعتبر الزيتة بعجالها — [ رد المعتار جلد ثاني كتاب النكاح صفحة 360 ]

و لا دفع قيمتها اجبرت على القبول... ولا نزيد على... نصف مهر المثل... ازوج عنها ولا ننقص عن خمسة دراهم لفقرها - [ رد المعتار جلد ثاني كتاب النكاح صفحة 360 ]
SECTION IV.

فصل الرابع في شرط المهر

Article 91.

(رادة 91) — بينما لها قدرا ومهر مثلهما أكثر منهما ويشترط منفعة لها...

وكانت المنفعة صحة الإنتاج متوقفة على فعل الزوجة فإن وليها بشرته فالمسمي وليد يود... فهم الأشـئي وليكاك المشروط غير منفعة ووجب لها المسمي وطلب المشروط ولا يكمل المهر مثل [رد المعتقار جدل ثاني كتاب النكاح صفحة 374]


Article 92.

(رادة 92) — فإن تزوجها بازي من مهر مثلهما على أنها بكراها هي غير بكر لا تجب الزيادة — [رد المعتقار جدل ثاني كتاب النكاح صفحة 375]


Article 93.

(رادة 93) — لو رد في المهر بين القلة والكورة في مسألة القلم والجمال لا يصح الشرط... ويجيب المسمي في أي شرط وجد — [رد المعتقار جدل ثاني كتاب النكاح صفحة 375]


Article 94.

(رادة 94) — لو شرط البكارة ووجدها تيبًا... يجب كل المهر [المسمى] ويجيب مهر المثل فيما إذا لم يسم مهرًا — [رد المعتقار جدل ثاني كتاب النكاح]


SECTION V.

فصل الخامس في قبض المهر وما للمرأة من التصرف فيه

Article 95.

(رادة 95) — للبل وأصل والنافئ قبض مصاريف البكر صغيرة كانت أو كبيرة إلا إذا أنفقت وهي بالغة مع النافئ وليس لها تزكيم ذلك وتوصي بذلك على الصغرية...
و النشبة البالغة حق القبض لها دون غيرها — [رد المحترم جلد ثاني كتاب النكف] صفحة 400.

Article 96.
( مادة 47 ) — لا نโทษ لبا القبض إلا إذا كانت رمية و حينئذ نفترض اللام إذا بلغت دون الزوج — [رد المحترم جلد ثاني كتاب النكف] صفحة 400.


Article 97.
( مادة 48 ) — المهَر في حالة البقاء حقها — [البعْر والراقي - جلد ثالث] كتاب النكف صفحة 161


Article 98.
( مادة 49 ) — قبضت ألف المهر فوجبنا له وطلقت قبل ولي رفع عليها بوصفه لعدم تعيين النقود في العقود وأن لم تقبض أو قبضت نصفه فوجبنا الكل في الأوان أو ما بقي و هو النصف في ذاته — [رد المحترم جلد ثاني كتاب النكف] صفحة 373 - 374 [لم يرفع عليها بشيء] [البعْر والراقي - جلد ثالث كتاب النكف] صفحة 379
و إذا وجبت المدانان من أجلهم وسلطنا على القبض تقبض ثم طلقتا قبل الدخل بها رفع عليها بوصفه — [فتاوى عالميغر جلد ثاني كتاب النكف] صفحة 383
فإن نزوجا على ألف فقضتنيها و هبتا لها ثم طلقتا قبل الدخل بها يرفع عليها بخصمانة و كذا إذا كان المهر مكونا أو مزيا ... لعدم تعينهم فإن لم تقبض اللف حتى و هي بذلك ثم طلقتا قبل الدخل بها لم يرفع واحده منهما على مصاحب بشيء و لو تقبضت بخصمانة ثم وجبت الألف كلا المبكر ووجدت أو وجبت الباقى ثم طلقتا قبل الدخل بها لم يرفع واحدة منهما على مصاحب بشيء — [فتاوى عالميغر جلد ثاني كتاب النكف] صفحة 384

و لولا رجوعنا على ما يعين بالمعنى كالعوالم فوجبنا لهم نصفه أو كلها ثم طلقتا قبل الدخل لم يرفع عليها بشيء — [فتاوى عالميغر جلد ثاني كتاب النكف] صفحة 385
و ليس للقب أن نتهم بهم عبنان عند عامة العلماء — [فتاوى عالميغر جلد ثاني كتاب النكف] صفحة 385

ARTICLE 99.
(البعر الرواق جلد ثلاثة. كتاب الكتاب صفعة 191)
فأذا ماتت منه فلوترتها روعه مهرا - [البعر الرواق جلد ثلاثة كتاب الكتاب صفعة 192]


SECTION VI.
الفصل السادس في ضمان المهر وهلاكي واستحلاكي واستحتاقه

ARTICLE 100.
(مادة 100) - وعم ضمان الولي مهرا و من المرأة صغيرة ... بشرط معاشه فلا يتغير مرضه وهو وارثه لم يصح ... وإن لم يكن المكفل له أو عنه ورث الولي إكثار مة ... (الضمان) من الولاء - [رد المعتبار جلد ثاني كتاب الكتاب صفعة 386]
وقب الكرة و غيرها في مجلس الضمان - [رد المعتبار جلد ثاني كتاب الكتاب صفعة 387]


ARTICLE 101.
(مادة 101) - وقطعهم أي شئ من زوجها البالغ أو الولي الضامن ... (سوا كلما وليت ولاءها) - فان أدنى يرجع على الزوج ... ان أمر الزوج بال抜الة ... و ... أنه لو فضمن وادين لا يرجع عليه [رد المعتبار جلد ثاني كتاب الكتاب صفعة 387]


ARTICLE 102.
(مادة 102) - ولا يطلب الأب بعهر إبنه الصغير الشقي الشقي ... إذا زوجة امرأة ... إلا إذا ضعفته - لا يأخذ أبو الصغير ... إلا إذا ضعف ولا رجوع للملب إلا إذا أشده على الرجوع عند الإياء ... فأنا لم يأب إلا ترجع المرأة في تركته ويرجع بأيدي المرثة في أصبابة اللبلب فمن كفاح الأب - [رد المعتبار جلد ثاني كتاب الكتاب صفعة 387]

ARTICLE 103.

(مادة 103) — لو تزوجها على شيء بعيدة، وذلك قبل التسليم أو استحقي فإن كان ذلك من ذوات الأمثال رجعت على الزوج بالمثل ولا بالقيمة — [ نقائس عالمية]

جلد ثاني كتاب التكالج صفحه 31

ولو استحق نصف الدار المهورة ان شئت اخذت الباقى ونصف القيمة وان شئت اخذت كل القيمة فإن ظلّتها قبل الدخول بها فليس لها إلا النصف الباقى — [ نقائس عالمية] جلد ثاني كتاب التكالج صفحه 31


SECTION VII.

الفصل السابع في قضية المهر

ARTICLE 104.

(مادة 104) — فإن صادفت وقوع الاختلاف في... العيدية وبعدها لا يحكم بهم المثل لأنها لا تشبه نفسها إلا بعد تعجيل شيء عادة بل يقال لها إذا ان تقر بإمكان تجلب والإفادة على المعترف... فإن ادعى قدر مهر مثلها دفعه إليها... فانه يمنع منها مقدار ما جرى العادة بتعجيله—[رد المعتقر جلد ثاني كتاب التكالج صفحه 393]


ARTICLE 105.

(مادة 105) — وان اختلفا في المهر ففي إسلام (بان ادعى احدهما النسمة وانكروا آخر)... بعد عجز المدعى من اليد (حلف منكر النسمة فإن كل ثبوت وإن حالف يجب المثل... وان يزيد على ما ادعى المدعى لروعي المدعية للسمه ولا ينقص مما ادعى الزوج لمو المدعى لها — وفي الطلق قبل الولى (أو الطلاق) حكم منعة المثل — [رد المعتقر جلد ثاني كتاب التكالج صفحه 391، 392]


ARTICLE 106.

(مادة 106) — وان اختلفا في قدرة حال قيام التكالج (قبل الدخول أو بعدة) أو كذا بعد الطلاق والدخول — فإن القول لمن شهد له مهر مثل بيمه — (妮كن القول لها ان كان مهر مثلها كما قالت أو أكره له ان كان كما قال أو أدل) واي اقامت بيئة قبلت سواء شهد مهر المثل له او ليا او لا... وأكان مهر المثل بينهما تعالقا...
وتبات البيئة فإن حلما أو برنا قضى به و ان يوه احدها — قبل برناه ... ان
أيهما — نكل لازم دعوى الآخر ... و اي اقام بينة قبلت ... قضى به — [ رد المحترار
جلد ثاني كتاب النكاح صفحه 394]

و لواء الاختلاف بعد الطلق قبل الدخول يجب المنعة — [ فيقوى المكسيكي
جلد ثاني كتاب النكاح صفحه 353]


Article 107.

( مادة 75 ) — و وصى امتهما كثيترهما في الحكم املا ... وندرأ ... ( فان
كان الاختلاف بين الحي وورثة إليت في الامل ... وجب مهر البنت ... و اكن في
القدر حكم مهر البنت ) ... و بعد موتها فقي الفرد القدر لورثة ( فيزمهم ما اعتزوا به...
وفي الاختلاف في اجل القدر بين网通 الناسية — ( وهم ورثة الزوج ) — لم يرض بهما
ما لم يبرهن ( ورثة الزوجة ) — [ رد المحترار — جلد ثاني كتاب النكاح صفحه 353]

ولو نفتقت الورثة على عدم نسبية المهر في القد يقضى بمهر البنت — [ فيقوى
المكسيكي — جلد ثاني كتاب النكاح صفحه 355 ]


Article 108.

( مادة 78 ) — وهذا ... اذا لم تسلم نفسها فإن سندت ووقع الاختلاف في الحالين
الحيدرة و بعدا ... و دعى الزوج مبلاً شائعا ... و قد جرىعادة أنها لا تسلم نفسها
إلا بعد قضي شئ من المهر ... يقال لها تقربي بها تمثلت ... والأقصى عليها ...
بالمعارض ... ان حصل التفاق على قدر المسمى يدفن لها إيباً منه و الإثان إكررة
الزوج اصل النسية فلياً بقيته مهر البنت و ان اكرر القدر فالنهر لن شياً له مهر
البنت و بعد مرتها القدر في قدرة لورثة الزوج — [ رد المحترار — جلد ثاني كتاب النكاح صفحه
394]


Article 109.

( مادة 9 ) — انفق رجل على معتمدة الغير بشرط ان يتزوجها بعد عدتها ... و ان
ابت فله الزوجة ان كان يقع لها — ( ولا يرجع في ... ما إذا ابت و لم يشربه أو تزوجها
و ان أكلت معه ناما ... يرجع شفي ... [ رد المحترار — جلد ثاني كتاب النكاح صفحه
395 ]

Article 110.


Article 111.

( ماده 111 ) - ولربعت إلى اخرى شيداً ... من النقيضين أو العوض اوصمه بالقبر قبل الزواج اوبعد ما بني بها ... ولم يذكر المهمر ولا غيره ... عند الدفن ... ثم قال إنه من المهمر ... فقالت هو ... هديه ... باتغل له بينه ... فأن حلف القبر و لبناه لان كده و ترجع بباقي المهر أو كله ان لم يكن دفع لها شيداً منه ... و ان هذ و قد قللى للارض ايه لا ترجع به - أن اقام كل منهما بيئة تقدم بينهما - [ رد معتبر جلد ثاني كتاب التكاح صفحه 394 ] Radd-ul-Muhtâr, Vol. 2, p. 394.

SECTION VIII.

الفصل الثاني في جهاز ومنع البيت والمنازعات التي تقع بشانهما

Article 112.

( مادة 112 ) - لو زوت إليه بالجهاز يقيق بدنه مطالبة الإب بالنقد ... إلا إذا سكت طوله فلا خصومه له ... الصحيح أنه لا يرجع على الإب بشي لان الحال في النكاح غير مقصود ... لكن من المعلوم عادة ان كتفره لأجل كفرة الجهاز - [ رد معتبر جلد ثاني كتاب التكاح صفحه 398 - 399 ] Radd-ul-Muhtâr, Vol. 2, pp. 393, 399.

Article 113.

Article 114.
(مادة 114) — وکذا لو اشتراء لها في صغرها ... إن سلما في مرخص أو لم يسلماإلا ... ملكة بشراء الله له قبل التسليم ... فلا يحل له اخذه بنذا الأخلاق ... و لو در لقال دعي الناس رفع المال على تركته ولا رفع للمرأة عليها — [رد المعتار جلد ثالث كتاب النكاف صفحة 397]

Article 115.
(مادة 115) — المهني حالة البقاء حقها — [البحر الرائق جلد ثالث كتاب النكاف]

Article 116.
(مادة 116) — و قد رأينا من يومها يفرش اعتمادًا لها و إشادة خص لا عليها و ذلك حرام — الجمال في المرأة ... ولا يختص بشيء من له ... و يتنفع به لنا — [رد المعتار جلد ثاني كتاب النكاف صفحة 706 - 708]

Article 117.
(مادة 117) — جهيز أسنة ثم أدعى إن ما دفعه لها عارية و قالت هو تليك أو قال الزوج ذلك بعد موتها لبيته منه و قال قد أو ورثه بعد موته عارية ... فالفول للزوج ولا إذا كان العري مستقرا أن اللب يدفع عهده جماهرًا لا عارية و ... إن مشترنا ... فالفول للب كما لو كان أكثر مما يجهزه منا و الأم كالف في تجهيزها — [رد المعتار جلد ثاني كتاب النكاف صفحة 707 - 708] — التجهيز ... يشترط فيه التسليم — [البحر الرائق - جلد ثالث - كتاب النكاف صفحة 400]

Article 118.
(مادة 118) — إذا اختلف الزوجان في منحة ذريوع في البيت الذي كان يسكنان فيه ... [لمأما أو لاحظها] — [رد المعتار جلد رابع - كتاب الأعراب صفحة 575] — و البيت الذي يسكنان فيه ملك الزوج أو ملك المرأة — [فتاوي قاضيخان - جلد أول - كتاب النكاف صفحة 182] — حال قيم الكنك أو بعد ما وقع الفرضة ...، مما يكون للنساء عادة — فهو المرأة إلا أن يقيم الزوج البنتة ... و ما يكون للرجل ... فهو للرجل البنتة إلا أن تقيم المرأة البنتة ... و ما يكون للرجل البنتة — [فتاوي قاضيخان جلد أول كتاب النكاف صفحة 182] — وما كان
CHAPTER VIII.

الباب الناس في نُكَاح الكتَابيَّات و حُكم الزوجية بعد
إسلام الزوجين أو أحدهما

SECTION I.
الفصل الأول في نكاح المسلم الكتَابيَّات

Article 119.

(مادة 119) — و إنما اعداهم واختلف وارثه مع الحي في المشكل الصالح
لعبة بالقول فيه للخلي — [ردة المحترز جلد رابع كتاب الدعوى صفحه 476.]

Article 120.

(مادة 120) — و عم نكاح كتابية و إن كره — اللغة فشل العربية والذمية ...
وان اعتتقوا المسج إليها و ... و من اعتتق دينها ساليا و للكتاب م.MiddleRight كزبور
دائر فهور من إهل الكتاب نفجر مناكمتهم — [ردة المحترز جلد ثاني كتاب النكاح
صفحه 313] — فعند نكاح مسلم ذنبية (كتابية) — عند زميين و لم يظهر بها ان جميع
هنا شهادة الكافر على المسلم لا تقبل — [شرح الرواقه جلد ثاني كتاب النكاح
صفحه 10.]

Article 121.

(مادة 121) — ويجوز نكاح الكتابية على المسلمة و المسلمة على الكتابية و هما
في القسم سواء — [تفاوت عالميزي جلد ثاني كتاب النكاح صفحه 10.

Article 122.

(مادة 122) — ولا يجوز نكاح المسلمة من مشرك ولاكتابي — [تفاوت عالميزي
جلد ثاني كتاب النكاح صفحه 10.
ARTICLE 123.
( مادة 123 ) — و ان تزوج بحرية فنصرت او نصرانيا فترتب لا يفسد
نكافها — [ فتاوى عالمغري جلد ثاني كتاب التكلم صفحه 10 ]

ARTICLE 124.
( مادة 124 ) — والرد ينفع خير الاثنين دينا — [ رد المعتدار جلد ثاني كتاب
التكاليم صفحه 207 ]

ARTICLE 125.
( مادة 125 ) — ما يعمم به من المبادى .. اختلاف الدينين على لايزد
الكافر من المسلم ولا المسلم من الكافر — [ البهد رائقة جلد ثاني كتاب
الفرائض صفحه 575 ]
و انا لم يتورنا لمنع الكفر — [ رد المعتدار جلد ثاني كتاب التكلم
صفحه 219 ]

SECTION II.
الفصل الثاني في حكم الزوجية بعد اسلام الزوجين أو احدها

Articles 126 & 127.
( مادة 126 - 127 ) — و ان اسلام احد الزوجين المخوضين .. ( والمواد
المخوضي مص ليه داعب سهوي ) او إمرة الكذابي — ( اما اذا اسلم زوج الهازية
فان النكاف بئبي ) — عرض الاسلام على الآخر كان اسلم نه — ( اي فقد انصف بالصفة
الحجة التي بقيت منها النكاف — طططاوري — جلد ثاني كتاب التكلم صفحه 83 )
و لوكانا اي المتزوجان الذين اسلموا معلومين اول اسلام احد المخوضين .. فرق
بينهما — [ رد المعتدار جلد ثاني كتاب النكاف صفحه 197 - 200 ]
و الا بان ابي .. فرق بينهما ولو كان الزوج صبي صبيا .. والتعديل كالصبي العاقل
و ينظر عقل اي تبيين غير المخوض ولو كان مجنونا لا ينظر .. بل يعرض الاسلام
على ابراهيل على اسلام بما في بئبي النكاف .. و ان ابي فرق بينهما .. وليس المراد
من عرض الاسلام .. ان يعرض عليه طريق الألزم — فان لم يكن له اب .. ( اراد
بال كل ما يشمل انن ان ايفا — طططاوري — جلد ثاني كتاب النكاف صفحه 82 )
نسب القاني عن ومية تيقضي عليه بالفرقة — [ رد المحتار جلد ثاني كتاب
التكا صفحه 427 ]

و التفريق بينهما طلاق ... ( المراة بالطلاق حقّته لا الفسخ ) ... لو ابن لا لو
ابت ... بل الذي يكون من المرأة ... هو الفسخ ... وإباد الحديم ولهما ابن بنجوان
طلاق — [ رد المحتار جلد ثاني كتاب التكا صفحه 324 ]
( قرأ فريق بينهما ) وما لم يفرق القاني فهي زوجته — [ رد المحتار جلد ثاني
كتاب التكا صفحه 427 ]


Article 128.
( مادة 128 ) — اسلم المتزوجان ... أعرا عليه ... و لوكانا ... معوضين ... او
قرا عينه هم على الفو افر الفق عليه القاني او الذي حكاة بينهما ... و ... لزوج نذبة
في عدة مسلم ... يفرق من غير مراقبة — [ رد المحتار جلد ثاني كتاب التكا
صفحة 420 ]


Article 129.
( مادة 129 ) — والولد يتبع خير الأبوين ديناً — هذا يتمضر ... بل كانا
كلاً فضل مسلم أو اسلم ثم جاءت بولد قبل الوليد على الآخر ... أو بعدة ... 
وكان بينهما ولد صغير قبل اسلام احدهما فانه بارم وهو يصير الولد مسلم —
[ رد المحتار جلد ثاني كتاب التكا صفحه 427 ]

و والولد يتبع خير الأبوين دينًا ... هذا إذا لم يختلف الدار بكانا في دار
الإسلام اري في الطربط اركان الصغير في دار الإسلام و لاسم الولد في دار الطربط
... وإذا كانا يخد ان الولد في دار العبد والولد في دار الإسلام لايتبعه ولده ولا يكون
مسلمًا — [ نظر معالج الكتاب الثاني كتاب التكا صفحه 427 ]


Article 130.
( مادة 130 ) — الولد لا يصير مسلم باسلام جده و لا يصير مهما ... و ... الصغير
تبع ... و ... لا فريق ... بل إن ينقل اولاً ... و ... الديم لا ينتقل بل لهما مراق ... 
[ رد المحتار جلد ثاني كتاب التكا صفحه 427 ]

فإن بلغ ماجراً تبقى الديم — [ رد المحتار جلد ثاني كتاب التكا صفحه 427 ]
إنها إذا بلغت معروفة بثابت تابعة ... في الديم — [ نظر معالج الكتاب الثاني
كتاب التكا صفحه 427 ]

CHAPTER IX.

الفصل الأول في النكاح غير الصحيح والمؤتم

SECTION I.

ARTICLE 131.

(حادة 131) - نذل في المحرمات - شروع في بيان شرط النكاح فإن منه

كون المرأة معتادة - أسباب النكاح إنشاع - قراءة - مصارفة - رفع - الغ

[خطوطات جلد ثاني كتاب النكاح صفحه 19]

حرمة النكاح على نويع من مؤبدة وغير مؤبدة فالمؤبدة تثبت بالنسب والرغم

و الصريحة - [فصول قاضيعلان جلد أول كتاب النكاح صفحه 135]


ARTICLE 132.

(حادة 132) - ولا يجوز نذل منكوبة الغير ونعيدة الخير - ولترويج عن منكوبة

الغير وهو لا يعلم أنها منكوبة الغير نودأها تجب العدة و إلان يعلم أنها منكوبة الغير

نوطأها لا تجب العدة حتى لا يحرم على الزوج وطلبه - [فصول قاضي خان جلد أول

كتاب النكاح صفحه 137 - 138]


ARTICLE 133.

(حادة 133) - وحرم على المرأة... الجمع بين الأخرين نكاحاً و مدة - [شرح

الروايه جلد ثاني كتاب النكاح صفحه 131 - 132]

وف لو تزوجها اي الأخرين معا... امرتدت و نسي النكاح الأول - (فلم علم

نور الصحيح والثاني باطل وله و طيع الأولان إلا بيتأ ثانية نتحرم الأولان إلى انقضاء

عدة الثانية) - فرق القاضي بينه وبينهما - (بعنف يقرض عليه ان يقررها فإن

لم يقررها وحب على القاضي... ان يفرق بينه وبينهما... رأى وقع الفرار قبل الدخول

نله ان يتروج ابيهما شاء للحال) ولهما نصف الزوج - (إذا في سحيلة تزوجها مما في

عقد واحد... إذا كان الفرار قبل الدخول فلا بارهما) (إذا مهرباه سلبهم قدرًا و

جنساً وهو مسمن - (الضمر راجع إلى المعلومات بقوله الدكرو) - في الحادث و كانت

الفرقة قبل الدخول ادعى كل ما قبلها انها الأولى ولا بيئة لهما... (فصول إهادها

ملاحم).
Article 134.

لا يجوز للرجل أن يتزوج حرة عن تمامًا قبل إتمام الزواج الثاني — [فازئري عالبكيو، جلد ثاني كتاب النكاح صفة 10] لا يجوز نكاح المجوسيات — [فازئري عالبكيو، جلد ثاني كتاب النكاح صفة 11]

لا يجوز للرجل أن يجمع بين أكثر من أربع نساء — [فازئري عالبكيو، جلد ثاني كتاب النكاح صفة 17]

Article 135.

( مادة 135 ) — و... في نكاح فاضد... و... يفرق بين فاضد وباطله في العدة... و... لا فرق بينهما في غير العدة... يثبت النسب — إما الأثر فلا يثبت فيه — [رد المعتار جلد ثاني كتاب النكاح صفة 27، 380-381]

و يثبت حزمة المصاهرة بالنكاح الصحيح دون القاسم... فان تزوجها كلاهما فاسدا لا تحرم عليه إما ببندق العقد بل بالوطيع... و كما تثبت هذه الحزمة بالوطيع تثبت
الفصل الثاني في المكاح الموقوف

Article 138.
( مادة 138 ) - ومن عقد مقدا يذوب بين نفس وضرر... من مؤلف المعثورين وهو يعلم... اجازة ولية أورد - أي أن لم يرزق فيه نهيب فانقلب لا يصم وانجازة الولي - [ ردا المعثور جلد خامس كتاب المعثور صفة 99 ]
تقدف عقد العبدي العاقل ... على إجازة الولي - [ البحراواني جلد ثالث كتاب المكاح صفة 88 ]

Article 139.

(Ma'da 39) — Whatever is the result or the consequence of the stated case, it is prohibited to apply any principle or rule to arrive at a conclusion.


Article 140.

(Ma'da 40) — The conclusion is based on the principle that, if a principle or rule is applied to arrive at a conclusion.


Article 141.

(Ma'da 41) — ... If a principle or rule is applied to arrive at a conclusion.


Article 142.

(Ma'da 42) — ... If a principle or rule is applied to arrive at a conclusion.
CHAPTER X.

الباب العاشر في أثبات النكاح والاقترابه

Article 145.

( مادة 145 ) — ولا ينعقد نكاح المسلمين إلا بحضور شاهدين حرين عاقلين بالدين مسلمين رجلي أو رجل و إمرأتين عدولا كنما أو غير عدل أو معدودين في القضاء... ولا يشترط العدالة حتى ينعقد بعضض الفاسقين عندنا خلافا للشافعي رح له أن الشهادة من باب الكرامة والفاسق من إهل الإيمان ولنا أن يكون إهل الولاية فيكون من أهل الشهادة وهذا أنه لم يحرم الولاء على شهادة إهل إسلامة إلا يحرم على غيره لأنه من جنمه ولله من له ماله؟ فيصلح مللدا و كذا شاهدا — [ هديه جاد ثاني

كتاب النكاح صفحه 182].


Article 146.

( مادة 146 ) — قوله وإن لم بثبت النكاح بها... ( أي بالرغم أيا بشهادتهما

أن إدعاء القريب كما صن نكاح مسلم زميمة عند ذميين... قوله إن إدعاء القرير... أي
إ yönetici إرديه وحدها زيادة واحدهما إحددهما الكالح وجذبهما الآخر لا تقبل شهادة ابنه المدعى له بل تقبل عليه و لو كانا إبنيهما لا تقبل شهادتهما للمدعى ولا عليه لما لا يتغادر من شهادتهما لإلههما وكذا لو كان إحدهما ابنه و الآخر إبنا لا تقبل إسلامهما في البعر — [ رد المعتق جلد ثاني كتاب البعر ص فذ 396 ]


Article 147.

(مادة ١٢٧٠) — ولو أقر ولي صغير أو صغير أو أقر وقيل رجل أو امرأة في بديل بالكالح لم ينقض إذ أنه أقرر على الفجر خلافاً مع الآية، حيث ينذر إجهازاً لأن منانع بضما ملكه - إلا ان يتدبر الشهود على الكالح — فإن ينصب القاضي خصماً الصغير حتى يذكر فقتام البيئة عليه أو يدري الصغير أو الصغيرة فيضيقه - أي الوثبة أو يدرون المركال أو الهام — [ طبعاً جلد ثاني


Article 148.

(مادة ١٢٨٣) — وضَمَ (aporee) بالإصغرة، بالزوجة، بشروط خلوها عن زوج و عدته — [ ٨٧ ]

BOOK II.

الكتاب الثاني فيما يجب لكل من الزوجين على صاحبه

CHAPTER I.

الباب الأول فيما يجب على الزوج من حسن المعاملة للزوجة

Article 150.

(مادة 150) - إن من أحكام النكاح المعاشرة بالعروف - [البعترالرائق إجلد النافقة ... في الطعام والشراب والسكنى ... ونفقة الغير تجب على الغير... بزويدة - رددالمعتار جلد ثاني كتاب النكاح صفحة 198


Article 151.

(مادة 151) - ويسقط حقها بعمرة في القضاء - [رددالمعتار جلد ثاني كتاب النكاح صفحة 322


Article 152.

(مادة 152) - وإذا كان للرجل إمرأة كان حرصًا عليها إن يعدل بدينها ... في عدم الخبر ... في النافقة - [رددالمعتار جلد ثاني كتاب النكاح صفحة 193

ومما يجب على الأزواج للنساء العدل والتسامح بينهن فيما يبكيه والبيئة 

والبوانسة - [رددالمعتار جلد ثاني كتاب النكاح صفحة 193


Article 153.

(مادة 153) - يجب ... أن يعدل ... بالتسامح ... بالشرف بين ... صريحة وصحيحة وحائض وذات نفس ... وزائدة وقرناء ... والبكر التب والجديدة والقديمة والمسيلة والكتابة سواء - [رددالمعتار جلد ثاني كتاب النكاح صفحة 530

ARTICLE 154.

(ماده ۱۵۴) و یکیم عند کل واحدہ منص برم و لیلہ... و ان شاء... ثلاثة
او سبعة ... و الیکی بری البدایہ فی القدر الیه و کذا فی مقدار الدور - [رد المعتار
جلد ثانی کتاب الکلام صفحه ۴۳۵]

یا لیلہ لیلہ تلخ رجیم - [رد المعتار جلد ثانی کتاب الکلام صفحه ۴۳۵]

ولو یکیم بالی ... ذکر ... ان یکیم نهارا - [رد المعتار جلد ثانی کتاب الکلام
صفحه ۴۳۵]


ARTICLE 155.

(ماده ۱۵۵) و یکیم عند احدهما اکثرآلا بانی الاعیان البالی - [رد المعتار
جلد ثانی کتاب الکلام صفحه ۴۳۵] و ... لا یدخل عليها الاعیان البالی والواشذ ... لا یاس
ان یکیم عندها حتى تشییع - [رد المعتار جلد ثانی کتاب الکلام صفحه ۴۳۵]


ARTICLE 156.

(ماده ۱۵۶) ولو ترتیب ... نویپ اضطرابا مع و لیلہ الرجوع فی ذلك فی
المقدبل - [رد المعتار جلد ثانی کتاب الکلام صفحه ۴۳۵]


ARTICLE 157.

(ماده ۱۵۷) و یکیم فی السفر ... فی السفر بین شاء منص و القدیر الیہ
[رد المعتار جلد ثانی کتاب الکلام صفحه ۴۳۵]

و اگر قدم من السفر ليس للبخول ان نطلب من الیکم ان یکیم عندها مثل
ما یکیم عند الیک سانیبا - [فاطوم عالیگیری جلد ثانی کتاب الکلام صفحه ۴۳۴]


ARTICLE 158.

(ماده ۱۵۸) و لیلہ رمی هی فی بیتته دعا کلا فی نوبتیا - هذای اگا یکیم
بتی ليس نیوی واحدہ منص برم و الیکی لم یکیم على التحول الى بیت الاعیان یکیم بعد
الشعر عدن الاعیان بقدر ما اقیم عند الیکم مرضا - [رد المعتار جلد ثانی کتاب الکلام
صفحه ۴۳۵]

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Article 159.
(مارادة 159) - ولواقم عند واحدة شبرا في غير سفر ثم خاصية الأخرى...

CHAPTER II.
الباب الثاني في النفقه الواجبة على الزوج للمرأة
SECTION I.
الفصل الأول في بيان مبسط النفقه من الزرجات

Article 160.
(مارادة 160) - تجب للزوجة بکاج مجمع ... على زوجها ... أو صغيرا ...
لا يقدم على الزوجي ... دخل في هذا ... العين و العرض ... أو نقراء أو لوانت صولة أو كافيرة أو كيدية أو صغرى تطلق الوطية أو تشقى للزوجي ... فقيرة وغنية - [رد المعتذر]
جلد ثاني كتاب الطلاق صفحه 699 - 700.

Article 161.
(مارادة 161) - تجب النفقه ... وإن لم تنتقل إلى منزل الزوج - إذا لم يطالها الزوج بالنقلة ... وكذا إذا طالبها ولم يتنق - بغير حق - [رد المعتذر جلد]
ثاني كتاب الطلاق صفحه 701.

Article 162.
(مارادة 162) - تجب للزوجة ... ولو ضعت نفسها للنهر ... الذي تعرف تقدية ...

Article 163.
(مارادة 163) - الدمحم ... وجيب النفقه للمرضية قبل النقلة ... وبعدها إمكنا
جميعها أو لا - [رد المعتذر جلد ثاني كتاب الطلاق صفحه 701]
ان لها النفقة إذا مرتت بعد النفقة في بيت الزوج أو قبل النفقة ثم انتقلت إلى
بيته او لم تنتقل ولم تتبين نفسها (بغير حق) — [رد بالمختار جلد ثاني كتاب الطلاق
صفحة 703]  
مررت في بيت الزوج ... فانتقلت أدراي إليها ان لم يكن للنفقة ونحوها
فلها النفقة ... وإن امكن نقلها إلى بيت الزوج بمعه ونحوها فلم تنتقل لا نفقة لها —  
[رد بالمختار جلد ثاني كتاب الطلاق صفحة 701]  

**ARTICLE 164.**

(ماده 146) — لها النفقة ... كحبسه مطلقًا — أي لو ... حينها هي ليست في دينه مليبه
[رد بالمختار جلد ثاني كتاب الطلاق صفحة 702 - 703]  
تعب الزوجة على زوجه ... ولم ... نفيرة — [رد بالمختار جلد ثاني كتاب الطلاق
صفحة 699 - 700]

**ARTICLE 165.**

(ماده 145) — وتتعب لخادمتها المباركة لها ... ماذا ناما و لا شغل له ندير
خدمتها ... لو ... ورسى لى ما يكشف بالمعرض ... ولولا اولاد لا يكفيه
خادم واحد فرض عليها نفقة لخدمتين أو أكثر — [رد بالمختار جلد ثاني كتاب الطلاق صفحة
711-710  
انية رتت إليه بخدم كثير استحققت نفقة الجميع — [رد بالمختار جلد ثاني كتاب
الطلاق صفحة 711]

**SECTION II.**

الفصل الثاني في بيان من لا نفقة له من الزوجات.

**ARTICLE 166.**

(ماده 146) — مغردة ... لا تعتني إصلا و لو للجميع فيبادون الغرج ... فلا
نفقة ... ما لم يسبيها في بيتها للخدمة أو الاستناد — [رد بالمختار جلد ثاني كتاب
الطلاق صفحة 700]
ردهلُ الأمر، وَلَوْ تَسْتَفْنِي فِي نَفْقَةِ الْخَزَائِمِ، فَكَانَ مَنْ تَصِيبُهَا فَيْنُوُيْنُهَا، وَلَوْ بَقَىَّ الْخَزَائِمُ مُّجِبَةً، فَكَانَ مَنْ يُدْعِيُّهَا فَيْنُوُيْنُهَا، فَكَانَ مَنْ يَصِيبُهَا فَيْنُوُيْنُهَا، وَلَوْ ضَلُّ إِلَى الْخَزَائِمِ، فَكَانَ مَنْ يُدْعِيُّهَا فَيْنُوُيْنُهَا، وَلَوْ بَقَىَّ الْخَزَائِمُ مُّجِبَةً.
Article 172.

(مادة 172) لا نفقة ... لمكثفة قاسما ... و ... مسولة بشبهة ... وفي ...

الكافح بالله شهود تستحق النفقة ... ولو ... فرض لها الاقتراضية النفقة ... ثم ظهر نفاد
الكافح ... و نفق بينهما رجع عليها ... وما اخذته من النفقة ... على زوجها ... ولو أنق
bla فرض الاقتراضي لم يرجع بشيء — [رد المعتار جلد ثاني كتاب الطلاق
صفحة 699 - 701]


SECTION III.

الفصل الثالث في تفديق نفقة الطعام

Article 173.

(مادة 173) — وجوب النفقة ... بقدر حالها ... نفقة الفقراء إذا كانوا
ميسرين و ... نفقة الميسرين إذا كانوا ميسرين ... فإن كان ميسرا وهي مسيرة ... فتوجب
نفقة الوسط ... وبخاطب بقدر وسعه والباقي دين إلى الميسرة — [رد المعتار جلد ثاني
كتاب الطلاق صفحة 700]


Article 174.

(مادة 174) — ويقدرها ... الاقتراضي ... إذا إذا أو قومها بالدرارهم ... بحسب عرق
سمر البلاد ... بقدر الغلاء والرخص ... يا اعتبار حالها ... ثم غلاء السمر ... تزداد ...
ثم رخص تساق الزيدان ... للزوج ... و لرحد التداع — [رد المعتار جلد ثاني
كتاب الطلاق صفحة 757]


Article 175.

(مادة 175) — يعتبر في الفرض الإصل والاقتراضي المعترف يوما يوما لأنه قد
ليرقد على تحصيل نفقة شهر ... و ... يعطيها معهلا ... كل يوم عند النساء عن اليوم
الذي يلي ذلك اليوم ... ظل كناجرًا نفقة شهر بسره لمن المدائن نفقة سنة
سنة أو من الصناع الذين لا يضق ويمهم إلا بإلتقاء الأسبوع كذلك ... لكن إذا
ماخلا ... و ... لم يدفع لها كفارت أن تطلب كل يوم ... تطلب عنده النساء —
[رد المعتار جلد ثاني كتاب الطلاق صفحة 758]

Article 176.
(مادة 176) — وللزوج الأثراع عليها بنفسه... إلا أن يظهر للقاضي عدم إقلاله ففيز... لاه... وأمّرنا لبيطيا (للتقف على نفسها...) أن شكت مطلقة ولم يكن صاحب مائدة... يمكن المرأة من تناول مقدار كفاينها... مع حضرتة... [رد المختار جلد ثاني كتاب الطلاق صفعة 705-7]

ولو فرض لحاكم النفسة على الزوج فانتمع من دفها وهو موسر وطلبت المرأة حبصة له ان يحبسه إلا أنه لا ينبغي ان يحبسه في أول مرة... بل بخرب الحبص إلى مجلسين وثالثة بفيظه في كل مجلس... فذ لم يدفن حبصة... فتارى عالكبيري جلد ثاني كتاب الطلاق صفعة 176 وبيع الحاكم ماله عليه وسحره في نفقاته... ولا يحبس... إلحج جراحه... — [رد المختار جلد ثاني

كتاب الطلاق صفعة 705]


Article 177.
(مادة 177) — وإذا كان حال الزوج في العسرة معلما... فالقاضي لا يعيبه — [تارى عالكبيري جلد ثاني كتاب الطلاق صفعة 171] — ولا يفرق بينهما يعيبه عنها... بل يفرق إيا نفقاتها مليئة و يأمّرها بالإسناده... عليه... ونجب الأدلة على من تجب عليه نفقاتها ونفقات الصغار لولا الزوج — لوكن للبكر إيا صغار ولم يدفر على انفقات... نجب الأدلة... على من... نجب نفقاتهم... لولا الإب — و بحبسه... من نجب عليه... الأدلة... إذا انتمع — [رد المختار جلد ثاني كتاب الطلاق صفعة 713-714]


Article 178.
(مادة 178) — إذا فرض القاضي... أو الترفيه على شيء معين... لها اخذ كفيل... جبره... ضمن... بنفقات شهر أكثر هو... من غيته... فيأخذ بقدرها... [رد المختار جلد ثاني كتاب الطلاق صفعة 705-706]


Article 179.
(مادة 179) — إذا فرض القاضي للمرأة النفقة غناء الطعام أو رخص فإن القاضي يغير ذلك الحكم... تجربة الزبادة... والذنبن... بعد... تقدم النفقة... إلى القضاء... قضى بنفقة الأعصار... أو... نفقة الإسار... ثم ايسر احدهما... أو اعصار... وجب
الفصل الرابع في تقدير الكنسية والسكنى

ARTICLE 181.

(مادة 181) — وتفويض لها الكسوة في كل نصف حوت مرة... فيجب...
[777777
ما تنفع به ذي الحرو البد — [ردميعيار جلد ثاني كتاب الطلاق صفحه 7777 —
الكنسية واجبة على... لها... حيث وأشهار — [فاطا عالميبي جلد ثاني
كتاب الطلاق صفحه 1777
ويخالف ذلك يسارا واعسارا... وبلاغا — [ردميعيار جلد ثاني كتاب الطلاق
صفحة 7777

ARTICLE 182.

(مادة 182) — كان شاء فرضها إسما وان شاء قومها فقضى بالقيمة... و...
[777777
نجب... موجلة — [ردميعيار جلد ثاني كتاب الطلاق صفحه 7777

ARTICLE 183.

(مادة 183) — بغلاف كسوة المرأة فانها لا يقضي لها باخرة إلا إذا تقرفت...
قبل مفتي المدة بالاستعمال المعتاد — [ردميعيار جلد ثاني كتاب الطلاق
صفحة 1777
ولمو ضاعت الكسوة... لم يعد... حتى يمضي الفصل — [فاطا عالميبي
جرد ثاني كتاب الطلاق صفحه 1777
**Article 184.**

(مادة 184) — و... توجب لها السكنى... بقدر حالهما... في اليسار و الأعصار... ففي... اليسار لمكن أن أفردها في دار — [ردا المختار جلد ثاني كتاب الطلاق صفحه 720 - 719 - 718]

وبهت منفرد من دار له... مرافق... كافها... و... فورى المرأة الوسط... و... البتة الذي ليس له جيران ليس بمسكن شريئ — [ردا المختار جلد ثاني كتاب الطلاق صفحه 720 - 719 - 718]


**Article 185.**

(مادة 185) — و... توجب له السكنى في بيت خال عن إلهام سوئ طفله الذي لا يقيم الجماعة — (إما الذي يقيم في نفس له إسكان معه — طبطاوي جلد ثاني كتاب الطلاق صفحه 719)

وإمه وام ولد و... له منع... إلهام... من السكنى معه في بيت و لو ولدها من غيره — [ردا المختار جلد ثاني كتاب الطلاق صفحه 718 - 719]


**Article 186.**

(مادة 186) — فإن كانت دار فيها دين و إعتقال لها بيتاً يغلق ويفتتح لين بها أي تطلب بيتاً أخرى... لم يكن شهاء أحد من أحياء الزوج يفضلها... ولو راد لين سكناً مع شريئة أو مع حسابها... فإن عليه أن يسكنها في منزل منفرد — [ردا المختار جلد ثاني كتاب الطلاق صفحه 719]


**Article 187.**

(مادة 187) — أن الانتقا بذوم المؤنة و عدمة يختلف باختلاف المساق... فإن كان كبيراً كالدد النفثية من السكان المرتفعة الجذرون يلزم... فإنا إسكننا في دار و كان يغمر ليلاً يبيت عند نفثها... وليس لها ولد او خادم نشأته... فيلزمها أبتها بمؤنة أو إسكانها في بيت من دار عند من لا يؤمنها — [ردا المختار جلد ثاني كتاب الطلاق صفحه 720 - 721]

Article 188.

(ماده 188) — يجب ... الفروض والرائع (و... ما يقتصر على قواعد الفقه. خاتم عامري جلد ثاني كتاب التلقيح صفحة 171) — و... لو كان بها إتفاق من فرض ونحوها لا يسقط من الزوج ذلك — [المحارب جلد ثاني
كتاب التلقيح صفحة 7]

[إن أوداالت للبس على الرجل — [المحارب جلد ثاني كتاب التلقيح صفحة 170] يجب لها ما تتفق به ... على عادة إهل البلد — [خاتم عامري جلد ثاني كتاب التلقيح صفحة 170]


SECTION V.

الفصل الخامس في فئة زوجة الغائب

Article 189.

(مادة 189) — تقرر النفلة ... لزوجة الغائب ... في مال ألا من جنس حقين كثبت — (نفي أغلب المرضى من الذهب أو من الفضة) أو طعام ... عند أو على من يقره (عند) للآمة (على) للمدين ... الوعدية أو مل عن الدين في إبادة باللفق منها ... وبالزوجية ... وإذا علم قاني بذلك - أي - لم يزوره المدين ونحوه ... ونحوها إذا اعدت willingly بها ارخدة ... ونحوها ... إذا التكلم لم يعدها النفلة ولا كانت نافذة ولا مطلقة مضت عدتها — [المحارب جلد ثاني كتاب التلقيح صفحة 732 - 733]


Article 190.

(مادة 190) — و... إن لم يغلف ماله فاقدمت بينة ... يقضي ... باللفقة ... و... تأمر بالآستدابة لا ... بالنگاح — [المحارب جلد ثاني كتاب التلقيح صفحة 724]


Article 191.

(مادة 191) — إذا رجع الزوج ... و... كان قد عمل (اللفقة) فاقام البيضة على ذلك وأمر نقم له بينة وعستدلها فكانت له بالخيار أن شاء أخذ من المرأة و إن شاء أخذ من ملك واحدا ونافذة المرأة انا كانت قد عملت النفلة من الزوج فان
الزوج يأخذ منها لا يأخذ من الكفيلة - [قضايا عالميكي جلد ثاني كتاب الطلاق
صفحة 170 - 171]


**ARTICLE 192.**

(مادة 192) - وفي رجع الغائب و أذكر العاقب فالقول مع حلفه. فإن كان المال وديعة فله أن يأخذ منها إن أيهما شاء. إن شاء إدخ مورال وإن شاء اخذ من المال و إما في الدين يأخذ من المال ثم يرجع الغريم على المرأة - [قضايا عالميكي جلد ثاني كتاب الطلاق صفحة 171]


**ARTICLE 193.**

(مادة 193) - وإذا رجع الزوج وأقام البيدة على الطلاق و انقضاء المدة في القاضي ولا يمض الدائن إلا إذا قال إلي الزوج أن الدائن كان يعلم بالطلاق وانقضاء المدة - [قضايا عالميكي جلد ثاني كتاب الطلاق صفحة 171]


**ARTICLE 194.**

(مادة 194) - وبعد ما أمر القاضي المدين أو المدعو إذا قال المدين دعت المال إليها لأجل النفقة قبل قرار ولا يقبل قول المدين إلا البيدة - [قضايا عالميكي جلد ثاني كتاب الطلاق صفحة 171]


**ARTICLE 195.**

(مادة 195) - وإذا كانت الديعة والمال الذي في بيت الزوج من خلاف جنس حقاً فلا يلزم بنفقة نفسها وكذل القاضي لا يبيع ذلك في نفقاتها ... ويصرف عليها من ملك الدار - [قضايا عالميكي جلد ثاني كتاب الطلاق صفحة 171]


**ARTICLE 196.**

(مادة 196) - في كل وضع كان للقاضي أن يقضي لها بالنفقة في مال الزوج إلا أنها تأخذ من مال الزوج ما يكفيها بالعروف وغير قضاء - [قضايا عالميكي جلد ثاني كتاب الطلاق صفحة 171]

SECTION IV.

الفصل السادس في دين الطاقة

Article 197.
(مادة 197) - وينفع على البصير وعلى زوجته والأم والأبناء الصغير وذوي أرحامه من ماله لإن حاجته الإصلي مقدمة على حق الفراء - [البحر الرائق جلده ثامن
باب البصير صفحه 95]

Bahr-ul-Rayek, Vol. 8, p. 95.

Article 198.
(مادة 198) - والقصة لا يصير دينًا ألا القضاء أو الرضاء ... على قدر مدين - [رد المعتبار جلد ثاني كتاب الطاقة صفحه 71]


Article 199.
(مادة 199) - إن القاضي إذا فرض لبا النفذة ... أو ... برلم العين على شيء ثم
مضت مدة ... لا تسقط ... إذا لم تقيمه ... وبعد القضاء أو الرضاء نرجع ببا إنفقت - [رد المعتبار جلد ثاني كتاب الطاقة صفحه 71]


Article 200.
(مادة 200) - لا يلزمها وما ... إنفقت ... قبل الفراء بالقضاء أو الرضاء ... على
شيء ... غاب عنها أو كان حاضرا ... بل تسقط بيمتي ... شهير أو أكثر ... ونفتة مادون
الشهر لا تسقط - [رد المعتبار جلد ثاني كتاب الطاقة صفحه 71]


Article 201.
(مادة 201) - النفذة ... المغرور ... بالقضاء أو القضاء ... والمسندامة ...
بالإسر القاضي ... يسقط ... بدون إحدها ... و ... عدم سقوتها بالطلاق ... إلا ... لسواء
العائقه - [رد المعتبار جلد ثاني كتاب الطاقة صفحه 71]


Article 202.
(مادة 202) - والنفذة المستديمة بأمر ... القاضي ... لا تسقط - [رد المعتبار
جلد ثاني كتاب الطاقة صفحه 71]

CHAPTER III.

الباب الثالث في ولاية الزوج وما له من الحقوق

Article 206.

( مادة 206 ) - ومنها ولاية تاديبها إذا لم تقطع - [ البعر الرآئ جاد ثالث

كتاب النكاح صفحة 68]}

المواد ليس عليها إلا التسميم نفسها في بيئة ... وقد رأينا من باحثها بشرح اعتذارها ل }

له ولاية جبرى عليها و ذلك حرام - [ رد المعتذر جاد ثانى كتاب الطلاق صفحة 707 ]


Article 207.

( مادة 207 ) - ذل قيضت فلا تخرج إلا على لها أو عليها أو زيارة إبوبها كله }

جمعة مرة أو المعايدة كل سنة ... بل اتفقها في زيارة الزوج، ومباينته والمراقبة }

و أو كانت عند المعتذر - [ رد المعتذر جاد ثانى كتاب الطلاق صفحة 724 ]

و جاد ثانى كتاب النكاح صفحة 620]
له منعم من السكين معا في بينه سوء كان مالا له اوراجزة او عاريا — [ردمالبعقار]

جلد ثاني كتاب الطلاق مسحة ٧١٩


Article 208.

( مادة ٥٨٠ ) — ونقلت فيما دون مدة ... السفر من المقص إلى القرية ونال공
وعن قرية إلى قرية إذا كان ساما عليها بعد إداء تكمله ولا ... أنه لا يستغل بيا جبراء
عليها ... بعد إداء العمرة — إذا اراد ان يخرجها إلى بلد القرية ونفع من ذلك —

ردمالمبعقار جلد ثاني كتاب الطلاق مسحة ٧٩٠


Article 209.

( مادة ٥٨٠ ) — ومنها ولاية تأديبا إذا لم تطعها ... و استجلب عجشتها

بالمعروف — [المحرر الأزرق] جلد ذلك كتاب انتكما مسحة ٨٨٠

Bahr-ul-Rayek, Vol. 3, p. 84.

Article 210.

( مادة ٥٨٠ ) — ان خفقت يا إياها الحمام شقاق اي عداوة بينهما ... فابتعوا حكما
حكا من اهل الزوج وحكما من اهل المرأة ... ان يريد الزوجان إصلاحا يوقف الله بين
ذينكما الزوجين ... وان الحكما لا يلایان البعض واحترف الا بائعي الزوجين —

[تفسير أحمدي سورة شاه بارك بنجم مسحة ٨٨٠]


Article 211.

( مادة ٥٨٠ ) — و لروقت الله يضرن و يؤمن ... فان متروها ... و ... ملم

التائية ذلك زجر — [ردمالمبعقار جلد ثاني كتاب الطلاق مسحة ٧٢٠]


CHAPTER IV.

الباب الرابع فيما لازوجة وما لها من العحق

SECTION I.

الفصل الأول فيما لازوجة من العحق لزوجها

Article 212.

( مادة ٥٨٠ ) — فعل استنفاذ كل منها بالآخر على الوجه المبينين فيه شرعا ... ومالك الجنسي ... ووجوب المهر والنفحه ... وحقوقن ووجوب الامتثال عليها إذا دعاها
الفصل الثاني فيما للمرأة من الحقوق

SECTION II.

Article 213.

(ص438.) ولها منعه من الرجال ودرجته ... ونفقاتها ولزوجها طلعاً ...

Article 214.

(ص438.) بل إنها لم يقض النظر...

Article 215.

(ص436.) إنها تخرج ... لزيارة ... الرجلين في كل جهة ... مرة ...

Article 216.

(ص436.) و دافعها ... مبرضاً مرضاً طويلة ... فاحتشاها و ... لم يك له
BOOK III.

CHAPTER I.

الباب الأول في الطلق

SECTION I.

الفصل الأول نبيم يقع طلاقه ومن لا يقع ومجل الطلق وعدده

Article 217.

(ماده 17) — وجعلت ولاينة إلى الرجل لأنه المالك — [عيني در حاشية

كنزلة الى كتاب الطلق صفعة 100 [111

يقطع طلاق كل زوج بالغ مائة ولو مئتين أو أكثر وأنا — [الدر المختار

جلد ثاني كتاب الطلق صفعة 141] — [فتاوى عالم الكرمي جلد ثاني كتاب الطلق صفعة 175] 

نيقع من الريفي — [التهار لاتي جلد ثالث كتاب الطلق صفعة 176] أي لم يزل عقله بالبراء — [درسته جلد ثالث كتاب الطلق صفعة 177]


Article 218.

(ماده 18) — وطلق السكار وقع (سوا كان سكرة من机械اء

الإشرة الربعة المعروفة أو غيرها — [در المختار جلد ثالث كتاب الطلق

صفعة 196] ودخل على شرب الغدر أو شرب الخمر لغرضة وسرك

وطلاق إمرائه... لا يقع طلاقه — [فتاوى عالم الكرمي جلد ثاني كتاب الطلق

صفعة 197]


Article 219.

(ماده 19) — وقع طلاق الطالب بالاشارة — [فتاوى عالم الكرمي جلد ثاني

كتاب الطلق صفعة 195]

Article 220.

( مادة 220 ) لا يقع طالق ... المجازن - إلا إذا علمت عاقل دائما ثم حين يوجد الشرع . وقع الطلاق - ( وارد بالمجازن من في عقاله انخال - البحراوق جلد ثانى كتاب الطلاق صفة 258 ) - والمعروف ... والعالم - [ الدار المختار جلد ثاني كتاب الطلاق صفة 19 ] - [ فنون عالميكي جلد ثاني كتاب الطلاق صفة 55]


Article 221.

( مادة 221 ) - لا يقع طالق الصبي - [ فنون عالميكي جلد ثاني كتاب الطلاق صفة 55 ] - وارد مرفقا - [ الدار المختار جلد ثاني كتاب الطلاق صفة 19 ] - واحترز ... عن وان المغير - [ الدار المختار جلد ثاني كتاب الطلاق صفة 552]


Article 222.

( مادة 222 ) - وردت لفظ مغوص ... وارد لفظ رواحها ليبدا الكتابة المستبنية - [ الدار المختار جلد ثاني كتاب الطلاق صفة 256 ] - وارد قال والكل ذلك في جميع ادوار التي بجرزها الداركيل كانت الرؤالة عامة في البدعات والانكعسة وكل شيء - [ فنون عالميكي جلد ثاني كتاب الطلاق صفة 90 ]

واعدت على وجه الرسالة - والخطاب ... طلق تبولي الكتاب إليها - [ الدار المختار جلد ثاني كتاب الطلاق صفة 256 ]


Article 223.

( مادة 223 ) - معه المكوتة ... ولو مغوصة عن طالق وجميع أوريجن في حلقات ... لم يقع فنون بفتاوي لإطاعة أحكاما عند الإسلام - [ الدار المختار جلد ثاني كتاب الطلاق صفة 552 ]

كل فرصة في طلاق (بِالفرصة في الإلهاء ... والجرب والعنة) يقع الطلاق في هذها
[رديم متعق لجذل ذاكي كتاب الطلاق صفعة 309 - ينتمي هذه النص - حاشية
بجررعالرف جلد ثلاث كتاب الطلاق صفعة 50]


إترجمة 224.
(عمر 43) — واعتبار دعوى النسا ... نطاق حرة ثلث — [الدربالخاطر جلد
نبي كتاب الطلاق صفعة 194]
طقف غير الموصل بها مما وقع وكان نبات واحده ... وقيل بغير الدخيلة
إن الرخوة بلغ عليها البلا — [البجررعالرف جلد ثلاث كتاب الطلاق صفعة 303 - 503
لا — لا يحكم الجذل بالدخل لحرة ... حتى يطمأن منه ... بنعج صميم ونضي
عدفة — [البجررعالرف جلد ثلاث كتاب الطلاق صفعة 71]


إترجمة 225.
(عمر 295) — زكى الطلاق الفلاقة الذي جلد دلالة على معنى الطلاق ... إما
يقوم مقام النظرة — [البجررعالرف جلد ثلاث كتاب الطلاق صفعة 204] الطلق على ضرر
سمع وكذيبة — [هدية جلد ذاكي كتاب الطلاق صفعة 505 - 506] صرحة ما لم يستعمل الأ
فية (بغي غلبنا) ... للفارسية — [الدربالخاطر جلد ثلاث كتاب الطلاق صفعة 603 - 604] قلت
أكتب على وجه الرسوم ملقية فهي صرير والكذيبة — [البجررعالرف جلد ثلاث كتاب
الطلاق صفعة 772] — نسبطل هذا مشيرة باالإعتراف ... وقعت بعدد —
الدربالخاطر جلد ثلاث كتاب الطلاق صفعة 206] ورغبها ... بيتك حكمة الشرع بلأ
نية وهو باالنطق إما يقيم مقامة من الكنية المعلمة أو الإشارة المفرومة —
[رديم متعق لجذل ذاكي كتاب الطلاق صفعة 505] — قيد بيد يطغأنه لها لا وقيل إن حكيمه
يقع الطلاق ... نفخوا لم يقع لذرته الإشادة (إلى الدعوة طيبة الشرط) الدنيا —
دربالخاطر كتاب الطلاق جلد ثلاث كتاب الطلاق صفعة 505] كانتها ... سالم يرجع له ... يؤن الطلاق —
واعتنى، وقطر، وأخذت لا تتعلق بها ... لا يد إذ دلالة المعلم — [الدربالخاطر جلد
ثاني نتب الطلاق صفعة 503]

SECTION II.
الفصل الثاني في أقسام الطلاق

Article 226.
(مادة ٢٢٦) نشيل البائِل بقسمة والرجل - [ ركشاق جلد ثاني كتاب الطلاق صفحة ١٩٥] 

وهي نزاع محتفقة وعلية - نوى حكم الثلاث وهم البينوتة الأغلب - لم تتح نية 

الثالث وت إن كانت بائنة أيضا - [ ركشاق جلد ثاني كتاب الطلاق صفحة ٩١] لانه 

لفظ واحد صالح للبينوتة الصغرى وكبيرة - [ ركشاق جلد ثاني كتاب الطلاق صفحة 

٨٩] - و البائنة ام من البائين الامغر والأكبر - [ طططاوي جلد ثاني كتاب الطلاق 

صفراء ١٠٠] 


Article 227.
(مادة ٢٢٧) نالصرم الرجعى ان يكون الطلاق بعد الدخول حقيقة ليس مقروا 

بعون ولا بعدد الثلاث انما ولا إشارة ولا مصمما بتبع من البينوتة او ندل عليها 

من غير حرف العلف ولا مشبها بعدد الوصفة ندل عليها - [ البعرارائق جلد ذلك 

كتاب الطلاق صفحة ٢٧٥] 

و اشار بانحن الطلاق إلى كل وصف على امل لأنا للطيبات وهو يعمل بالبينوتة 

و هو انحن من الطلاق الرجعى - [ البعرارائق جلد ثالث كتاب الطلاق صفحة ١٠٠] 

طلفت وتان طلاق ومطاقة ... يقع بها ... وحدة رجعى وتان نوى خلافها 

من البائين او أكثر ... او لم ينر شيئا - [ ركشاق جلد ثاني كتاب الطلاق 

صفراء ٢٥٥ - ٣٧٥] 


Article 228.
(مادة ٢٢٨) و في انت الطلاق ... يقع واحدة رجعى ان لم ينر شيئا او نوى 

واحدة او اثنين ... فإن نرى ثلاث فثلاث ... ومن اللفات المستعملة الطلاق بالزينى ... 

و على الطلاق - [ الإدرارشاق جلد ثاني كتاب الطلاق صفراء ١٩] 

Article 229.

(مادة 229) — نطاق وحيدة رجعية في إخكريدي واسكرني رحمك وانت وحدة

و لعنري ثلاث أو تنين — [فاناو إيمانكوري جهد ثاني كتاب الطلاق صحة 49]

الكتابات ثلاث ما يحتل الأذن وما يحمل للسب الأذن ولا... ونحو إككريدي

واسكرني رحمك وانت وحدة... لا يحتل السب الأذن — أي بل معنا الحجاب فقط —

وفي حالة الوضع... تنكرت الأقسام الثلاثة... على نية... وفي الغضب... الآن... 

و لا ينكره ما يتغير للجواب... وفي مذكرة الطلاق تكرت الأصل فقط ورغم الأخرين

و إن لم ينور ونفي رجعية (إلى وان نرى البائغ) بقره إخكريدي واسكرني رحمك

وانت وحدة وان نرى آخر — [رد المعتدار جلد ثاني كتاب الطلاق صحة 500 -


Article 230.

(مادة 230) — وعلى هذا مبنى حل الوطأ و حرمته عندنا يحل لقيام ماك

الجاف من كل وجه وانها زرع عند القضاء العدة ذيكون العدل قائمًا قبلي انطقلها —

فنج القدير جلد ثاني كتاب الطلاق صحة 490[.

[إن الرجعية لايرزول فيه النكاف — [رد المعتدار جلد ثاني كتاب الطلاق صحة 950.

و لا يخرج معدنة رجعية ونائت... لاحرة... محالة من بينها — (و الوراء بها ما

يضاب إليها بالسكياني...) إما — [رد المعتدار جلد ثاني كتاب الطلاق صحة 763-764.

ثم الظرف ندب السرية فيه — [رد المعتدار جلد ثاني كتاب الطلاق صحة 766.

و نجب ... [النفقة] ... لمطامة الرجعية — [رد المعتدار جلد ثاني كتاب الطلاق

[صحة 766

لا يكره دخوله إذا لم نآذن له... وندب عدم دخوله ولا إنها عليها — [رد المعتدار

جلد ثاني كتاب الطلاق صحة 575.

[و الطلاق الرجعية لا ينجرر الوطأ — [رد المعتدار جلد ثاني كتاب الطلاق صحة 582.

و كميا يبت ذرة بالقول تثبت بالفعل وهو الوطأ — [فناوي عالمكوري جلد ثاني

كتاب الطلاق صحة 67.

[إذا طلق إمرأة طلاقاً رجعياً في حال صحته أو في حال حرضه برضها أو بغيرها

ثم ماً وهي في العدة فانه بقراران — [فناوي عالمكوري جلد ثاني كتاب الطلاق

[صحة 132.
ولو طلها كان مراجعاً [مقاواً سراجاً در حاشية قاضي خان كتاب الطلاق
صفحة 259]  


Article 231.

مادة (231) — و التف ( الرجعة ) في العدة — ( أي عدة الدخول حققته) إِي
الوطني — رد المحتر جلد ثاني كتاب الطلاق صُفحه 670.)

إن لم يطلق ثلاثاً — ( .. و مودة ان لا يكون بأي حال سواء كان واحدة أو ثلاثين و قدمان
الرجعية والثنان في الأمة كالثلاث في العدة ) — ولو لم ترى — ( البحر الرائع جلد
رابع كتاب الطلاق صفحه 670 )

هي استدامة ملك القائم بلا عرض ( أي بلا اشتراك على ) مادامت في العدة
إِي عدة الدخول حققته ان لا رجعة في عدة العدة ( أي لا يكون معهما لماس ابتر
بزهرة و لو إلى الفجر الدخل ) .. وإن ابتداء ( أي سواء رجعت بعد علمها لما ابتداء و كذا
لو لم تعلم بها إلا) أو قال ابتدائها رجعتي لا رجعة لى — ( رد المحتر جلد ثاني كتاب
الطلاق صفحه 675 - 676 ]

ويقيد بقيان العدة لانه لا رجعة بعد انقضائها — ( البحر الرائع جلد رابع كتاب الطلاق
صفحة 676 )


Article 232.

مادة (232) — و تفع — بنوع ... راجعكم ... ( الأولى ان يقول بالقول ... إِي
في حال حتاه ومنه رجع أرملة في حال حبيتها و حضوراً أيضاً ) — و بالعدل ... للكما يوجب حملة المصاهرة ... ولم ترى انها احتلاما ... ولا رق بين كون التقييد،ل
والمس و النظرشئة ومنه اوجها — ( رد المحتر جلد ثاني كتاب الطلاق
صفحة 675 - 675 ]


Article 233.

مادة (233) — ومن احكمنا انها ليس بمثابة إضافتها إلى وقت في المستقبل
ولا تعلقات بالشرط — ( البحر الرائع جلد رابع كتاب الطلاق صفحه 675 )

Bahrr-ul-Rayek, Vol. 4, p. 54.
Article 234.

(مادة ٢٣٤) — إذا كان وليها بها لا يشرط مطلقًا — [طهطاوي جلد ثاني
كتاب الطلاق صفحة ١٧١]
و ندب اعتراف بها ... و ندب الأشهاد — (إلى الأشهاد على القول ... وإن لم
يشهد معاً) — بإحالتين و لو بعد الراجعة بالفعل — [رد المختار جلد ثاني كتاب الطلاق
صفحة ٥٧٦]

Article 235.

(مادة ٢٣٥) — و منقطع الراجعة إن طهرت من الحيض الأخير — (العه prova
إيام) — وإن لم تتفتسل — [البحر الرائع جلد رابع كتاب الطلاق صفحة ٧٥]
Bahrr-ul-Rayek, Vol. 4, p. 57.

Article 236.

(مادة ٢٣٦) — قالت متمربت النبي والأمة تعتمدة و كذبها الزوج قبل قوليها
مع حلفها ... ثم ... لو بالحيض فاقله لحرة متورى فيما — [الدرالمختار كتاب الطلاق
جلد ثاني صفحة ٥٢]
Durrul-Mukhtár, Vol. 2, p. 44.

Article 237.

(مادة ٢٣٧) — وإذا طلقها ثم رجعها بفقي الطلاق و ان كان لا ظيل الحلال،
وقيد في الحلال فإن رضيتها في الحال حتى انضم إليه نذكي — [فتاوي عالمييري
جلد ثاني كتاب الطلاق صفحة ٨٢]

Article 238.

(مادة ٢٣٨) — و ... الموكل ... لا يكون حالا حنفي تنقصي العدة — [ردالمختار
جلد ثاني كتاب الطلاق صفحة ٥٧٦]
ابن لان العدة تأجيلة إلى طلاق يقلل الملك الوالد الموت و الذي لا يرقي
الملك إلا بعد مضي الأعدة فلا يقليها — [ردالمختار جلد ثاني كتاب الطلاق
صفحة ٥٧٦]
إما إذا كان على حجة معينة فلا يتعلم — [ردالمختار جلد ثاني كتاب الطلاق
صفحة ٥٧٦]
القسم الثاني في الطلاق البائن ونوعه واحكام كل منهما

Article 239.

(مادة 239) — واما الصريحة البائن في الطلاق، وهو ان يكون بعرف الآياء او بعرف الطلاق لكي قبل الدهول حقيقة او بعده لك مقرنا بعد الثلث نما او اشارة او موصوف بصفة دقيقة عن البدينة او تدل عليها من غير حق النعطف او مشبها بعدة وصفة تدل عليها — [الбирعئرائق جلد ثالث كتاب الطلاق ص475]

و اشار باحتجج الطلاق الى كل رص على افعال لانه للتقاوت وهو يحصل بالبدينة —

[البيرعئرائق جلد ثالث كتاب الطلاق ص476]

و يقع بقوله ان طلاق بائن او البينة او كالجلب او نطقية شديدة او طويلة او عريضة او اشدة او عريضة او امارة واحدة بالنية في الكل — ان لم يذو ثلثا في الحرة — [طبيعته جلد ثاني كتاب الطلاق ص477]

ظاهر كلامه صحة نية الثلاث في جميع ما مر — ولن قال الطيابي الصحيح انها لا تقع في نطقية شديدة او طويلة او عريضة او امارة لان تطبيقه بذات البينة لا تعامل ثلاثة...

قلت لكن البين على خلافه — [رد البعثار جلد ثالث كتاب الطلاق ص478]

إقت طلاق هكذا و اشار بثلاث اصبع في ثلاث — [البيرعئرائق جلد ثالث كتاب الطلاق ص479]

كما لو قال أكثر الطلاق او طلاق ملأ او الوَا ... ثلاثا — [رد البعثار]

جلد ثالث كتاب الطلاق ص479]

و لو قال انت طلاق ثلثا من هذا العمل طلقت ثلثا — [نظاوري عالجيري جلد ثاني]

كتاب الطلاق ص480]


Article 240.

(مادة 239) — قال لزوجته غير الجملين يا انت طلقت ... ثلاثا ... وقع ...

و ان فرق ... بات بالاول لا الى عدة و ... لم نقع الثلاثة — (المراد بما بعد الأولي نشبت الثلاثة) بخلاف الموطنة — امو و لاحكونا لمختلفها بينها فانيا كالمطرسة في الزوم العدة — [رد البعثار جلد ثالث كتاب الطلاق ص480]

198x598
Article 241.

(مادة 42) — و إذا طالق الرجل أمرته تطليقة رجوعية أو تطليقتين فله إن يراجعها في عدتها ... ولا بد من قيام العدة ... لأنها لا تملك بعد انقضاءها — [هداية جلد ثاني كتاب الطلاق ص 365].

فإذا انقضت العدة وانتميط حق الراجعة — [جامع الرموز كتاب الطلاق ص 365].


Article 242.

(مادة 43) — و إن طالق بمال أي قال لها إنه طالق بعون مال ووقع بان ... إن قبض المرأة المال في المجلس — [جامع الرموز كتاب الطلاق ص 365].

Jami-ur-Romuz, p. 240.

Article 243.

(مادة 46) — قلت يعني بخلاف حلال الله أو حلال المسلمين فانه يعم ... وذالك يعمل القول فإن يقع على كل واحدة من كل طبقة على ما إذا كن اللفظ عاماً — [رد المعتصر جلد ثاني كتاب الطلاق ص 370].

رجل قال كل حلال على حرام ... أو قال كل حلال الله أو قال حلال المسلمين ... ولم ينذرهما ... تبين منه أنتم بتطلقة واحدة وان نوى ثالثا فقلت — [فقرأ قاضيحان جلد ثاني كتاب الطلاق ص 370].

تقول حرام ... و سيأتي وقوع البائن به بالنية ... لا يفقي في ذلك بين ... حومتك سواء قال على ام لا ... وانت معي في الحرام — [طخاطاوي جلد ثاني كتاب الطلاق ص 373].

قال لأمرته أنها على حرام ... يفغي طالق بان وان لم ينوه ... مثله انت معي في الحرام وحرام بلزنعي وحومتك عليه — [طخاطاوي جلد ثاني كتاب الطلاق ص 373].
وأقول هذا لا يلزم في قوله إن للحرام مخاطبة لواحدة بل في هذا يجب 
أن لا يقع على المخاطبة - [ البحر الرائق جلد رابع كتاب الطلاق مصفحة 76 ]


Article 244.

( مادة - 345 ) - وهي ( الكفاية ) على ضررين منها ثلاثة، فإن قذف بها طلاق 
رجعي ولا تقع بها إلا واحدة وهي قذف آمن أو استبدال رمَح وانت واحدة ... 
وبقية الكفاية إذا نوى بهذا الطلاق كانت واحدة بائدة وأن نوى ذلك كان ثلاثة وان نوى 
تنين كانت واحدة بائدة - [ هديا، جلد ثاني كتاب الطلاق مصفحة 354 - 355 ]


Article 245.

( مادة 346 ) - الأبلاء ... هر ... الحلف على حرق قرباني مدته شنجة وشرطة 
محليات المرأة ... واحالة الزوج للطلاق ... وحكمه وقود طاقة بائدة أن يرولم بطلاء ... 
والمدة أقليها للحرة ربية أسرى لوقال وله ... لا أخرجك ... ارتباط إضرر ... فإن قررتها 
في المدة ... حنث ... والل ... بانت بحرة بعضا - [ طهاريي جلد ثاني كتاب 
الطلاق مصفحة 178 - 179 - 180 - 181 ]


Article 246.

( مادة 347 ) - وأنا أحسن زوال المال عامب إذا كان طلاقا ... بائنا - 
[ البحر الرائق جلد ثالث كتاب الطلاق مصفحة 357 ]

هو ( الطلاق ) ... رفع قيد النها ( الورث بقيد الأحكام التي عوضت بسبب النكاف ) 
في الحال بالبناء ... والبناء، أعمن البائن الأصغر والأكبر وأعتبر بن البائد 
لم يرفع فيهما لوجوب بينة - [ طهاريي جلد ثاني كتاب الطلاق مصفحة 101 ]

وتعديد أي معندة طلاق وعري في بيت وجبت فيه - وهو المنزل الذي 
يضفي إليها بالسكنان - ولا يخرج من منها ... ولابد من مثرة بينها في البائني ... وان 
ضاق المنزل عليها ارتك الزوج مباشرة خروجه اولى - [ طهاريي جلد ثاني كتاب 
الطلاق مصفحة 358 - 359 ] 

وان ابناها في الصحية ثم مرن وما و هي في العدة لم تربث - [ فارقي 
قاضيي خان جلد ثاني كتاب الطلاق مصفحة 238 ]
و الاعل نهيد ان احد الزوجين اذا باشر الفرصة بعد ما تعلق حق آخر بالله

وتهنآ آخر... نناو قانعيغات جلد ثانيا كتاب الطلاق صفحه 298


ARTICLE 247.

(ماده 247) — وينفق مبالغة في العدة وبعدها — اي المبادئ بما دون الثلاث
لا ينصح بالثلاثة وامه الطلاق. ونضع بين عقدة — [العهد] الرائق جلد رابع كتاب الطلاق

صفحه 11


ARTICLE 248.

(ماده 248) — و... حكه ... زوال حل المناكحة مني ثم ثلاثة... [فتاري
عالومبوي جلد ثانيا كتاب الطلاق صفحه 55 [ لا ينصح مبالغة من نكاح معين ناذر... بناي بالثلاثة لو حرة... قال لزوجته
غير المدخل بها انت طلاق... ثلاثة... فنحو... وان فرق... بما بالبيرو... و...
لم تقع الثلاثة بخلاف المواعيد... حيث يقع كل — رد المحترر جلد ثانيا كتاب الطلاق

صفحه 582 1930 3693)

حتى يطأفا غيره... بنكأ ناذر... وشمطتي عدة (رد المحترر جلد ثانيا كتاب
الطلاق صفحه 385 3693) ( سواء كانت العدة مدة فوهة او طلاق — طيطاوي جلد ثاني
كتاب الطلاق صفحه 175)

و الشرط النيق بتقيم الوطني في العمل المتين به... والموت عنينا لا — (إي
لوماكنها قبل الولي لا يعدها الولى)... و... ينصح ان يكون الإبطال صويا للغسل —
رد المحترر جلد ثانيا كتاب الطلاق صفحه 585 585)


ARTICLE 249.

(ماده 249) — والزوج الثاني — اي نكاح الزوج الثاني يهم بالدخل...
مادون الثلاثة اضا — اي كما يهم الثلاث... ثم طلقناها وعادت الى بعد كيف
مادب ثلاثه لو حرة — [طيطاوي جلد ثانيا كتاب الطلاق صفحه 177
ثم العدل الذي يثبت به ما ان يكون العدل السابق او حالا جديدا لا سبيل
الي الأول... قيمين الثاني وباضطرور يكون غير الأول... ذكان الجديد كامل هو
ما يكون بالطلاقات الثلاثة - [عذبة حاشية] هددته جلد ثاني كتاب الطلاق

[صفحة 381]


Article 250.

(مادة 250) - ولا يتحقق الطلاق في النكاح الفاسد بل هو مقارنة وليس - [البهر النريقي جلد ثالث كتاب النكاح ص. 186] رد المحترج جلد ثاني كتاب النكاح

[صفحة 381]


SECTION III.

الفصل الثالث في تعلق الطلاق

Article 251.

(مادة 251) - لما فرغ من بيان المذعج شرع في المعلق - [البهر الرائق]

[جد رابع كتاب الطلاق ص. 2]

التجزير... عبارة عن إيقاعه في الحال ويقابله التعلق... [عذبة الرعاية حاشية]

[شرح وردية جلد ثاني كتاب الطلاق ص. 47]

التعلوق هو... ربط حصول معدون جملة بالملف معدون جملة أخرى ويسمه

[بعينا - طخطاوي جلد ثاني كتاب الطلاق ص. 150]


Article 252.

(مادة 252) - وشرط محتلة كون الشريعت معدما على خطر موجود... وكونه

[مضللا لا لدكر - [طخطاوي جلد ثاني كتاب الطلاق ص. 150]

التعلوق... تنجيز - ليس على اطلاقه بل فيما لبقائه حكم إبداده... والمستعليل...

[لما رد المحترج جلد ثاني كتاب الطلاق ص. 150]

قال ليا انت طلاق ان شاء الله متصللا (قد بالالتصال لأنه أدرك بينهما سكور كبير

بلا ضرورة نثبت حكم الكلام الأول - البهر النريقي جلد رابع كتاب الطلاق ص. 150)

[مسموا... لا يقع للشك - [طخطاوي جلد ثاني كتاب الطلاق ص. 150]

[150 - 159]

كما لغا إيقاعه مباشرة لبهرة ملك كانت طلاق مع نكاح... إغزالة كم موتى

أو مرك... فإنه إضافة إلى حالة متناقية للطلاق (في الأول) ورفع (في الثاني)
Article 253.

(مادة 48) - إذا قضى في الملك ... (الطلاق الملك قاضي أن يشمل العقليقي
كما الحال ببقاء التحكّم في حقّ النساء بالعطاء والتعليم يمنع نفسها ونقولنا ... ان
تعمق الطلاق الممدهدة فيما معناها في جميع البصيرة إلا إذا كانت ممدة عن بائث وعلق
بائنا) أو مشابها إليه ... نقول لأجتهود أن زلت أن طلاق تفكّكها نزارت لم تطلق.

البخار الرائع جلد ربع كتاب الطلاق صفحه 90.


Article 254.

(مادة 47) - ويبيطل بنعيم الثلاث للعمرة ... تمليك للثلاث ومادونها ...
لا فتغيرة ما دونها - إمام أن الطاعني يبطل بزوال العدل لا بزوال الملك فلو был الفصل
أو مادونها بدخول الدار ثم نجز الثلاث ثم تقعها بعد التحليل بطل التعلق فلا يقع
بدخولها شيء ورغم أن نجز مادونها لم يبطل فٍيقع العالمي للث - [بططاوي جلد ثاني
ذناب الطلاق صفحه 152.


Article 255.

(مادة 45) - الطاعني يبطل بزوال العدل ... بنعيم الثلاث - [ردالبحث جلد
ثاني كتاب الطلاق 539.

وإن قال لها ان دخلت الدار قالت غالية للث، ثم قال ان طالق للث فتغيرة
ودخل بها ثم رجعت إلى الأولى فدخلت الدار لم يقع شيء - [نجم القدير جلد ثاني
ذناب الطلاق صفحه 262.


Article 256.

(مادة 44) - وينعيم البشير بعد وجود الشرط مطلقاً (إلى مواء وجد الشرط في
الملك ثم لا) - كن أن وجد في الملك طالت - ليس مجرد أن يوجد جميع الشرط في
الملك بل أن يوجد تاحة فيه ... ومراد بالملك ما يعمل الملك الحكيم كما إذا
وجد في العادة ... ولا لا - [بططاوي جلد ثاني كتاب الطلاق صفحه 155.

الفصل الرابع في تفويض الطلقات للمرأة

Article 260.

مادة 260 (اولاً) — لما فرغ من بيان ما يوسع الزوج بنفسه... شرع فيما يوضع فيه الزوجه بلطف النفي ونفي الأمر بالذكورة والمشيئة.

[العمر الأدنى لجلد ثاني كتاب الطلقات مصفحة 157]

اشتر بعدم ذكر قولها إلى أن يكون زوجه في الملك وحده فلما رفع نبل انقضاء المجلس لم يهم — [طحتاوي جدل ثاني كتاب الطلقات مصفحة 139]
و ليس للزوج أن يرجع قبل انقضاء الركز — [نُهِي القدير جُدَّ الثاني كتاب الطلاق
صفحة ٣٠٠]


Article 261.

مادّة (٢١٢) — قال لها اختاري أو امرها بيدك اذهن تفويض الطلاق ... فالأمر
تطلق في مجلس علماً به مشاينة (أي في الحاضرة ... اتخاذاً في النافية — ردئالحدار
جلد ثاني كتاب الطلاق صفحة ١٥٥)

و إن طال ... ما لم تقره ... ما لم تقم ... أو ... تعمل ما يلاحده صبايدل على الأعراض
لا تطلق بعده ابي المجلس إلا إذا زاد ... وعلى شفته أو مثني ما شفت أو إذا شلت أو
إذا ما شلت — [طخطاوي جلد ثاني كتاب الطلاق صفحة ٣٠٠]

ولو قال جعلت لها أن تطلق نفسها اليوم اختار مجلس صلها في هذا اليوم نلو
صفي اليوم ثم علبت خرج الأمر من يدها فاذك كل وقت قيد التفويض به وهي نافية
ولم تعلم حتى انتهى بطل خيارها — [طخطاوي جلد ثاني كتاب الطلاق صفحة ٣٠٠]


Article 262.

مادّة (٢١٥) — وفي اختاري نفسك لا نصّ نية الثلاث ... (بخلاف ... امرك
ببدك — لي تنصّ نية الثلاث) بل نبي برائحة أن قالت اختري نفسك —
[طخطاوي جلد ثاني كتاب الطلاق صفحة ٢٠٠]

إذا جعل امرها ببدك اختار نفسك في مجلس عليها بانت برائحة و إن كان
الزوج ارد ثلاث نفلات و ان نوى واحدة أو تنين ... فهي واحدة — [فتاوات عالميكي
جلد ثاني كتاب الطلاق صفحة ٧٨]

ول كلف يقول للإقلاع منها بصل العجوب منها ... نلو قالت ... طلقت نفسها
وقع — [طخطاوي جلد ثاني كتاب الطلاق صفحة ٣٠٠]


Article 263.

مادّة (٢٠١) — نصل في المشيئة — قال لها طلقي نفسك ... طلقت ورعت
رجمية — [طخطاوي جلد ثاني كتاب الطلاق صفحة ٢٠٠]

إذا قال لها طلقي نفسك ... فاما ان تطلق نفسها في ذلك المجلس خاصة —
[فتاوات عالميكي جلد ثاني كتاب الطلاق صفحة ٨٦]

ARTICLE 264.

( مادة ٢٥٤ - ) قال لها طلقي نفسي ثلاثة أو رجلين وطلقت واحدة - ( لر قال
وطلقت غير ما امره... لكان أو رجل... وتم إلى... لا يقع شيء في عفصة - أي
لا يقع فيها إذا امرها بالواحدة فطلقت ثلاثة... و مثل الثلاث الثلاث - [ طهطاوي
جلد ثاني كتب الطلائع صفحة ١٤٧ ]


ARTICLE 265.

( مادة ٢٥٥ - ) أمرها بذلك أو رجعى فعكست في الجواب وقع ما إمر الزوج به
وبلغت وصفها - و الإصل أن الشخالة في الروف لا تظل... وهذا إذا لم يكن معلقا
بمشتتها فان عفصة فعكست لم يقع شيء - [ طهطاوي جلد ثاني كتب الطلائع صفحة
١٥٧ - ] [ ١٥٨ - ]

طلقت نفسي ثلاثة ان شلت نفسي واحدة و كذا عفصة لا يقع فيها - [ طهطاوي
جلد ثاني كتب الطلائع صفحة ١٤٧ ]

Tahtavi, Vol. 2, pp. 147, 148.

SECTION V.

الفصل الخامس في طلاق المرير

ARTICLE 266 & 267.

( مادة ٢٦٦ - ٢٦٧ - ) من غالب حالة البلاء بمرير أو غيره... إجازة من
إقامة مصالحة خارج البيت... أو بارز وجاء... أو قد لبقت من قاسم... أو بقي
على لح من السفينة أو لقلة العاطف أو خيف الغرق... فأمر بالطلاق... ولا يسم نبعته
لا من الثالث - [ طهطاوي جلد ثاني كتب الطلائع صفحة ١٦٥ - ]

و يقال له الفار لفترة من أرثها - [ طهطاوي جلد ثاني كتب الطلائع ١٦٥ ١٦٦ ]

Tahtavi, Vol. 2, pp. 165, 166.

ARTICLE 268.

( مادة ٢٦٨ - ) - و المقعد والمقرج والمسلم إذا نظر... كاللعين ثم...
حد النظرية سنة... و... المقرج والمسلم والمقد مادام بزاد بالمرير -
[ طهطاوي جلد ثاني كتب الطلائع صفحة ١٦٥ ]

و المقعد والمقرج مادام يزداد مازه بالمرير فإن صار قديما ولم يزداد فهو
اللعين... صاحب البل إذا طال به ذلك فهو في حكم الصلح إلا إذا تغير
Article 269.

(Mahad 389) - من غالب حالة البلاد بعرض أخرى... فار بالطلاق... نفو ابانها وهي من اهل العرقـ (إي من وقت الطلاق إلى وقت الموت) ... طالعا بلا رضاها ... وهو كذلك ... ومنا فيه ... بذلك السبب ... أو غيره ... في المدة ... وربّت ... هي منه - [ردد المجتاع جلد ثاني كتاب الطلاق صفحه 565 - 566 - 567 - 568]

فلوم (الأولى) نلزم ذلك الحال ... ليم (لم) في عدتها لم ترث - [ردد المجتاع جلد ثاني كتاب الطلاق صفحه 567]


Article 270.

(6 ماه 475) - وكذا ثرت طالبة رجعية... (إي في مرضه) طلقت بائنا أو ثلاثة... ومن لاعنها في مرضه أو كله منها مريض (إراد به أن يكون مني المدة في المرض أيضا) كذلك - [ردد المجتاع جلد ثاني كتاب الطلاق صفحه 567]


Article 271.

(6 ماه 476) - لو أركوز على طلاقها البالغ لا ترث وهذا لوركان الإكراه بوعيد طلـ - [ردد المجتاع جلد ثاني كتاب الطلاق صفحه 569]

وان كلا في محتله ومنابعه... في مرضه... أو إيها نارت فاسلبت نفاثة لا ثرة... لوركان كتابية... ثم أصلمت... لم ترث كما ثرت لو طلقتها رجعية (أو لم تطلقا) فظاهرتي - (المظاهرة ليست تقييد - إن لو كانت مكركة لا ترضي أيضا... لك أستر مثيرة) اتبع بذلك وربّت (إي)... أوقفت إيها... أو إيها بأمرها... أو اخالت منه او اخترت نفسها... و لو بيلغ... وجب وعنة لم ترث لراها أو لوركان الزوج معصرو بحبص (عبارة في الأد منطلق في حصن وكم عبارة غيره... والعصر وانت كان... يشمل الحبص والعصر لكل مسألة الحبص ذكرها بعد) اوفي صف القنال (مثل بن في الصف من كأن زرك صفقة قبل خوف الطوق)... أو مثل حال فالو معتزلن... أو قابلات... بصالح خارج البيت مشتكيا من الم... أو معبوسا بقصام... لا ثرة - [ردد المجتاع]

CHAPTER II.

الباب الثاني في الخطط

Article 272.

(مادة 272) — و لو باشرت المرأة سبب الفرقة وهي ... مريضة و مائت قبل انقضام عدتها ورثها الزوج كما إذا وقعت الفرقة بينهما باغتيالهما نفسها في خيار البلوغ ... اوتقيتها أو مطاوعتها ابن زوجها — [طبعاً] جلد ثاني كتاب الطلاق صفحه 169


Article 273.

(مادة 273) — و إذا تشاكي الزوجان وخلاص أن لا يقم حذيرة

إيقاف مباح — [ردداعتار جلد ثاني كتاب الطلاق صفحه 604] —

الاعتبار هو ... إزالة ملك الكح خرج به الخلي ين تكلم الفاسد ... فانه لو —

[ردداعتار جلد ثاني كتاب الطلاق صفحه 606]


Article 274.

(مادة 274) — وشرارة كالطلاق وقوامية الزوج وكون المرأة معنال للطلاق —

[ردداعتار جلد ثاني كتاب الطلاق صفحه 605]


Article 275.

(مادة 275) — الفصل من إذا كان يخير عرض أيضًا — [البصرين الرائق

جلد رابع كتاب الطلاق صفحه 78

خراج ما لوقال خلنة نجل — أي ولم يذكر المال لأنه منى كان على مال لزم قبولها — [ردداعتار جلد ثاني كتاب الطلاق صفحه 606]

Article 276.

(مادة 375) — ولواحد الزيادة (على الامير) جاز في الغضاء — [هديه]

جلد ثاني كتاب الطلاق صفحه 385


Article 277.

(مادة 376) — وما جاز أن يكون ميرًا جاز أن يكون بدلاً في الخلع — [هديه]

جلد ثاني كتاب الطلاق صفحه 385


Article 278.

(مادة 377) — وحكم أنه الواقع به لو بلا مال... طلاق بائن... و... إن نوى الزوج ثلاثة كان ثلاثة — [طاحلسي جلد ثاني كتاب الطلاق صفحه 187]

حضرة السلطان ليس بشرط لـ واز الخلع — [فنايرو مالكيري جلد ثاني كتاب الطلاق صفحه 187]


Article 279.

(مادة 378) — هربيع في جانبنا لنن تعليق الطلاق بقبول المال فلا يصح رجوع عنه — (فلاصص رجوع الخلع لو ابتدا الزوج الخلع — رد المختار جلد ثاني)

كتاب الطلاق صفحه 604، 605، 606

قبل قولبا... ولا يقتصر على المجلس... فلا يبطل بقيةه من المجلس قبل القبول... وينتصر قولبا على مجالسهم علمها... (فائدة) يشترط في قولبا علمها ببعنها — [طاحلسي جلد ثاني كتاب الطلاق صفحه 187]

لو قال خلمنك... (أي ولم يذكر المال) فانه يف باينا ... لعدم ترقية عليه (أي)

على قولبا — طاحليسي جلد ثاني كتاب الطلاق صفحه 187

نقرأه لها خلمنك بلا ذكر المال... طلاق بائن غير منتقف على قولبا بغطائ اسم إذا ذكر معه المال أو كان لفظ اللفائمة أو الأمر فانه لابد من قولبا — [رد المختار]

جلد ثاني كتاب الطلاق صفحه 604.

Article 280.
( مادة 280 ) — إذا كان الإبلاء منها بأن قالت اختلفت نفسها منك بذلك فلا
أن ترجع علما قبل الزوج ويقتصر على الزوج - ويبطل بقيامها عن المجلس
و يقاسها أيضا و لا يتصرف على ما أوراه للملبس — [ رد المحترج جدل ثاني كتاب الطلاق
صفحة 206 ]


Article 281.
( مادة 281 ) — ويستقبل الخلع و المباراة كل حق لكل الواحد على الآخر مما يتعلق
بالنكاف حتى لو خالفها أو وراءها بحال معلوم كان للزوج ما شئت لهم ولم يبق لأحدهما
قبل صاحبته دعوى في غير مقبولة كان أو غير مقبولة قبل الدخل بها أو بعدة ... و
على كل كلامة سنتها مشروة لها لا يخول بها إلا يساها شيا أو سميها المهر أو بعضه أو
مالة كفر و كل وجه و جميعاً ما أن يكون المهر مقبولاً اولو و كل على وجهين
إما أن يكون قبل الدخل او بعده — [ البهرارائق جدل رابع كتاب الطلاق صفحه 97 ]
وان سيما مالا كفر غير المهرنة المسمى و بيع كل منها مطلقاً في الأحوال كلها —
[ البهرارائق جدل رابع كتاب الطلاق صفحه 97 ]
ويستقبل الخلع و المباراة كل حق — [ كالهر و البتة ] ينبغي ان يعمل
على ما إذا كان الخلع أو المباراة ... قبل الوثيق لا الدفع لا الدفع حينئذ نجب لها
وعنهم من المهر فتأخذ حكمة وهو السقوط بالخلع أو المباراة ) — نبات وتقيها لكل منهما
على الآخر ما يتعلق بذلك النكاف — فلا يتطلب بهم ولا فائدة مائدة فرضية —
( و إلغاء في الحق فشل ... الصرة — البهرارائق جدل رابع كتاب الطلاق
صفحة 97 ]
ولا يطالب برفقة ملكها ... لم نيب مدها ولا يطالب أيضاً بسرمة —
[ طحاوتي جدل ثاني كتاب الطلاق صفحه 191 ]
فان لم يساها شيئاً يرفع كل منهما — [ البهرارائق جدل رابع كتاب الطلاق
صفحة 97 ]


Article 282.
( مادة 282 ) — الثاني أن يصر بنقب العش فيه كما لو قال لنا خليفي نفشت
مني بغير شيء ... فلا يبرأ كل منهما عن حق صاحبه — [ البهرارائق جدل رابع كتاب الطلاق
صفحة 191 ]

Article 283.

( مادة 683 ) — إن خالها على مهرها فإن كانت المرأة مدخولا بها وقد قضت
مهرها برجع الزوج عليها بمهرها وأم لم يكن مقيضا سقط عن الزوج جميع المهر...
و إن لم يكن مدخلا بها فإن كانت قضت مهرها وهو الف درهم رفع الزوج عليها...
بالف و إن لم يكن قضت ... يسقط المهر عن الزوج — [ فتاوى عالميكي جلد ثاني
كتاب الطلاق صفحه 388 ]

و إن خالها على عشر مهرها ومهرها الف درهم فإن كانت المرأة مدخولا بها والمهر
مقيضا برجع الزوج عليها نائفة ويلزم لها الباقي ... و إن لم يكن المهر مقيضا سقط
من الزوج كل المهر ... و إن لم يكن المرأة مدخلا بها فإن كان المهر مقيضا رفع
الزوج بعرش نصف المهر ... و إن لم يكن المهر مقيضا بري الزوج عن جميع مهرها —
[ فتاوى عالميكي جلد ثاني كتب الطلاق صفحه 182 ]


Article 284.

( مادة 683 ) — وأما نفقة العدة فيلم دخل تحت العموم ... يسقط بيه واما
سقط بالتصنيص ... و أما السكنية فيلم يصح استفصاله بحال ... إلا أن ابرانه عن مؤثة
السكنى — [ البحر الرائق جلد رابع كتاب الطلاق صفحه 97 ]


Article 285.

( مادة 685 ) — وللحك بدلها في يدها قبل الدفع او استحق — ( أي إدعة
كثر وأثبت أنه لا ) نفعها قيمتها ولو البديل قيمة ومذاه لمثلا — [ رد السماك جلد ثاني
كتاب الطلاق صفحه 609 ]


Article 286.

( مادة 686 ) — شرط البرك ( اي في الخلع — عاطفوي جلد ثاني كتاب الطلاق
صlain )

من نفقة الولد ... ( شمل العدل بأن شرط براءته من نفقاته إذا ولدته ... وهي
مؤونة الرضاع ) إن وقفا صم ولزم وا لا ... ولو كان الولد رضيعه صم وإن لم
يوقتائ ... و إنما يصح على إمكاك الولد — ( إذ بين المدة ... و وجه الرواية ... إن كونه
غيرما قربة على إرادة مدة الرضاع ) و نقيضه حدين بخلاف الظهم — ( إذ كان ذلك
فلاب من التوفيق ) — و لو تزوجها أو سرت — ( اي و تركت الولد على الزوج ) —
ومن المأمون لوالد ولد في بطنها ولد فإنها إذا خالطها على إرضاء رضاه فتسقط للفترة عشر سنة. وهو خالص للنفقة الحالية والولد في التزام نفقاته في المدة الباقية. وربما هي نفقة الولد (ربما) يرجع عليها بعد، فعلى بعدين في المدة الباقية بعد أن يمر عهدهم، تذكر هذا وربما يتم ذلك إذا قام بهما. 

رده المعزول جلد ثاني كتاب الطلاق.

صفحة 316-315

تاختي، جلد 2، ص 192; ردارعدد الطلاق، جلد 2، صص 615، 616.

ال'article 287.

(مادة 287) — لو خلط ستة من أجل الولد، أو خلط الولد سيئة، فإن نفسي على وجه مهب السائل على تلك المدة، فربما يرجع عليها CID [يرد المعزول جلد ثاني كتاب الطلاق]

ردارعدد الطلاق، جلد 2، ص 616.

ال'article 288.

(مادة 288) — رجل خلط امرأة، و بينهما ولد، فلو صغر عليه أن يكون الولد عند الأدبenne مع الجلد، و يبطل الشرط فإن الولد الصغير عند الأدبنة في الجلد.

[تفاوض قضيتيان جلد ثاني كتاب الطلاق صفحة 467،] إحدى النساء بعضن الطلاق، فإن الفرد لا يترك الجلد. 

[تقرأ عالميي جلد ثاني كتاب الطلاق صفحة 145،] و تجاوز النفقة .. للفترة .. الفرد — [رده المعزول جلد ثاني كتاب الطلاق]

صفحة 328-327

و تجاوز .. إجراء الحضانة إذا لم تكون منكرحة ولا معندة .. وفي المبنتو .. لفترة وجودة .. و الفرد على أن لها ذلك — [طبعتان جلد ثاني كتاب الطلاق]

صفحة 256

فاتواد-كازى خان، جلد 2، ص 257; فاتواد-الامير، جلد 2، ص 165; ردارعدد الطلاق، جلد 2، صص 727، 728; تاختي، جلد 2، ص 244.

ال'article 289.

(مادة 289) — لو خالط ستة على نفقة ولد، وهي معمرة بطالبه باللفقة، يرجع عليها — فإن بدل المسلم دي، لا تنسق نفقاته الأولد، بدين له عليها كما إذا كان له عليها دين آخر .. والفرد — إن الولد يرجع عليها بعد سارها — [رده المعزول جلد ثاني كتاب الطلاق]

صفحة 616

ردارعدد الطلاق، جلد 2، ص 616.
Article 290.

(مادة 420) — خلع الاب صغيره بمالها أو مالها طالت (إي باشد) ولم يلزم الاب (إي لا عليها ولا على الاب) ... فإن خلع الاب على مال (قبل الام) ضامن له (إي ملتزم) ... صحف الام عليه (فان استحق لزمته قيمته) ... بل سقوط مهر... لكن إذا كان على الام نفها ان ترجع به الزوج و الزوج يرجع به على الاب — [رد المختار جلد ثاني كتاب الطلاق صفحه 616 - 617]


Article 291.

(مادة 421) — و إن شرطت اي الزوج الضمان (الأولي ان يغلب اي الزوج بدون الخلع) — طبططووي جلد ثاني كتاب الطلاق صفحه 193 (عليها أي الصغرى ... توقف على قوليا — فإن قبضتها وهي من اهلة (إي القبل — طبططووي جلد ثاني كتاب الطلاق صفحه 193)

إن تأهل ان التاج جالب و الخلع مال طالت بلا شع ... وإن لم تقبل أو لم تقض لم تطلق وإن قبل الاب ... ولو بلغت واجازت (إي اجارت قبل الاب) — جاز — [رد المختار جلد ثاني كتاب الطلاق صفحه 618]

فإن قبضتها وهي عاقلة ... وقع الطلاق ... قلت و يقت كثيرة أنه يبطلها بمقابلة إرائها ايا من مالها و الام ان يرغب الرجعي لمقدم سقوط المهر ... قال لامرأته الصبية انت طالق بمركز قبضتها ينبغي ان تطلق رجعي ولا سقوط المهر — [رد المختار جلد ثاني كتاب الطلاق صفحه 616 - 617]


Article 292.

(مادة 422) — خلع إبنه الصغير لا يصح ولا يترف خلع الصغير على اجازة الوالي — [رد المختار جلد ثاني كتاب الطلاق صفحه 617]


Article 293.

(مادة 423) — في غير رشيدة (إي سقفية) — طبططووي جلد ثاني كتاب الطلاق صفحه 193 ... ناخلتمن من زوجها بمال جاز الغلخ ... ولم يلزمها الام ... فإن كان طلبهما تطيبه على ذلك الام يملك رفعها — [رد المختار جلد ثاني كتاب الطلاق صفحه 617]

Article 294.

(ماده ۲۹۴) — خ Albuquerque — ای سری اموات (ان لوح بیش از هنگام کل
عمر) — بیشتر از کل ائل می‌باشد و بدل بالغ لیکن خروج از کل
والاً ناقل است از ائل و ائل — و ادعا لیکن هر ائل می‌باشد و ائل بالغ
و ائل کل (ان) لیکن فی اعله و لو بردها... لحظه ادل ان خروج از کل...
یعنی از دو بالغ لیکن مجری ائل — [رجالبعتار جلد ثانی کتاب الاطلاق
صفحة ۵۱۷]

Article 295.

(ماده ۲۹۵) — ولی بلاط الوکیل بالغال بالبدل — [رجالبعتار جلد ثانی کتاب
الاطلاق صفحة ۵۱۷]
وان اضاف الوکیل بالدل الی نفسه اضافه مک کارتیم... کان البدل بالوطکی...
و الوکیل ان يرجع على الامر — [یبعتوی جلد ثانی کتاب الاطلاق صفحه ۶۱۹]

Article 296.

(ماده ۲۹۶) — طلقنی على ان الؤدار مالی على الوکیل ان کان الاتخیر غایة
معمولة مک الاتخیر ان لم تکن لا يسمع... و يسمع الاتخیر فی البدل بالغال مع جهالة
مستمرة... لا الغامضة... وکیل لیکن لا يسمع الاتخیر يجب الامر حالا— [نقلوی مالیکروی
جلد ثانی کتاب الاطلاق صفحه ۱۴۲]

Article 297.

(ماده ۲۹۷) — خرج به الغال لیکن النکاح الفاسد... نان دیگر — [رجالبعتار
جلد ثانی کتاب الاطلاق صفحه ۹۶]

CHAPTER III.

الباب الثالث: فی الفرقة بالعنعة و نحوها

Article 238.

(ماده ۲۳۸) — نان علاء وقت الالفانج ان دینین (هو)... من لا يقدر على
جامع خرج زودن — [رجالبعتار جلد ثانی کتاب الاطلاق صفحه ۶۳]
۴۰۵

لا یکون لیا حقیِ غربة... و ان لی تعلم وقت یکاش و عامت بعند ذلک گان لیا حقیِ غربة... و لی بیطن یکاش برک غربة... ما لی ترهّ بذلک - [قاتیر: قاضی‌نام]

جلد اول کتاب اطلال صفحه ۱۸۲ []

فلو وجدت عینانا... ولم تخاصم زمینا لم بیطن حقها... کب لروعنة... ولم تخاصم زمینا - [رده‌پنجر چل‌شانا کتاب اطلال صفحه ۱۸۶ - ۱۸۷]


Article 299.

(۱۸۶۷) - اگر رفت المرأة زوجه الى الفقیر و ادعت اته مههم و طلبت الفرقة فإن الفقیر سيغل له وصُل الى اهنا أو لم يصل فإن ان اهنا لم يصل اجلاً سنة - [قاتیر عالمگیری چل‌شانا کتاب اطلال صفحه ۱۵۵]

اجل سنة... قربة... و رمضان و ایام حاضرا منها و کذا حجة و غیابه لا مدت حجمها و غیبها و خصیص و مرّها - ای مرّا لی تستطيع معه الرطب - [رده‌پنجر چل‌شانا]

کتاب اطلال صفحه ۱۸۶ - ۱۸۷]

ابتداء التاجیل من وقت المخاصی - [قاتیر عالمگیری چل‌شانا کتاب اطلال صفحه ۱۵۵]

ان خاصیة وهو معمر يزجل بعد الاحلال... ولم رجاء المرأة زوجه مرتضا لی قادر على الجماع لا يزجج ما لم يصح - [قاتیر عالمگیری چل‌شانا کتاب اطلال صفحه ۱۵۵]

ان وجدت ... زوجه الصغر عینانا ينتظر برّة - [قاتیر عالمگیری چل‌شانا]

کتاب اطلال صفحه ۱۵۶]


Article 300.

(۱۸۶۲) - ذلک ولى مرّة فيها و الا بات بالتفريق من الفقیر - (و هذا التفريق طلاق بناء) - ان ای طلاقا بطلها - ای علیا ثانیا... للتفريق - [طططاوی جلد ثانی کتاب اطلال صفحه ۲۱۲]

اگر وجدت المرأة زوجه معموره ... نرق... بطلها لو... غیرناملة بتولا قبل النکاح - [رد المعترف جلد ثانی کتاب اطلال صفحه ۱۸۶ - ۱۸۷]


Article 301.

(۱۸۶۱) - ولوادنی اولی و اکرها (هذا شامل لما قبل التاجیل و بعده)

فأان قالت امرأة نِقة - و النینان احرط - هي بکر... خیرت في معلسها و ان قالت
406

Article 302.

(مدة 420 م.) - ولطرفتي - (أي العينين وزوجته) على الرجفان نائبا بعد التفريق مع - [طحاوي جلد ثاني كتاب الطلاق صفحه 241] ولفريق بين المرضية و زوجها لنائبة لم يبرأ الزوج - [فتاوی عالمگیری] جلد ثاني كتاب الطلاق صفحه 123 - [فتاوی عالمگیری] فرق بالنائبة ... في مرض الوجیه و ما في غدتها لم ترثه - [فتاوی عالمگیری] جلد ثاني كتاب الطلاق صفحه 132 - [فتاوی عالمگیری]

و هذ التفريق طلاق بات - [طحاوي جلد ثاني كتاب الطلاق صفحه 123] إذا كان الطلق بالنانا دون الثلاث فئة أن ينزوجا ففي العدة وبعد انقضائها - [فتاوی عالمگیری] جلد ثاني كتاب الطلاق صفحه 128 - [فتاوی عالمگیری]


CHAPTER IV.

الباب الرابع في الغرامة بالردة

Article 303.

(مدة 420 م.) - و ارتقاد احدهما اي الزوجين فساخ - (فلانقس عدد) - (أي عدد الطلاق) - عاجل بلا تضايا - [طحاوي جلد ثاني كتاب النکاح] صفحه 628 - [haust]

Tahtavi, Vol. 2, p. 84.

Article 304.

(مدة 420 م.) - الحراجة بالردة غير متاحة فإنها ترتفع بالإسلام - [ردالمعاد] جلد ثاني كتاب النکاح صفحه 625 - [haust]
فلو ارتد مماليك وجمال الإسلام في كل مرة وجدد النكاح... تعلع إمرائه من غير إصابة
زوج ثان - [طهطاواني جلدل ثاني كتاب النكاح صفحه 48]
وجبر على الإسلام وعلي تجديد النكاح... ببرهير - [رجالبحث جلد ثاني
كتاب النكاح صفحه 45]
فيقع طلاقه عليها في العدة مستنذباً نقلتة من حرمته على بعد الثالثة حرومة منيلة
بتوقي زوج آخر... ثقت وهذا إذا لم تلحق بدار الحرب... فالمرد إذا لحق بدار
الحرب نطق إمرائه لا يقع - [رجالبحث جلد ثاني كتاب النكاح صفحه 80]


Article 305.

(مادة 630) - و بقي النكاح ان ارتدت معا... او لم يزع سبق ادلةها على الآخر
ثم اسلما كذلك ... و قد أن اسلم احدهما قبل الآخر - [طهطاواني جلد ثاني
كتاب النكاح صفحه 85]

Article 306.

(مادة 630) - فلموضوعة و لى حكما كل مهرها - الاطلاع تشتمل ارتتاده
و ارتتداها - [رجالبحث جلد ثاني كتاب النكاح صفحه 80]


Article 307.

(مادة 637) - و لغيرها نصفه لو مسمي أو المنحة - (إي ان لم يكن مسمي) لو
ارتد... ولا شيء من المهر... لو ارتت - [رجالبحث جلد ثاني كتاب النكاح صفحه 80]


Article 308.

(مادة 638) - لو ارتد هو فانها تترز مطلقا إذا مات... وهي في العدة -
[رجالبحث جلد ثاني كتاب النكاح صفحه 80]


Article 309.

(مادة 639) - ولوانت في العدة ورذبها زوجها المسلم - هذا إذا ارتت وهي مريضة
تم مانت... بخلاف ردتها في الصحة - [رجالبحث جلد ثاني كتاب النكاح صفحه 80]

CHAPTER V.

الباب الخامس في العدة وفي نفقة العدة

SECTION I.

الفصل الأول فيما توجب عليها العدة من النساء ومن لا توجب

Article 310.

(مادة 310) — وقنتها حكما ثابتًا بها كفرة زوج - أي زوجها غيره — [رد المحترف جلد ثاني كتاب الطلاق صفحه 450]

وشرطه الفرقة [رد المحترف جلد ثاني كتاب الطلاق صفحه 450] اتفاق الطلاق نشل إبائن والرجع ولم يقيد بالدخول بناء على إلى الأصل في النكاح الدخل ولا بد منه حقيقة او حكا حتى تجب على مطلقة بعد الخلافة ولو فاسدة ... وشمل جميع إسباب من الفسخ بغير البرغو — [البحر الرائق جلد رابع كتاب الطلاق صفحه 462]

لوركان النكاح فاسدا ففرق القاضي ان فرق قبل الدخل لا يجب العدة وكذا لفرق بعد الخلافة فإن فرق بعد الدخل كان عليها الاعتداد — [فتاويعالمغيري جلد ثاني كتاب الطلاق صفحه 471]

إن مبدأ العدة في النكاح الفاسد بعد الفريق ... أو المتنازع ... وفي الوطيبي بشبهة عند إنتهاء الوطيبي — [رد المحترف جلد ثاني كتاب الطلاق صفحه 450] هي إنظر مادة معلومة يلزم المرأة بعد زوال النكاح حقيقة أو شبهة المتأكد بالدخول أو الموت — [فتاويعالمغيري جلد ثاني كتاب الطلاق صفحه 471]


Article 311.

(مادة 311) — وهي في حق حرة و لو كاذبة تحت مسلم — تحيض لطلاق ... أو فسع بجميع إسبابه ... بعد الدخل حقيقة أو حكا ... ثلاث حيض كرامل — [رد المحترف جلد ثاني كتاب الطلاق صفحه 450 - 451]

وذاك موطرة بشبهة ... او نتاج فإنه — أي عدة كل منهما ثلاث حيض — [رد المحترف جلد ثاني كتاب الطلاق صفحه 452]

في الموت والفرقة — [رد المحترف جلد ثاني كتاب الطلاق صفحه 455]

ومنها عدة النكاح الفاسد بسببا تفرق القاضي أو المتاركة وشرطها ان تكون بعد الوطيبي حقيقة — [البحر الرائق جلد رابع كتاب الطلاق صفحه 460]
ولا اعتداد ببعض طلعت فية — أي إذا طلعت في الحيض لا يعمس من العدة —

[ رد المختار جلد ثاني كتاب الطلاق صفحه 650 ]


Article 312.

 وما 210 (ومادة 210) — وواحة في حق من لم تتعش — لصغر .. أو كبير .. أو بلغت بالبس .. ولم تعش .. (شامل لها إذا لم تئمن إلا) ثلاثة أشهر بالأهلة لو في الغرة، الا قبل الأيلام .. اذا تعش عدة الطلاق والمرات تغرة الشهور اعتبرت الشهور بالاهلة .. وان نقصت من العدد .. وان تعش في وسط الشهر .. يعتبر بالايتام فتعشد بالطلاق بنعمس يوما ..

[ رد المختار جلد ثاني كتاب الطلاق صفحه 652 - 653 ]


Article 313.

و ما 310 (وقصيرة .. إذا حافظت في أحالتها .. (إي قبل نعمسها) — تطائف بالعريس .. [ رد المختار جلد ثاني كتاب الطلاق صفحه 658 ]

أيما اعتد ل لابنأشه ثم عادمها .. استطفال بالعريس .. إن رأته قبل نعمس الابنأشه استطلاق لا بعدها .. ولعله نالناف جائز وتعشد في المستقبل بالعريس — [ رد المختار جلد ثاني كتاب الطلاق صفحه 657 - 658 ]


Article 314.

و ما 410 (وخرج برنا .. ولم تتعش التشاء المحمد بالظهر .. كان حافظ — (إي ثلاثة أيام مثل) — ثم احتدي طبها .. (إي سنة أو أكثر) — فتعشد بالعريس .. إن أن نبغض سينيس — [ رد المختار جلد ثاني كتاب الطلاق صفحه 653 ]


Article 315.

و ما 515 (وصنعة الدم .. و المراد بها المتعمرة التي نسبت عارتها .. تغشفي عدتها بسبعة أشهر — [ رد المختار جلد ثاني كتاب الطلاق صفحه 650 ]


Article 316.

و ما 615 (وناهي .. في حق الحامل مطلقًا .. وضع جميع حملها .. و المراد به العمل الذي استبان بعض خلقته أو كله فإن لم يستبين بعضه لم تغشفي العدة — [ رد المختار جلد ثاني كتاب الطلاق صفحه 655 ]

**Article 317.**

(مادة ٣١٧) — و الأعدة للموت — (إلى موت زوجة المرأة) ارعة إشهر... و العشر من الأيام بشرط بقاء النكاح صحيحًا إلى الموت — مطلقة — وطلبت اولاً و لو صغرية — (الأولى و لو كبيرة) — أو كثائرة تحت مسلم... وفي حق امة تحب لطلاق أو نسيح حيضنباً... و في امة لم تحب لطلاق أو نسيح منها زوجها نصف الحرة... و في الحال مطلقة — و لو امة... وضع حيلها — [رد المعتفار جلد ثاني كتاب الطلاق صفحة ٢٥٥]


**Article 318.**

(مادة ٣١٨) — أن الزوج إذا طلق زوجته طلاقًا رفعها في مجنه، ورمده... ودخلت في عدة الطلاق ثم مات، والعدة بائقة تنتقل عدتها إلى عدة الموت — [رد المعتفار جلد ثاني كتاب الطلاق صفحة ٢٥٥]


**Article 319.**

(مادة ٣١٩) — وفي حق امرأة القزاز... (و الموافقة بمرأة الغار من إبانها في مرضه بغير رضاها)... ان مات وه هي في الأعدة ابتد الإجلين من عدة الأوقات و عدة الطلاق... لأنه و ان انقطع النكاح... لكنه بائق... في حق الأرث... لأن تجري ارعة إشهر وعشرا... فيها ثلاث حيض — [رد المعتفار جلد ثاني كتاب الطلاق صفحة ٢٥٦]


**Article 320.**

(مادة ٣٢٠) — ركح... معتمدة — (إلى من طلاق بائنة غير ثلاث)... و طلتها قبل الوليدة... وجب عليه مهر تام و عليها عدة مبدعة — [ردالمعتفار جلد ثاني كتاب الطلاق صفحة ٢٥٥]


**Article 321.**

(مادة ٣٢١) — و مبدأ الأعدة بعد الطلاق وبعد الموت على الفوز و تنقص العدة وان جعلت المرأة بما على الطلب و الموت — [ردالمعتفار جلد ثاني كتاب الطلاق صفحة ٢٥٦]

حتى لو لم تعلم و مضت عدة الأعدة فقد انقضت — [البحر الراقي جلد رابع كتاب الطلاق صفحة ٢٥٧]
و مبادئ في النكاح الفاسد بعد الفرقين ... أو المتارة - [ رالبحث جلد
ثاني كتاب طلاق صفحه 262 ]

إلا أن نقلها من وقت الإقرار ... إن كتبته ...
لها النفقة ... وإن صدقته ... لأنجزت أي إذا كان الزمن الماضي استغرق العدة ...
إما إذا بقي منها شيء تنبع النفقة - [ رالبحث جلد ثاني كتاب الطلاق
صفحة 263 ]

و عرف أن تنفيذ بالإقرار يفيد أن الطلاق المنتظم إذا ثبت بالبينة ينبغي أن تعتمد العدة من وقت قامت - [ البحر الرأقي جلد رابع كتاب الطلاق
صفحة 158 ]

157, 158.

Article 322.

( مادة 322 ) - و تعدد أن إيجابية طلاق و صمت في بيد وجبت فيه -
هوما يضاف إليها بالسكتة قبل الفرقة ... ولا تخرجان منها إلا أن تخرج - ( إلا وإن
الإبناء يضمن السكنة فيها فإليهما بعد ) - أو ينهدمن الدخل أو نجان الإجادة أو أولف
مالي لا تحدد غرام البيت ... تخرج - ( إيجابية الروضة ) - لا رفع موضع إليه
وفي الطلاق إلى حيث شاء الزوج - [ رالبحث جلد ثاني كتاب الطلاق صفحه
775 ]

طلقت امرأة ... في غير مسكونها عادة الباء فأوا - [ رالبحث جلد ثاني
كتاب طلاق صفحه 776 ]

ول لا تخرج إيجابية رجع و بال ... ) والحق أن على المغني إن ينظر في خصوص
الوقائع فإن علم فيها واصفة معجزة - ... كان لا تخرج إثناها بالعمل فإن علم صدرت لها
إثناءها بالحقيقة ) - من بينهما إعلا ... ومعينة مير تخرج ... و ثبات ... في منزاها - [ رالبحث جلد ثاني كتاب الطلاق صفحه 776 - 777 ]


Article 323.

( مادة 323 ) - فهدة الإقرار اوجبوا إسقاب منها الفرقة في النكاح الصغير ...
بعد وطع أو خارة و منها عدة إفتان الفاسد ... و حولنا أن تكون بعد الوطن حقيقة - [ البحر الرأقي جلد رابع كتاب طلاق صفحه 361 ]

Bahrr-ul-Rayek, Vol. 4, p. 139.
SECTION II.

الفصل الثاني في نفقات البعثة

Article 324.

(مادة ٣٢٤) فالعامل إن الفارقة إما من قبله أو من قبلها فلا من قبله في النفقة مطلقًا سواء كانت ببعضها أو طلاقًا أو نفخًا - [ردوة المعتار جلد ثاني كتاب الطلاق صفحة ٧٦٢]

وتجب لملفة الرجل والبائين... واطلاق فشل العامل وغيرها والبائن بثلاث أو أفل... [ردوة المعتار جلد ثاني كتاب الطلاق صفحة ٧٦٢]

إن الفارقة... إن كانت من قبله فلا النفقة... تعلمه و عنه... أو إيلاءه مع عدم فهي... أو إ打包ه عن الإسلام - [البحر الرائع جلد رابع كتاب الطلاق صفحة ١٧٢]

خلالها على إن نفقت له ولا سكنى لها السكنى دون النفقة إلا النفقة حتى ينص

لإلاع عن... [البحر الرائع جلد رابع كتاب الطلاق صفحة ١٧٧]

والمباني بالطبع والإبل والماعز ورده الزوج ومجامعه إما في النفقة سواء - [ثاني قاضياً جلد أول كتاب النكاح صفحة ٣٠٠]

احتجز عن معصيته كتبته بثناها... فإن النفقة واجبة لها - [ردوة المعتار جلد ثاني كتاب الطلاق صفحة ٧٧٢ - و... إذا لم يكن ببعضية منه ولا منها كغير بلغ...

فإن النفقة واجبة لها - [ردوة المعتار جلد ثاني كتاب الطلاق صفحة ٧٧٢]


Article 325.

(مادة ٣٢٥) - وتجب... للفرقة بل معصية (إي من قبلها) كغير... بلغ وتفريق بعدم كفتانية - ومثله عدم مهر مثل النفقة... [ردوة المعتار جلد ثاني كتاب الطلاق صفحة ٧٦٦]

تستحق النفقة... إمرأة العين إذا اختارت الفرقة... [ثالث عالمكي جلد ثاني كتاب الطلاق صفحة ١٧٥]


Article 326.

(مادة ٣٢٦) - وإن كانت من جهة المرأة... إن كانت ببعضية لا نفقة لها - [ثالث عالمكي جلد ثاني كتاب الطلاق صفحة ١٧٥]
Article 327.

(مادة 372) — كل من بطلت نفقتها بالقرة لا تعود للفقة إليها في العدة وان زال سبيل الفرة — [فقاً عالمي حر الثاني كتاب الطلاق ص 175]

فان اصلت المردة واعدة بائدة فالتقية لا تقضي ولا تزوج من بيتها ثم تركت

النشوز فإنها التقية — [فقاً عالمي حر الثاني كتاب الطلاق ص 175]

ولو طلبت وهي ناشرة فإنها ان تعود الى بيت زوجها وتأخذ التقية.

[فقاً عالمي حر الثاني كتاب الطلاق ص 175]


Article 328.

(مادة 373) — لو كانت صغيرة بجامع بنها نقلتها بعد ما دخل بها انفق عليها

ثلة أشهر فان حاست فيها واستقبلت عدة الأقرار انفق عليها حتى تنقض عدتتها.

[فقاً عالمي حر الثاني كتاب الطلاق ص 175]

فان طالت العدة بارتفاع العيب كان لها التقية إلى ان تنصير آية وينقضي عدتها

بالأشهر — [فقاً قاضي خان جلد أول كتاب النكاح ص 200]


Article 329.

(مادة 374) — البعدة إذا لم تتخاص في نفقة العدة حتى انقضت عدتها لا تقضى

لها وهذا لأور كان القاضى فرض لهما تقية العدة ولم تأخذ... وانقضت العدة

... تسقط التقية — [فقاً قاضي خان جلد أول كتاب النكاح ص 201]

Fatawa-i-Kazi Khan, Vol. 1, p. 201.

Article 330.

(مادة 375) — ولا تسقط التقية الحضرية بغض العدة... صحروا من التقية

نجب بالقضاء أو الرضا — [رد المعتبار جلد ثاني كتاب الطلاق ص 725]

Article 331.

الكتاب الرابع في الأولاد

CHAPTER I.

الباب الاول في ثبوت النسب

SECTION I.

الفصل الأول في ثبوت نسب الولد المولود في حال قيام النكاح الصحيح

Article 332.

( مادة 332 ) - وأكثرة العمل سنتان واقليها سنة أشهر - [ شرح الوقاية
جلد ثاني كتاب الطلاق صفحه 152 ]


Article 333.

( مادة 333 ) - وثبت نسب ولد ... منكوبة إت به لستة أشهر ... ولاقل
منها لا يثبت - [ شرح الوقاية جلد ثاني كتاب الطلاق صفحه 143 - 150 - 151 ]


Article 334.

( مادة 334 ) - وثبت نسب ولد ... منكوبة إت به لستة أشهر على من وقت
النكاح أقر به الزوج أو سكت - [ شرح الوقاية جلد ثاني كتاب الطلاق صفحه 143 ]

Sharh-i-Vikaya, Vol. 2, pp. 143, 150.

Article 335.

( مادة 335 ) - شرط أن يكونا زوجين و أن يكون النكاح بينهما صحيحًا ...
ولو طلقها طلاقا رجعيّا ثم فذنه يجيب العلان ( إلهام ... من كل إلهام للشهادة
إي لائدها - عمدة الرعاية حاشية شرح وقاية جلد ثاني كتاب الطلاق صفحه 126 )
حتى أن اللعان لا يجري بين الزوجين ... إذا كانا مجددين في الفذ ... أو كانا رقعيين ... أو كاثرين ... أو اضطراد ... أو مجندين ... ويجري
نفسه عدا ذلك — [فتاوي جلدها ثاني كتب الطلاق صفحة 151] وقسح على كون الزوجة عريفة — [شرح الوقائع جلدها ثاني كتب الطلاق
 صفحة 122] 

إذا الفتاوي الحاكم بينهما — [فتاوي جلدها ثاني كتب الطلاق صفحة 152] وله قذفها بالزنا ولهة الولد ذكر في اللعان الأم ... ثم ينفي القاتم نسب الولد
و يلعق قدامه — [هداد جلدها ثاني كتب الطلاق صفحة 99]

سقط اللعان بوجه من الوجوه فإنه لا ينفي النسب ... إذا كان من أهل اللعان
فلم يقلمن فإنه لا ينفي النسب — [فتاوي جلدها ثاني كتب الطلاق
 صفحة 153]

فإن ابن حبس حتى ... يذك نفسه فيجلد للذان ... وإن اكذ نفسه ... ( أي
إذا أكذبها بعد اللعان) حد للذان — [ردد الطلاق جلدها ثاني كتب الطلاق صفحة 93] .


Article 336.

( مادة 737) — نفي الولد ... عند التهيئة ومدناها سبعة أيام عادة ( اشاره الى انه
لم يقهر زمنه بشيء ) وأن عند إنيباع آل الولد ميع ... و لو كمية فعالة علامة كفالة
والديها — [ردد الطلاق جلدها ثاني كتب الطلاق صفحة 42]


Article 337.

( مادة 738) — و إذا شروط اللقية ضيقة ... الأول التفقي — الثاني ان يكون عند
الولد أو بعدها بضعة أو بضعين — الثالث ان لا يفتقده من أقراد بله ولد دالية ... الرابع
حبوة الولد وقت التفقي — الخامس ان لا تلد بعد التفقي وأف أكثر من بطق واحد ...-
السادس ان لا يكون محاكمي به يзерع كأن ولد ولد فالقلب على رضيع فقط فإني
و قضي بدينه على عاقلة الإية — [ردد الطلاق جلدها ثاني كتب الطلاق صفحة 42]


Article 338.

( مادة 739) — ولا عم ان تفقه بغيره من كونه عمصة ... وحرم أبناء نسبه
بعد القطع في كل الأحكام ... إلا أن ... الأرض واللقية فقط — تبقي النسب بين الولد

و الملافين في حق الشهادة والرضا والقصاص والنكاح وعدم الحيض بالغير حتى لا يجوز شهادة إحداهما الآخر ولا يجوز زكاة ماله أمه ولا يجب القصاص على الأب بقتله ولو كان لا هذه اللائعات إبانا النزور نبنت من إمراء أخرين لا يجوز لأب أن يرزق ببث الملكة البنت ... لا تتسع دعوة غير النهذي — [ رد المعتجر جلده ثاني كتاب الطلاق صفحة 639—640] 


Article 339.

( مادة 640 ) — ولو ماتت بنته النبانية عن ولد فارع ففيقبه في ثابت منه ... و ... والد النبانية لكون ذكر وفعت ترك وذا ثبت نسبه من وجد وورث الأب منه — [ البحر الراق جلده رابع كتاب الطلاق صفحة 639 ]


Article 340.

( مادة 640 ) — فان النبانية ... بانت بطريرك الحمام — أي تكون الفرقة تنظيمة بالائدة — فتغتنم قبل الفرقة — لأنها امرأة ما لم يفرق القاني بابها ... نعم يحرم الوالي ودراعية ... [ فان الفرقة باللعن ... تجب حرامة الاجتهاد والنزور مادامما على حال اللعن — البحر الراق جلده رابع كتاب الطلاق صفحة 639—640 )

لم أصر ... من حديث المنتقلان لا يجتمعان أبدا ... و ... له تزوجها إذا خرجا أو احدهما عن إمكاة اللعن — [ رد المعتجر جلده ثاني كتاب الطلاق صفحة 639—640 ]

وإذا كان الطلاق بأننا دون الثلاث فلأن تزوجها في العيد وبعد الانتقلغا — [ هديه جلده ثاني كتاب الطلاق صفحة 639—640 ]


SECTION II.

الفصل الثاني في ثبوت نسب الولد المولود من نكاح فاسد

أو من الوطى، بشهبة في نكاح ناسد

Article 341.

( مادة 641 ) — و ... يثبت النسب بلا دعوة وsumer مدته وهي سنة اشهر ( أي ناوية ... التذكر بالعلم الشهيد فإنما هو للحُفظ وما دونه لا أعنا زاد ) من الوطى ( أي إذا لم تقع الفرقة ) فان كانت منه إلى الواقع أقل مدة العلم يعنى سنة عشر وأكثر يثبت النسب — [ رد المعتجر جلده ثاني كتاب الكتالج صفحة 641 ]
ثم أن معنى ثبوت النسب فيه إذا انتهت به أقل من سنين من وقت المفارقة لا أكثر منها — [رد المع协调发展 ثاني كتاب الطلاق ص. 676]

ARTICLE 342.

(مادة 676) — إذا جاءت به المفروضة لأكثر وأدعا الزوج ثبت نسبة منه لأنه الطابع... وهذا أولى من حمل بعضهم على المبادئ بالكتابة فإن الشهية فيها شبهة المحمل — [البحر الرائق جلد رابع كتاب الطلاق ص. 676]
وأما ثبوت إذا كان الوطية شبهة في المحل أو شبهة في العقد — [عمدة الرعاية]

 hashed شرح وقائدة جلد ثاني كتاب الطلاق ص. 676.

وثبوت النسب لمجرد شبهة العقد ... من وطية امرأة زفت إليه وقيل له أنها إمرأة فيه شبهة في الفعل وإن النسب ثبت إذا اذاء — [رد المع协调发展 جلد ثاني كتاب الطلاق ص. 677]


ARTICLE 343.

(مادة 677) — ولو زوجة فرضت ثبوت النسب في حالة ان جاءت به لستة أشهر ... ثبت نسبة وإن جاءت به أقل من ستة أشهر لم يثبت نسبة إلا إن يدعاه ولم يقل إياه من الزنين — [فتوى عالم واعزي حدث ثاني كتاب الطلاق ص. 675]


SECTION III.
الفصل الثالث في وفد المطلقة و السترية عنها زوجها

ARTICLE 344.

(مادة 677) — ثبوت نسبة وفد معتقدة الرجعي ... وإن ولدت لأكثر من سنين ولو ل_SUR_حن ستة ناكرز ... ما لم تقر بقضية العدة ... كانت ... رجة ... في الأكثر منها لا في الأقل ... وإن تثبت نسبة ... كما يثبت ... في ميدان ناجحة به لاقل منها ... ولم تقرر بقضية ... ولم روأ لنا لا تثبت النسب ... لا بد منه — [رد المع协调发展]

جلد ثاني كتاب الطلاق ص. 676 - 677.

وثبوت نسبة وفد معتقدة العود لأقل منها من وقتها أي الموت ... ولم تقرر بالقضاء عدتها ... وإن ولدت لأكثر منها من وقتها لا تثبت — [رد المع协调发展 جلد ثاني كتاب الطلاق ص. 678]

**Article 345.**

(مادة 345) — وكذ البقرة بعيضها (إي) يثبت نسب ولدها... سواء كانت
معتدة بالنبن أرجعي إلواة (والمرة تعنيل) — ردمعتار جلد ثاني كتاب الطلاق
صفعة 276 (لؤلؤ الال من لثل مدة من وقت الأقرار ولا الق من أكثرها...
) إي إكتر مدة العمل أي والاق من ستين من وقت الفراق) والأ لا يثبت —
إي و إن لم تلد لاقل من سنة إشهر بان ولدها... لاقل مدها ولاكثر من
ستين من وقت البت — ردم يعتبر جلد ثاني كتاب الطلاق صعة
[276 - 278]


**Article 346.**

(مادة 346) — ويثبت نسب ولد المطلاقة... المراقبة المدخول بها... غير المقرة
بالقضاء عدتها... إذا لم تدوم جبالا... لاقل من سنة إشهر مدة طلقها... والأ لا — إي
و ان لم يكن لاقل ولدها لسنة إشهر فاكثر فإنه لا يثبت نسه — ردم يعتبر جلد
ثاني كتاب الطلاق صفة 277 - 278 [278]

وكذ البقرة إن ولده لذلك — إي لاقل من سنة إشهر من وقت الأقرار...
ولاقل من سنة إشهر من وقت الطلاق — ردم يعتبر جلد ثاني كتاب الطلاق
صفعة 278 [278]

نارادة حبلًا... يثبت إذا ولدها لاقل من ستينين أو الطلاق بانه ولاقل
من سبعه وعشرين شهرًا أرجعيًا — ردم يعتبر جلد ثاني كتاب الطلاق
صفعة 278 [278]


**Article 347.**

(مادة 347) — إما الصغرية (إي التي لم تقرر بالعجل ولا بالنقاب العدة) فإن
ولده لاقل من عشرة أشهر و عشرة أيام ثبت ولا لا — ردم يعتبر جلد ثاني كتاب
الطلاق صفة 278 [278]

الصغرية إذا تقول عما زوجها فإن أقرت بالعجل فهي كالكبيره يثبت نسه منه
إلى ستينين... و إن أقرت بالنضات عدتها... ثم ولده لسنة إشهر فصاعدا لم
يثبت النسب منه — فقايره عمالير جلد ثاني كتاب الطلاق صفة
[278 - 279]

SECTION IV.

الفصل الرابع في دعوى الولادة والإقرار بالاوثوءة والبنوة و الأخوة وغيرها تابع ذلك

Article 348.

(مادة 188 مم) – كان جبريل الولادة يثبت بشهادة الإمام واحدة – [ هديه جلد ثاني كتاب الطلاق صفة 123 مم]

قيدها ... بالعدلة و قيدها ... بالحرية والإسلام – [البغر الرائق جلد رابع كتاب الطلاق صفة 175]

أن الكر تعيين الولد فإنه يثبت تعيين بشهادة القالة – [البغر الرائق جلد رابع كتاب الطلاق صفة 175]


Article 349.

(مادة 189 مم) – و يثبت نسب ولد المعتدة بموت أو طلاق – إياً بائناً أو رجعي (شامل للمطقة رجعياً فإنه إذا جاء مثياً لأكثر من سنين اشكال ... و حتى أنها ان جاءت به لأقل من سنين انتهى إلى الشهادة كالآء – طعضاً جلد ثاني كتاب الطلاق صفة 180.

إن جندة (بالمناء للمجهول والعامل الزوج في الموت والزوج في الطلاق) ولدتها بشهدة نائمة ... او جبل الظهر ... أو إقرار الزوج به – بالعن والاكتر تعيين تكفي شهادة القالة ... او تصريح ... الورنة – [دلالمعتدار جلد ثاني كتاب الطلاق صفة 180 2759]


Article 350.

(مادة 190 مم) – و كان اقر لغلم صجوول النسب ... و نيا في الس بعيب بلود مثله لبلة إى أنه وضوه الغلام أو مبكر (عبر عن نفسه – البغر وإلا كتاب الأقر صفة 279)

أو لم يصدقه – البغر وإلا كتاب الأقر صفة 279 ... ثبت نسبه ولو المقر مبرنا إذا ثبت شري الغلام الورنة – [دلالمعتدار جلد رابع كتاب الأقر صفة 115]

و يضع ... حتى يلزمهم اي المقر الإحكام من النفقة والعشاءة – [دلالمعتدار جلد رابع كتاب الأقر صفة 512]

ARTICLE 351.

(مادة 126م) – وكذا صح (أبي إفرارها) بالولد أن شهدت امرأة ... وإنفاذ إما نسبي، كما في عدودها لم تصدقها منه رضي الله عنها. وإن لم يبق من ذلك كله إلى مزجة ولا معتقدات وكانت مزجة و ابتدأت إنها من غيره ... ولا يد من تصدق هؤلاء إلا في الولد إذا كان لا يعبر عن نفسه - [رد المعتاد جلد رابع كتاب الأقرار صفحة 512]


ARTICLE 352.

(مادة 350م) ... صح اقراره ... بالولد مين ... بالشروط الثلاثة المتقدمة في الأدنى - [الدر المعتاد جلد ثالث كتاب الأقرار صفحة 87]


ARTICLE 353.

(مادة 353م) - وإن للغة نسبي فاقرأ لم يثبت نسباً أخرى ... ويشترك في المصدر - [هداءه جلد ثالث كتاب الأقرار صفحة 337 - 339]

ولاقرأ ... نسب ... على غيره ... قالات ... لا يصح ... في حق غيره ... لا صح في حق نفسه حتى يلزم ... الإثر - [رد المعتاد جلد رابع كتاب الأقرار صفحة 513]

ومن مات ابنه فاقرأ نسبي في الأثر فيستدعي نصف نصيب المنف ... [رد المعتاد جلد رابع كتاب الأقرار صفحة 416]


ARTICLE 354.

(مادة 346م) ... وشرط أن لا يكون له نسب مانون إلا يمنع ثبوتته من غيره - [هداءه جلد ثالث كتاب الأقرار صفحة 227]


SECTION V.

الفصل الخامس في حكم اللقيط

ARTICLE 356.

(مادة 356م) – اللقيط ... هو ... الإنسان يطول طرحة إلهام خوفا من العيلة أو قرارها من وجهة النظر - مفهومه أثناء معرفة عام اللقيط فرض ... إن خليت على ظنها حالك لولا للجعه ... ولا لم يندوب لما فيه من الشفقة والإحياء ... وينفي إن يحرم طرحة بعد اللقيط - [رد المعتاد جلد ثالث كتاب اللقيط صفحة 227 - 228]

Article 357.

(مادة 357) — وهو حِرٌّ (أي في جميع احِكَامه) مسلم... و... يصير مسلمًا في ثلاث ضرورًا في صحة واحدة وهي ناتجة ذي في مكان... 

[ردد المعتار جلد ثالث كتاب اللقب صفحه 343 - 345]


Article 358.

(مادة 358) — وليس لأحد خذله منه قولاً و... لا ينطبق للامام أن يأخذ من المسلمين الإنسان بسبب يوجب ذلك — [ردد المعتار جلد ثالث كتاب اللقب صفحه 343] ـ و... ينترعر منه إذا لم يكن إلا لتعظمه — [ردد المعتار جلد ثالث كتاب اللقب صفحه 343]

لروجدة بسم الله و كلام من فضي الله للسلم ... ولواسترها — (أي في مفهوم الترجمة كليًا) — فناع في اللقب — [ردد المعتار جلد ثالث كتاب اللقب صفحه 343]


Article 359.

(مادة 359) — وان وجد معه مال فوه له... فصبره الراجحه... إليه

بامر القياسي — [ردد المعتار جلد ثالث كتاب اللقب صفحه 343] و انافق المطلق عليه من مال نفسه يكون متطرعاً لا يرجع بذلك على اللقب وأن

الامرأة القياسي ان ينقف عليه من ماله على ان يكون ذلك ديناً على اللقب فيما انفق يكون

ديناً على اللقب — [فقاً في قاطعي الأجل رابع كتاب اللقب صفحه 343]


Article 360.

(مادة 360) — و بعدها في حرفة (بيني أن يقال)... إنه يعلمه العلم أن أولاً نان

لم يجد فيه قابلية لشرعه (والله)... و تبين... ما وведение له الخبيث أو تصدق به عليه...

و ليس له كلهه ... وله نكله حيث شاء ... ولا ينفق لللملقب عليه نكاح ... و... لا يجوز

أن يرجح لياخذ الأجرة للفقه — [ردد المعتار جلد ثالث كتاب اللقب صفحه 343]

وله... شراء ما ما له منه كالعلم والكرامة ... ولا تقدم في مال الملقب-

[هدایه جلد ثاني كتاب اللقب صفحه 345]


Article 361.

(مادة 361) — و ذكرت نسبة من وجد بمسير درجات ولغيرهم البلقب... لو حيًا

والآخ — (أي وأناك اللقب مينا) ترك مالاً أو لم بترك) ففي النبضية... و ذكرت نسبة من
CHAPTER II.

الباب الثاني فيما يجب للولى على الوالدين

Article 365.

(إمامة ۴۳) — ن튜تاج ... إلى من يـُـم بماله حتى لا يلتحف الضبر ... فالولادة في المـال جعلت إلى الأب ... و الأب يجر على نفقتته ... ويجب عليه
SECTION I.

الفصل الأول في الرضاة

ARTICLE 366.

(مادة 366) — وليس على ام إرضاعة ... إلا إذا تعيّنت فنفجبر — فإن لم يجد والد من ترضيه أوكاون الوالد لا يأخذ ثني غيرها ... وإن لم يكون لاب ولد مال

[صفحة 732]


ARTICLE 367.

(مادة 367) — ويستأجر الإبل من ترضيه مندها (إي عند الام) — [رد المختار

جلد ثاني كتاب الطلاق صفحه 732]


ARTICLE 368.

(مادة 368) — لا يستأجر الإبل إم لإرضاعه ... او معطية رجوي وجاز

[صفحة 733]


ARTICLE 369.

(مادة 369) — المعتقدة عن طلاق بائتي ... تستحق اجراً الرضاة ... وإن

مضت عدتها ناستاً أجرها لإرضاع ولدها جاز — [فتوى عالمي جلد ثاني كتاب الطلاق

[صفحة 177]


ARTICLE 370.

(مادة 370) — وهي اجراً بإرضاع ولدها بعد المعدة إذا لم تطلب زيادة على

ما تأخذها الأجنبية ولود انجر المثل (إي لوركان الذي تأخذها الأجنبية دون إجر

المثل ولعيبت الام اجر المثل، فالاجنبية الأول (بل الأجنبية المبتدعة اجراً منها ... إي
في الأراضي (نعلم ذاك يستأجر الاب له من يرضه عندها - طاعتي جلده
ثاني كتاب الطلاق صفة 376)
و...للإمام اختر اجرة البنت على العضانة ولا تكون الإجنبية المتبرعة بها أولى
نعم لو قررت العمة (إن العمة غير قيد بل مثلها بقية البعذار) - [رد المعتذر جلده
ثاني كتاب الطلاق صفة 389]
بعضانة من غير أن تبيع الإيم عنده...والأب معصر نقيض للإمام إنما استكفي الولد
بلا إجراء واما إن تدعيه إليها - [رد المعتذر جلده ثاني كتاب الطلاق صفة 332]

Article 371.
(عامة 77) - ولهما اجرة الأراضي بل فقد اجارة - بل تستعده بالإراضي في
المدة مطلقا...و...الفامي...يأمر يدفع ذاك البيبا...و...مدة الرعاع في حق
الاجرة حولان - [رد المعتذر جلده ثاني كتاب الطلاق صفة 378]

Article 372.
(عامة 77) - وحكم الدخل كالاستعجار - يعني لو صلاشت زوجها عن اجرة
الراضي على شيء إن كان الدخل حال قيم الدخل أو شيء مندوب لا يجوز وأنا كان
في عدة الدائن بواحدة أو ثلاث جاز - [رد المعتذر جلده ثاني كتاب الطلاق صفة 377]

Article 373.
(عامة 77) - ما تأخره الإيم من الإب...بما قابلة رفع الولد هو إجارة...نذا
مات الإب لا تسقط هذه الاجرة بموت بل تجب لها في تركه وتراث غرامها -
[رد المعتذر جلده ثاني كتاب الطلاق صفة 373]

Article 374.
(عامة 77) - و...الاهل تجب على إبقاء الاجرة...من استنجر ظلم
الصبي شاهد لما انقضى الشهرليب أن ترضه و الصبي لا يبطل شيء غيرها...إجبرها لن
ترفع - [رد المعتذر جلده ثاني كتاب الطلاق صفة 376]
ولاء لم الاطار عليك عند الإيم ما لم يشترط في العقد - [رد المعتذر جلده ثاني
كتاب الطلاق صفة 377]
الفصل الثاني في مقدار الرشاع الموجب لتحريم النكاح

**Article 375.**

(مادة 375) - الرشاع هو مص من ندى أدمية ... والحق بالنص الوجوه والسعود في وقت منصوص، هو حراً، وينب أجر في المدة فقط ولو بعد الاستغناء بالطميم ... وينب به ... فإن قال علم ووصول لجوء، فإن فهم لا غير (ولا الاستعانة بالنظر في ذلك وحيدة وآفة). - [حكم الواقع جلد الثاني

كتاب النكاح صفحه 398]

فلا التقيم العلماء لم يفر دون الالتباس في حلقهم ا لم يعمم ... وكذا يعمم لين

ميلة و لوم جبر و [رد المعترض جلد ثاني كتاب النكاح صفحه 937-938-940-943]


**Article 376.**

(مادة 376) - وينب التحرر في المدة ... وينب به ... اعونة المزعة للرضى و ... ابرة زوج مزعة إذا كان لينه منها له - [رد المعترض جلد ثاني كتاب النكاح صفحه 937-938-940-943]

[رد المعترض جلد ثاني كتاب النكاح صفحه 943]

و الرطب بشبة كالعمل - [رد المعترض جلد ثاني كتاب النكاح صفحه 943]

ولا حل بين رضيعي امرأة لكونها أهوب - (إن ذا الالتباس الذي شرائه لرجل واحد وام واحدة) ولم عن لرجل واحد، ولم يكون لاب - الطباوعي جلد ثاني كتاب النكاح صفحه 943]

و ان اختلف الزمن ... ولا حل بين الرضيعي وولد مزعة - اي من النسب اما الذي من الرضيع ناهي ... كذلك - [رد المعترض جلد ثاني كتاب النكاح صفحه 943]

[إذا كان لرجل امرأتي وولدنا من ان فاز بها كلاً واحدة منا فاز عليها الالتباس - [رد المعترض جلد ثاني كتاب النكاح صفحه 943]

رجل وطبي امرأة بنكاح قام ثم تزوج صبي فازدة ام الموظمة بأن الصيبة - [تقوى: عالم الفتيدي جلد ثاني كتاب النكاح صفحه 50]

Article 377.

( Madness 377 ) — إملاء بعض من الرضا ما يحرم من النسب ... و البصيرة ... حتى لا يجوز له أن ينفخ بهما ... ولا بنت امرأته ... من الرضا ... و اخته الشقيقة ولد بنته ... و تدخل اخت الإحق رضاعا ... و زوجة الأب و الأم من الرضا إلا أم أخته و اختها ... و بنت إبنه و بنته و جدة ابنه و بنته و أم إبنه و عمته و عمه و خاله و خالته و و ... و بنى اخت إبنه ... و بنته و بنته و بنته و إبنه و ولدها و إبنه ولدها و ... و بنته و بنته و بنته ... ولد بنته ... و تدخل اخت الإحق رضاعا ... بعلي لها إبراشها وأخو بنها و جدي بنها وإبراشها و إبراشها و خالها و ولدها و ابن خاله ولدها و ابن اخت ولدها — ردا المختار جلدل ثاني كتاب النكاف صفحه 443 - 444 - 445.


Article 378.

( Madness 378 ) — و لو أرضعت الكبيره ... ضربتها الصغرى ... في مدة الرضا ... حورما ابدا ان دخل بالدم ... ولا يجوز نفر الصغرى أثنا ... و ابنتها حينما من غيره ... ولا 서로 للكبرة ان لم تؤمر ... و للصغرى نفها ... و رفع الرضا به على الكبيره ... ان تعبد الفسان بأن تكون عائفة طائعة مستقيطة عادلة بالنكاف و بالإحرار و لم تقصد دفع جوع او هملا ولا — ردا المختار جلدل ثاني كتاب النكاف صفحه 444 - 445.


Article 379.

( Madness 379 ) — و ان ثبت عليه فرق بينهما والرضا حديثه ... وهي شبادة إعدادين أو عدل و مدانيين لكن لا تخط الفئرة إلا بتفريق الزائد ... ولا يمر ان لم يدخل ... و لودخل ... لياخذ الأول من مهر البشيل و المحمي لا النفقة و السكين ... — ردا المختار جلدل ثاني كتاب النكاف صفحه 445 - 446 - 447.


SECTION III.

الفصل الثالث في العضادة

Article 380.

( Madness 380 ) — تربية الولد تثبت للالم النسبية ... في حال قيام النكاف أو بعد الفئرة — والام احت بالولد — ردا المختار جلدل ثاني كتاب الطلال صفحه 687.

Article 381.

(مادّة 381) — والحاكمة الزائدة ولو موجبة كعملية لما لم يعقل فينا... أو ابن
ان يتعاطى أن يكلف الكفر فيديع منها وان لم يعقل فينا — [ردع المعتار، جلد ثاني، كتاب
الطلاق صفحة 692] -


Article 382.

(مادّة 382) — يشترط في الحكامة أن تكون حرة بالعلاقة العامة إمينة... لا يضيع
الولد عندما، بشفقها، من البأضج من منزليا كل وقت... قادرة... على العفاظ... ولم
تكون مرونة... بل فراق في ذلك... وان تتعثر من زوج اجنبي... ولم تمسك في بيت
المبسط للولد — [ردع المعتار، جلد ثاني، كتاب الطلاق صفحة 690-691] -


Article 383.

(مادّة 383) — والحاكمة يستحق حقها بتكا عر مجرمة أي الصغر... سواء
كان دخل بها أولا... فإذا تزوجته مشفقة... تنقلل الحكامة لسبي للإم في الاستحقاق
إذا كان مستحق للحكامة بقرب منه فلا لم يكن غيره وكان الولد ذكرًا بقية عند إمه... وتعود الحكامة بالقرعة الإبلة لزوال البائع — [ردع المعتار، جلد ثاني، كتاب التكاح
صفحة 693 - 695] -


Article 384.

(مادّة 384) — حق... الحكامة... من قبل إميها... اعتبارًا لقرب القرابة و
تقدير المعدل بالإمل على المدرطلق بالاب عند اتحاد مرتينما قريباً — [ردع المعتار، جلد ثاني
كتاب الطلاق صفحة 692] -

بعد الإم بأن مات... أو تزوجت بالاجنبي — أو لم تكن ابها للحكامة، فإم
وان على ثم ام الاب وأنك على... عند عدم إملية القرابين ثم... اخت الصغير... و
الاخت لأم تلي الاخت الشقيقة ثم لا لم... ثم الاخت لاب ثم بنية الاخت لأربين ثم لم
ثم... خالص الصغير كذلك ام لأربين ثم لم لم ثم لا أبت ثم بنية الاخت لأم لم ثم خالة
ثم العاب كذلك اي تقدم القرابة لأم وأم ثم لم لم ثم لا أبت ثم خالة الإب
كذلك ثم عملا السهبات و الآباء بين الحكامة — [ردع المعتار، جلد ثاني، كتاب النكاح
صفحة 692] -

Article 385.

( مادة 385 ) — ان لم يكن للصغير احده من معايرة النساء ... او كان لا اذة

سائر الحضانة ثم الصباح بترتب الأثر فيقدمت اللب ثم الحد ثم الخلق ثم لاب ثم

دنو الخلق ثم بنو الخ لا لاب لاب للام — فإن تساروا ، فاصعدم ثم

اورغم ثم اكترهم اشتر ... في العصبة انحن الدين حتى لو كان للصبي اليهودي اخوان

اصلها مسلم يدعون لليهودي ... لا للسلم — [رد المنتار جلد ثاني كتاب الطلاق

صفحة 692 - 693 ]


Article 386.

( مادة 386 ) — العصبة المستحق ان لم يستحق ... و ... للاعزة الفاسقة ...

ومعقوه وابن عم مستفأة وهو غير مأموم ... تسلم الامهم هذا بقيد ان الدير يدفع الى

ابن الام — لا تدفع إليه البيت ... ثم اذا لم يكن عصبة ذكر الإمام ... تدفعن لاب لا

بقي ان يذكروا أولا الحد لاب ... انها أولى من الخ لا لا الخال ثم لابه ثم للالم ثم


Article 387.

( مادة 387 ) — ولا تجبح من لبا الحضانة عليه ... اذا امتعت ... الا اذا

تعينت لبا ابن لم بأخذ دونه غيرها ... وان لا يكون للصغير دوم صبر مصمم فعندئذ

تعبر ... ولو وجد غيرها ... وامتعن من القبل ... جير الثام على الحضانة اذا لم يكن

لبا زوج — [ رد المنتار جلد ثاني كتاب الطلاق صفحة 689 - 690 ]


Article 388.

( مادة 388 ) — اجرة الحضانة ... وهي غير اجرة ارضاعة ونقشة ... مرونة

الحضانة في مال الحضانون للاة ولا الا ... يجب على الاب ... اجرة الرضاعة واجرة

الحضانة ونقشة الولد جميعا — [ رد المنتار جلد ثاني كتاب الطلاق صفحة 691 ]


Article 389.

( مادة 389 ) — اذا كانت الحضانة اما ... كانت مكرمة او مستردة لابا لم تستحق

اجرها ... على الحضانة ... فكلما غيرها فالظاهر — استحقاقها اجرة الحضانة ... مع
جبر ... لو كانت في كأك أو عدة رجل غير الأب ... إذا كان الأناك محضرا للصغير ...
وعن هذا كان الإمراء عدهم الفرقة بين معتقدة الجنوح والبلى - مثل أبو حفص عن لها
إحساس البرل وليست لها ملك مع البرل فقول على الإبرس كنها جمعه ... و كذا أن
إحساس الصغير إلى خادم بنام الإبره فيا مكلفة فيدرها فالظاهر استحقاقها إجرة
العهدان بالإوارد - [ رد الحكماء جلد ثاني كتاب الطلقة صفحة 990 - 991 ]


Article 390.

( مادة 935 ) - لو اتبت ان تزوي مبعانا والصلة ان الإبر معسر ... ولم يوجد
احد مثيرا ... ومجت نفقة البرل على العبد، إما تام تزوج على الإبر إذا أيسر - فإنه وجد
( مثير بالعهدان ) ... او كان الإبر معسر ولا صغير فالصغير مقدمة وان طالت
العهدان - كان الاب معسر وصغيره مال أو يكال للعهد اما أن تسكي مبعانا أو تدفع مبعانا
للعهدان ... ( صريح في أنه ينزع من الإبر والصلاة له وتعدها عقاء )
و كان الإبر معسر وصغيره مال فكدلك ... إن كان إجتنبا ينزع للج育儿 للعهدان باجرة
المثل ولو ما صغير - [ رد الحكماء جلد ثاني كتاب الطلقة صفحة 988 - 993 ]


Article 391.

( مادة 936 ) - والحالة ... احتج بالعهد حتى يستغني من النساء وقدر
بسيع و ... بالصغير ... قدر بقع ... ويجبر الإبر على إخذ البرل بعد استغفائه من الإبر ...
و إذا إبتنتا العلماء، ولم يوجد له عصبة ولا رفيق ... في أسح عند الحالة إلا أن يري
الناضج غيروه أولى له - [ رد الحكماء جلد ثاني كتاب الطلقة صفحة 994 - 995 ]
وأنا استغني العلم وسجلت الجارية فالعهدان أولى يقدم الإبر فألرتب ولا حق لا لابن العم
في حفالة الجارية - [ رد الحكماء جلد ثاني كتاب الطلقة صفحة 994 - 995 ]


Article 392.

( مادة 937 ) - ينفع الإبر من استغفائه من بلدها بالرضا ما بقيت حضانتها
فلأخذ المطلق ولهما من الشروبة جابر، ان يراق به ... إذا لم يك في من ينقل
الحق إليه بعدها إلا ان يعود حق الإبر - [ رد الحكماء جلد ثاني كتاب الطلقة صفحة
996 - 997 ]


Article 393.

( مادة 938 ) - ليس للمطلقة ... الخروج بالبرل من بلدها إلى أخرى ... قبل

[ انقضاء العدوى مطلق ]
ليس للمطالبة بانها بعد مدتها الخروج بالولد من بلدها إلى أخرى، بينما تقاوت...
ومن قرية إلى مرتبينها تقاوت ومن قرية إلى أخرى... إلا إذا كان ما انتقلت بينها وطناً وقد نكحها ثم وفي التقاليد من اليهود إلى القرية لا تمكن من ذلك ولوكانت القرية قريبة... إلا إذا كان وطناً وقد فقد عقد عليها في وطناها — [رداً للمتسار]
جلد ثاني كتاب الطلاق صفحة 697 - 697


ARTICLE 394.

( مادة 696) — هذا الحكم في العام... إنه غيرها... فلن تقترح عليه...
لا بابين للإب — [رداً للمتسار جلد ثاني كتاب الطلاق صفحة 697]


SECTION IV.

الفصل الرابع في النقطة الراجحة للإبقاء على الآباء

ARTICLE 395.

( مادة 695 ) — تجب النقطة باشاها (من الطعام والكمية وسائر العادات)...
الصور للفصل... الفقر الامم... يعم الأثري... إلى أن يراعي... يبلغ أحد الكسب...
لو كان ذكرنا... وينفق عليه من كسبه... فبصرف الأدرنة عجز إلا إذا كان لها زوج فنفظها عليه — [رداً للمتسار جلد ثاني كتاب الطلاق صفحة 727 - 728 - 729 - 729 - 729 - 729]
— البحر الراقي جلد رابع صفحة 218 — ونقطة الأثري وأبطالها مطلقاً على الآباء مال يتزاوج — [خواص المعمفي جلد ثاني كتاب الطلاق صفحة 178]
— ويجبر الكبار على نقطة وله المسلم — [خواص المعمفي جلد ثاني كتاب الطلاق صفحة 178]


ARTICLE 396.

( مادة 696 ) — تجب لولده الكبير العجز عن الكسب... و من به مرض مزمن... ينفق عليه الكسب... وإذا كان من إبقاء الكسر ولا يستحق الناس فهو عجز... كأنه يرى ونام ونامت بها زماناً تتجاوزا عن الكسب... فبصرف الأدرنة عجز إلا...
إذا كان لها زوج — [رداً للمتسار جلد ثاني كتاب الطلاق صفحة 729]

ARTICLE 397.

(مادة 7 م٣) — لا يشارك ... الأب ... أحد في ... نفقا طلغة ما لم يكن مسؤولا...

زمتما ... تلبثت باليد فنتجب على غيره بلا رجوع عليه — [ ردالمعتجر جلد ثاني]

كتاب الطلاق صفحه ۷۳۰ .


ARTICLE 398.

(مادة ۷۳۸) — نفقا الصفار والإناث المبعضات على الأب لا يشاركه في ذلك أحد

ول لا ينتفعRegex: (بقرة).حساس — [ ردالمعتجر جلد ثاني كتاب الطلاق صفحه ۷۳۸ - ۷۳۰]

فإن لم يف كسبه بعلاقتهما او لم يكتسب بعدم تسر الكسب أنف علىهمقرب...

ورفع على الأب إذا ايسر — [ ردالمعتجر جلد ثاني كتاب الطلاق صفحه ۷۳۸]


ARTICLE 399.

(مادة ۷۳۹) — الأب مفسر وام مسورة تؤمر الأم بالانفاق ... وهي أولى من الإجدد

الموسر ... حالاً أخرى بالتحصل من مائر الإقراض ... لكلها ناقرين وجدت ... أو الخلاف

والأمم مسور يعوض على نفقا الصغير ... ويكون ديناً أو لم تسر أنف عليهمقرب

ورفع على الأب إذا ايسر ... لركان مفسراً وامر الإقتراض غير بالإفتاق ... برجع سواء كان...

المطلق ... أما وجداأو غيرهما في ثبت الرفع على الأب — لم يكن الأب زمةاً —

[ ردالمعتجر جلد ثاني كتاب الطلاق صفحه ۷۳۸ - ۷۳۸ - ۷۲۹ - ۷۲۰]


ARTICLE 400.

(مادة ۷۴۰) — فإن كان مهم اب فالنفقة عليه ... وإلا فاما ان يكون ببعضهم

وارتشا وايضاعاً في القرب ... فإن نفاوا في karş ... ترجيح الورث ... نفي جدة وجد

لاب نجيب على الجد لاب ... واصوا في الروث ... يعتبر الإقراض جزءاً ... له ام وجد

لام تمهل الإم — لو كان كل الإسمر وابناء تلكول脑子里 فقى ام وجد لاب نجيب عليهمها

اثناما — [ ردالمعتجر جلد ثاني كتاب الطلاق صفحه ۷۳۷]


ARTICLE 401.

(مادة ۷۴۱) — الإسمر مع المعرفي ذا كان أحد المنفـين غيروارث اعتبر

الأسر وخذهم نرجحا للجزءية ... نفقم الأم فارس كان هو الورث لركان الورث
Article 402.

If a man is not known to be of the same race or of similar status... then he is not bound to testify against him...


Article 403.

If a man is not known to be of the same race or of similar status... then he is not bound to testify against him...


Article 404.

If a man is not known to be of the same race or of similar status... then he is not bound to testify against him...

Article 405.

(مادة 500م) - لو خاصمته الإم ... إن لا ينفظ أو أنه يقترر في نفظهم
فورها القاضي و إرها ب إذن الفاسد لها صيحا و صصاء ... ولا يدفع
إليهما جملة وأن شاء إمر غيرها ليتفنف عليهام - [رد المعتار جلد ثاني كتاب الطلاق
صفحة 769 - 770]

فإن لم تكن الإم نفظه يدفع إليها غيرها لينفظ على الولد - [نقول عالميكي جلد
ثاني كتاب الطلاق صفحة 177]


Article 406.

(مادة 501م) - و لن صالحت المرأة زوجها عن نفقة الأولاد ... صحيح ... فبعد ذلك...
أن كان ما وقع الصلح عليه أكثر من نفظه ... فإن كانت الزوايدة ندخل تحت
تفدير المقدرين في مقدار قابلهما فإنها تكون عفوا و إكاثر الزوايدة بحيث لا ندخل
تحت تفدير المقدرين فإنها نظر عنة و أن كان المصالح عليه أقل من نفظه فإن كان
لا يكفيهم يبلغ إلى مقدار قابلهما - [نقول عالميكي جلد ثاني كتاب الطلاق
صفحة 178]


Article 407.

(مادة 502م) - الرقبي القاضي ... بنفقة ... الصيغة ومضة مدة ... شهر
تأثر ... فلا تسقط نفظة البعض بها بنعية الدقة كالأزوة بطلاق مالر الإقرار و ...
أغري القاضي بنفظة على الإبل فتفاسد الإبل و تكريم بلا نفظة فاستدانت بامر القاضي
و نفظة علهم ترجم عليه بذلك فإن لم تستدنت بعد الفرض ... و ... لم ترجع حتى
مات لم تأخذه من ترهقه - [رد المعتار جلد ثاني كتاب الطلاق صفحة 178 - 566]

و إن كان القاضي بعد ما نفظ نفظة الأولاد إمرها بالإستدامة فاستدانت حتى بِثت
لها حق الrike على الإبل فلم الإبل قبل أن يؤذي لها هذه النفظة هل لها أن تأخذ من
ماله إن ترى ما لا ذكر في الإصل إن لها ذلك وهو الصحيح و اما إذا لم يرعاها بالإستدامة
CHAPTER III.

الباب الثالث في النفقة الواجبة لل يستطيع على الإبناء

Article 408.

パイrias9) — يعبر الولد الموسر على نفقة الأبوين البصرَين مثلاً، كما
أو زميين قدرت على الكسب أو لام يقدر — [ فتاوى عالم الغرب جلد ثاني كتاب الطلاق
صفحة 174 ]

وإجادة وجداثه ... الفقراء — [ رد المعتار جلد ثاني كتاب الطلاق صفحة 736 ]
ول لا يشارك الولد الموسر اهد في نفقة أبوه البصرَين — [ فتاوى عالم الغرب جلد
ثاني كتاب الطلاق صفحة 179 ]


Article 409.

パイrias9) — إن يكون بالاب علة لا يقدر على خدمة نفسه ويسئ إلى خادم
يقوم بتشاءه ويعدهم أن يعبر الابن على نفقة خادم الاب من كوكحة كانت أوامة — [ فتاوى عالم الغرب جلد ثاني كتاب الطلاق صفحة 174 ]
وإن كان للباب زوجتان أو أكثر وبضمن الابن لا نفقة واحدة ويدفعها إلى الاب — [ فتاوى عالم الغرب جلد ثاني كتاب الطلاق صفحة 179 ]


Article 410.

パイrias9) — الام المتزوجة فإن نفقتها على الابوين ... و ... الوجد لو كان
معصراً فإن الابن يطرع بان يقرضه ثم يرجع عليه إذا ايسه فإن زوج الاب – [ رد المعتار جلد ثاني كتاب الطلاق صفحة 735 ]


Article 411.

パイrias9) — لا يجب على الابين القدير نفقة والدهما القدير حكماً إلا أن كان والده
ومنا لا يقدر على العمل والابين عيشاً تعالى انا ببذاهما وينفق على الكل...

ولا يجدر بأن يعطى شيئاً علماً و الأم بذئلة الأب الزمن وأن الكوب
يدخل إبرهة في نفقة — رد المحكمة جلد ثاني كتاب الطلق صفحه 735


Article 412.

(مادة 319) — و تصرف ... على الغالب ... نفقة ... إبرهة ... الفقهين ... في
مال له من جنس حقهم ... عند أو على من يقرره عند الأمانة و على للذين — 
رد المحكمة جلد ثاني كتاب الطلق صفحه 736


Article 413.

(مادة 320) — ومصرها ... فقيه ... ليس له من نفقة على — 
رد المحكمة جلد ثالث دخل في الجزية صفحه 736


Article 414.

(مادة 321) — الامرأ في نفقة الوالدين ... القرب بعد الجزية دون البقرة ... 
تعتبر أول الجزية ... لا تمر ... ثم يقدم فيها الأقرب فالأقرب ولا ينظر إلى الأثر 
النفقة لإمراء ... بالسرية بين الابن والبنت — رد المحكمة جلد ثاني كتاب الطلق صفحه 735

CHAPTER IV.

الباب الرابع في نفقة ذوي الراحمن

Article 415.

( مادة 150 م) — نجب ... لكل ذي رحم معمر ... فنجر ... بعثت تعجل لها المدعية ... على من برزت أنه ما تقدر ارثهم منه ويجبر عليه ... كل ذي رحم معمر صغير أو إرث مطلق ... سواء ... كان ذكرًا ... صغيرًا ... أن كان الذكر بالنها ... لكن عاجزًا من الكسب ... أو إنثي ... كانت بالنها أو صغيرة متعبة أو زينة ... الصحيحة القادة على الكسب ... لا ... مكاسبة بالفعل — [ رد المحترر جلد ثاني كتاب الطلاق صفتة 739]...


Article 416.

( مادة 151 م) — ولا يجب اللفقة مع اختلاط الدين أو زوجة والأبوين والإجداد ونجلاء والود وولد الولد ولا يجب على النصريان نفقة أخيه المسلم ... ونجب على المسلم نفقة أخيه النصري ... ولا يجهل المسلم وذووته على نفقة والديه من أهل الحب وإن كانا متأمنين في دار الإسراء والمكسيكي العري الذي دخل عليهما بابا لا يجب على نفقة والديه إلا إذا كانا مسلمين اذ كانا من أهل النها ... [ فتوى عالمكير ]

جلد ثاني كتاب الطلاق صفتة 181


Article 417.

( مادة 152 م) — ولو كان رحما غير معمر ... أو معمر غير رحم ... أو رحما معمرًا لا من قراءة ... لا يجب اللفقة وأوكان له خال من قبل الإمام وابن عم لأب وام باللفقة على الغلال والبراثان لإب الاسم — [ فتاوى عالمكير ]

جلد ثاني كتاب الطلاق صفتة 180


Article 418.

( مادة 153 م) — وبراستها في البئرة ... و في إهلية الإرث ... رد القاضي ... وجبت ... على قدر الإرث ... مال يكون مسرا ... و ... الغلال و الاسم إذا اجتمع — [ رد المحترر جلد ثاني كتاب الطلاق صفتة 181 ]...

CHAPTER V.

الباب الخامس في ولاية الاب

Article 421.

(مادة 310) — و إذا بلغ الأب سناء صغيرًا، فتعدي وفاته ولاية الاب عليه في ماله ونفقة، و إذا بلغه أبا بلغ عاقلًا، جعله أبا عنه، يعود الولاية إلى الاب — [تناوؤ


Article 423.

(مادة 311) — و يرث الأب المال صغير، فحال الأب يرث أبًاوصار يرث الأب إذا ورث أو نشب وأم — فمثل القبيحة، وربما يكون له، فالسيدة من أصل لا هذا، في النقل، وشراء كبيعة، عن ج세ب بعض صغير، ورد الاقتراح، أهجة، معقدة، وأستور الحاصل، وليس، لل_squared، نقصة، بعد بلغه — [ردماختار جلد خامس كتاب الوضايا صفحة 3494، 3495]،


Article 424.

(مادة 310) — و إذا كان الأب فاستعا لم يجزي بعد المغارفرة، فليس بعد بلغه — [ردماختار جلد خامس كتاب الوضايا صفحة 3494، 3495]،

ARTICLE 425.
( مادة 425 ) — الصغير إذا ورث مال والباب مبذر ... لا تثبت الولاية للباب — [ النحراواتي جلد ثامن كتاب الروميا صفحه 576 ]
لوكان الأب حيا و خخف منه على مال وعادة الصغير فإن الفضي يخرج البال من بدء — [ فتاوى قاضي خان جلد رابع كتاب الروميا صفحه 64م ]

ARTICLE 426.
( مادة 426 ) — لو عارب ماله من ورثه لا يصير قابضًا لولده بمجرد البيع حتى لو هلك قبل البنوك من قيمة حققتة هلك على الوارث ولا لو شرئ مال ورثه لنفسه لا يبرأ عن النفس حتى ينصب الفاضي و كيلا لولده يأخذ الفضي ثم يبره على الأب — [ زيد المنصور ]
جلد خامس كتاب الروميا صفحه 564م - 949م ]

ARTICLE 427.
( مادة 427 ) — لو عارب مال الناسليتيم بدين نفسه ... يجوز ... و ... اذا رهن الأب مال ورثه الصغير بدين نفسه و قيمة الرهن أكثر من الدين و هلك الده عند المرزه كان على الأب مغار الدين لا قيمة الرهن — [ فتاوى قاضي خان جلد رابع كتاب الروميا صفحه 667م ]
و ... للباب رهن ماله عند ورثه الصغير ... و كلذ ... رهن مئه طففة عن نفسه — [ زيد المنصور ]
جلد خامس كتاب الروميا صفحه 88م ]

ARTICLE 428.
( مادة 428 ) — الأب والوصي سواء لا يجوز افراز كل منهما — [ حموي ]
كتاب الروميا صفحه 669 — فتاوى عالمي جلد سابع كتاب الروميا صفحه 6.]
و ليس للوصي أن يبيع مال البنيم بعون أو يبيع عون و كذلك الأب — [ فتاوى عالمي جلد سابع كتاب الروميا صفحه 694 ]
ليس له وللباب أن يستحقون مال الصغير ... و ... الأب بمزاولة الوصي لا بمزاولة الفاضي — [ النحراواتي جلد ثامن كتاب الروميا صفحه 589 ]
ARTICLE 430.

( مادة 530 ) - ولو اشترى لطفة ذرياء أو طعاماً وشهد أن يرجع به عليه يرجع لوله صالح ولا لا لوجرهما عليه - [ رداً على جملة نصه كتاب الروايا صفحه 505 ]


ARTICLE 433.

( مادة 333 ) - يبيع الأجل لا الإمام ولا ملكة أقاربه ولا القاري ... عرض ابنه الكبير الغائب ... لا عقاره فيبيع عقار مغير ومجنون ... للنفقة له ولزوجته والطفلة ... و ... الإمام أيضاً ولا في دين ... لاب على الأبناء الغائب مروي ... النفقة ... ولا يجوز له بيع زيادة على قدر حاجته نسحاً - [ رداً على جملة كتاب ثاني كتاب الطلاق صفحه 742 ]

BOOK V.

الكتاب الخامس في الهيئة والوصايا والوصي والمجرود المفقود

CHAPTER I.

الباب الأول في الهيئة

SECTION I.

الفصل الأول في أركان الهيئة وشروطها

ARTICLE 435.

（۰۵۴۴ م.） وتشعب بأبيحاب ... و قبريل ... كنز الدقائق كتاب الهيئة صفحة ۲۳۸

۳۰۳ - فتاوى عالميغيروي جلد خامس كتاب الهيئة صفحة ۲۳۸

آن القبض كالقبر في البيع - رد المجتهد جلد رابع كتاب الهيئة صفحة ۵۵۰ -

فتاوى عالميغيروي جلد خامس كتاب الهيئة صفحة ۲۳۸


ARTICLE 436.

（۰۵۴۴ م.） وشراط صحتها في الواجبات والواجبات والملك - الدراجت

جلد الثالث كتاب الهيئة صفحة ۲۳۸ - فتاوى عالميغيروي جلد خامس كتاب الهيئة


ARTICLE 437.

（۰۵۴۴ م.） - فتاوى الإم إما إلى إما الفرض فيها لمجرود الملك - البحر الراقي

جلد سبع كتاب الهيئة صفحة ۲۳۸
Article 438.

( مادة 438 ) — الباب ... تبليك البناء مجانا — [ قرة عيون الإخبار جلد ثاني
كتاب الباب صفحة 300 ]

و قال تعالى: يهب لمن يشاء إناا و يهب لمن يشاء الذكور — [ قرة عيون الإخبار
جلد ثاني كتاب الباب صفحة 308 ]


Article 439.

( مادة 439 ) — [ والعمري جائزة العمارة في حال حياته ولو رثاء من بعد
مرده — ومناه ابرجحل داره له عمرة و إذا مات يد بها علاه نصص التمليك و يبطل
الشرع، والباب لا يبطل بالضرورة القادمة — ] جوفرة نيرة جلد ثاني كتاب الباب صفحة
64 — نذاعي عالمگیری جلد خامس كتاب الباب صفحة 328

و الرقيق باطلة وهي ينقول داريه لك رقيق و معناه أن من فني لي و أن مت
نمي لك — ] نذاعي عالمگیری جلد خامس كتاب الباب صفحة 328 — نذاعي قاضيغان
جلد رابع كتاب الباب صفحة 376


SECTION II.

الفصل الثاني فيما تجوز هبته وما لانجوز

Article 440.

( مادة 440 ) — وهبة المشاع فيما لا يقسم جائزة — ] قدرى كتاب الباب صفحة
33 — نذاعي عالمگیری جلد خامس كتاب الباب صفحة 329

أي ليس من شأنه أن يقسم بمعنى أنه لا يبقى منطعاً به بعد القسمة إصلا... اولا
أي يبقى مثلما هي بعد القسمة عن جنس الاستئناف الذي كان قبل القسمة — ] قرة عيون
الإخير جلد ثاني كتاب الباب صفحة 329 — نذاعي عالمگیری جلد خامس كتاب الباب
 صفحة 339

Koodoori, p. 136; Fatawa-i-Alamgiri, Vol. 5, p. 229; Kurat-ul-
Article 441.


Article 442.


Article 443.

Article 444.

( مادة ۴۴۴ ) — وَهِبْ إِنْتَانَ دَاوَارًا — الإرادة بها ما يقسم - لواحد مص ... و بقلية —
وهو هبة واحدة من أثاث — غير مقيضين ... — هذا إذا لم يبين نصيب كل واحد منهما
اما إذا بين ... يجوز ان قضيه ... و ... الخلاق — الأثاثين فإناد ان لا فرق بين أي يكون
كبيرين أو صغيرين أو اخذهما كبيرا و الآخر صغيرا — [ قرة الإلخ الأثاثان جلد ثاني كتاب
اِلْبِهْة مَسْفَعَه ۵۰۰ — نقائٍ عالميقيضي جلد خامس كتاب البهجة صفحة ۵۳۰ --۴۳٩ ]

و لو قال وجدت منكما هذه الدار والمهوب لهما فهي فقيران صحت البهجة بالإجماع —
رد المختار جلد رابع كتاب البهجة صفحة ۵۵۵ — نقائٍ عالميقيضي جلد خامس كتاب
اِلْبِهْة مَسْفَعَه ۵۰۰ [ ۴۳۹ ]


Article 445.

( مادة ۴۴۵ ) — هبة الدين مم عن على الدين و ابراء ولا يشتم من غير قبول من
المجدين و يرد من برهان ... وهذا إذا لم يكن الدين بدل الصوم فاما إذا كان بدل الصوم
فابراً، رب الدين منه او وهدين منه فإناد ان يترقب على قبالة — [ نقائٍ عالميقيضي —]
جلد خامس كتاب البهجة صفحة ۵۳۰ [ ۴۴۶ ]

هيبة الدين مم عن على الدين و ابراء عنه يشتم من غير قبول إذا لم يجب انفسخ
عقد سلم او مص — [ الدر المختار جلد ثالث كتاب البهجة صفحة ۷۷ ]


Article 446.

( مادة ۴۴۶ ) — تحليك الدين مم عن على الدين باطل — لا في ذلك حواله
و وصية و إذا ... سلط البليك — غير المجدين على قبالة — اي الدين نصيب — [ حينئذ —
[ الدر المختار جلد ثالث كتاب البهجة صفحة ۵۵ — نقائٍ عالميقيضي — جلد خامس كتاب
اِلْبِهْة مَسْفَعَه ۵۰۰ [ ۴۴۷ ]


SECTION III.

الفصل الثالث فين يجوز له تبف البهجة

Article 447.

( مادة ۴۴۷ ) — و هبة مم عن ولاية على اطفال ... للطفال ... نب الجملة وهو
كل من يعوله ندخل اطفال و العلم عند علماء لى في علمهم تمثل بالعتقد — اي بالايحب
فقط ... ولا يقتصر إلى القاض لآ لآ هو الذي يقضي له نكال قضية قضية .. لو الموهوب
معتمدا وكان في يده أو يده .. وإذا في يده مستعرة لآ .. عاصبة أو عرينة ...
وحين يشترط فيه إن يكون محضرًا مستحقًا .. الظاهر نعم .. وقول أله على الطفل أخرج به
الولد الكبير فإن البينة لا تتم إلا يقضي و لا كان في عيلة ... [قرة عيون الأخبار جلد ثاني
كتاب البينة صفعة 439 - 440 - فتاوى عالميتي جلد خامس كتاب البينة صفعة
438 - 439]

238, 239.

Article 448.

( مادة 448 ) - وإن رهب له اجتنبي تتم بقية وليه .. وهو واحد ارعة الأب ثم
ومية ثم العدد ثم ودية وإن لم يكن في حجههم .. عند عدم تتم بقية من يرهك ...
و بقية لم يميزا .. ولو مع وجوه يده .. [ الادب المختار جلد ثالث كتاب البينة صفعة
3 - فتاوى عالميتي جلد خامس كتاب البينة صفعة 439 - 440 ]

239, 240.

Article 449.

( مادة 449 ) - ولو قضى زوج الصابرة - إذا البالغة تناقل قضية لها .. بعد الزناة ما
ربما لها سم قبيحة .. ولو بعضرة الأب .. وبلد أي الزناة - لا - بصح .. [ الادب المختار جلد ثالث كتاب البينة صفعة 439 - فتاوى عالميتي جلد
خامس كتاب البينة صفعة 439 - 440 ]

239, 241).

SECTION IV.

الفصل الرابع في الرجوع في البينة

Article 450.

( مادة 450 ) - مع الرجوع فيها .. مع انشفا مانه .. ولو مع انسقاط حبه من
الرجوع - [ الادب المختار جلد ثالث كتاب البينة صفعة 439 - فتاوى عالميتي جلد
خامس كتاب البينة صفعة 438 - 439 ]

ووضع الرجوع نفسه لا إلوا أيضا - [ قرة عيون الأخبار جلد ثاني كتاب البينة
صفعة 438 - فتاوى عالميتي جلد خامس كتاب البينة صفعة 438 ]

Articles 451, 452, 453, 454, 455, 456.

In Articles 451, 452, 453, 454, 455, 456, the author refers to the following texts:


Analyzing the texts mentioned, the author discusses various points of view and arguments presented in these works, indicating a methodical approach to the selection of quotes and references.
Article 460.

( مادة 460 م ) — ولا يجوز للإنسان أن يعرض إياها. وبذا، فإن ماله...


Article 461.

( مادة 461 م ) — لا يصح الروجوم ... بعد القضاء إذا وجب الفقيه — [ جوهرة نيرة ]

جلد ثاني كتاب الہبة صفحه 105 — نظار عالمگیري جلد خامس كتاب الہبة صفحه 238


Article 462.

( مادة 462 م ) — لا يصح الجواب إلا الترايض لها أو بحكم الجواب ... و إذا رد.

إحدهما ... كان نصها ... من الأصل وأعادة لملكة القدوم — فلو استمرها في قضاء
ولا رضاه كان عامبا حتى لو مات نسي يدك، بضم قيدها للهجوم له ... لا سأله رداءين
الهجوم بعد قضاء القاضي بصحة الروجوم فهي فائتة من تسليمها فباتطت لهما ضمها —

[ قرة عيون الإخبارجلد ثاني كتاب الہبة صفحه 238 — نظار عالمگیري جلد خامس
كتاب الہبة صفحه 235 - 236 ]


Article 463.

( مادة 463 م ) — وإذا وقعت الہبة ... شرط الوضوح المعين في حبة إبداع مسيّط
القاضي في الوضوح ويبطل — الوضوح. بالشيوخ. فيهما يسمع إياها — ( ما إذا
إتصل القاضي بالوضوح) فتفر بالعبيد وخيار الہبة وتنوّع بالشفقة ... ولا يؤدّي بها
الملك قبل القاضي وكلا الواقعة يمنع من السليم. وإذا لم يباكر إياها فقط نقل
الروجوم القاضي وحرة سواء — [ قرة عيون الإخبارجلد ثاني كتاب الہبة صفحه 238 —


Article 464.

( مادة 464 م ) — والصدقة كالهبة ... لا يتمّ غير مقبولة ... ولا رجوع فيها أو
على علني — [ الدراهماظن جلد ثالث كتاب الہبة صفحه 107 — نظار عالمگیري جلد
خامس كتاب الہبة صفحه 238 ]

CHAPTER IV.
الباب الرابع في الوصايا وفيه فصول

SECTION I.
الفصل الأول في حذ الوصايا وشرائطهم وممن هو أهل لها

Article 465.
(مادة 455) — الوصية ... تلقيك مسما ائت ما بعد الموت ... طريقة البتين ... 
البعر الزائر جلد ثامن كتاب الوصايا صفحة 459 [ .. ]

Article 466.
(مادة 466) — وشرائط كون الوصية ... أهلا للبتين ... قلم تجز من 
صغير ومجنون ومكاتب ... و ... الوصي له حيا ... تحققينا أو تقديرنا ... و 
الوصي به قابل للتمييز بعد موت الوصي — [ رد المعتتر جلد خامس كتاب الوصايا 
صفحة 454 [ .. ]
لا من صبي في ولم يميز إلا .. و كذا لا تم من مميز إلا في تجهيزه أو امتهانه ... 
إما .. مات بعد الإذراك أو إضافتها إليه ... فلا يملك تنفيذها أو تعليقا — [ رد المعتتر 
جلد خامس كتاب الوصايا صفحة 457-458 [ .. ]
 تصرف الصبي .. إن كان .. ضارا .. ضروا دينيا ... لا وإن ذنب به وإيمانا — 
[ رد المعتتر جلد خامس كتاب العجز صفحة 419 [ .. ]
اجازة عمرegg إلغة هذه الوصية ... المرافق ... مصْحول علي أنه ... كان بالغا 
لم يضع على بلونه زمام كثير — [ رد المعتتر جلد خامس كتاب الوصايا صفحة 458 .. [ .. ]
لا يجوز وصية الصبي ... و كذا إذا كان مراهقًا — [ فناري قاضي ذكر جلد رابع كتاب 
الوصايا صفحة 462 [ .. ]
Radd-ul-Muhtär, Vol. 5, pp. 119, 452, 457, 458; Fatawa-i-Kazi Khan, 
Vol. 4, p. 422.

Article 467.
(مادة 467) — الوصية (السفيه) — ووصايا في القرب .. وإجاب الخير جاز ذلك — 
[ هداية جلد ثالث كتاب العبادة صفحة 456 [ .. ]
Article 468.

( مادة 468 ) - الوجبة تقليك ... سواء كانت ذلك في الإعيان أو في المباني ...
[ البحر الرائق جلد ناس كتاب الروميا صحة 459 ]

Article 469.

( مادة 469 ) - و ( من ) شرائطها ... عدم استغراقه بالدين - [ رد المعتار ]
جلد خاس كتاب الروميا صحة 459 [ نورولوسي بجميع ماله وليس له راث نفظت الرصية ولا يستغلال إلى إجازة بيت المال ] [ نورواله عالكير جلد سابع كتاب الروميا صحة 459 ]

Article 470.

( مادة 470 ) - و ( من ) شرائطها ... عدم استغراقه - أي الموسي به بالدين ...
[ والا بابر الذرا - رد المعتار جلد خامس كتاب الروميا صحة 459 ]

Article 471.

( مادة 471 ) - ولا تجوز الرومية للولات ... إلا أن يجيءها الزرعة ... ( واما }
تعتبر الإجازة بعد موت الموسي - فنالى مراجعة حاشية قاضي غان جلد رابع كتاب }
الروميا صحة 459 [ نورولوسي بجميع ماله ليس للوات أن يرجع فيه ولواجز البعض ورد البعض يجوز على المجي بقدر حمله ]
[ وقلب في حق غيره - [ نورواله عالكير جلد سابع كتاب الروميا صحة 459 ] }
Fatawa-i-Sirajiah, Vol. 4, p. 423; Fatawa-i-Alamgiri, Vol. 7, p. 64.

Article 472.

( مادة 472 ) - ويجوز بالثلاثة للميزاني عند عدم باع وان لم يجيء الولات 
ذلك لا الزيادة عامة إلا أن يجيء زرعة بعد مدة ( وفي كل موضع يعتج إلى الزيادة }
أنا يجوز إذا كان المجي من هل الإجازة - نورواله عالكير جلد سابع كتاب الروميا }
[ صحة 459 ] - ولا تعتبر اجازتهم حال حياة - [ رد المعتار جلد خامس كتاب الروميا }
صحة 459 ]
ARTICLES 473, 474.

(383 - 384) — ولا لواحم والقاتلة (عامدا كان او خاطئا — فقاير عالبييري

جلد سابع كتاب الوصايا صفحه 46 —

مباشرة ... ( سواء اوصي له قبل ثم قنله او اوصي له بعد الجرح ) لا تسبا ...

لا بباجارة ورثة ... او يكون القاتل صبيا او مجنونا ... او لم يكن له وث سوا ...

اي سواء الموسي له القاتل والوارث حتى لواحمزوجته او هوي له ولم يكن ثمه واثر

آخر تعمه الوصية — طبطوري جلد رابع كتاب الوصايا صفحه 368 - 369


ARTICLE 475.

( مادة 456 ) — وصعت للعمل ... ان ولد العمل لاقل من ستة أشهر —

لوزوج الحامل حيا ولمينه — ( مثل الموت الطلق البالان ) وهي معةدة حديث الوصية

ثلاثين من سنين — ( اي من وقت الموت أو الطلق ) ... من وقتها اي. من وقت

الوصية — راحدعت إليه جلد خامس كتاب الوصايا صفحه 555 —

وإذا وضعت ... ولدا مينا فلا وصية له ... وان وادت اثنين ادحدهما حي وآخر

ميت فالموصية للحري مهما ... وان وادت اثنين قبيصن ثم ما ادي ادههما فان الوصية لبها

تصرف و حصة الذي ما منهما ميراث لورثته — [ فقاير عالبييري جلد سابع كتاب

الوصايا صفحه 65 ]


ARTICLE 476.

( مادة 457 ) — اوصي ... لبيت المقدص جاز ذلك و ينفق في عارة

بيت المقدص وفي ورثة ونحوه ... لا تتعم انه يفرق عن السجود —

[ راحدعت إليه جلد خامس كتاب الوصايا صفحه 565 ]

ولواحم ... للرجال ... ان كان هناك دليل يقر بها انها اردا ب هذه الوصية

المقدمين مشف الإيمان — [ فقاير عالبييري جلد سابع كتاب الوصايا صفحه 66 ]

ولواحم ... لعمال اليد ... ان كل ما ليس فيه تبليه لم يكد اعمال اليد

حتى يجوز صرفه الى عارة المسجد ورثة ... ولوحم ... في وجوه الاخير يصرف

الوقت ان تشاد الاصلح او علامة العلم — [ فقاير عالبييري جلد سابع كتاب الوصايا

صفحة 68 ]

Article 477.

( مادة 77 مم ) - وصنعت .. من السلام للذمٍ وبالعكس .. و .. المستأمن

كالذمي - [طهطاوي جلد رابع كتاب الوصايا صفعة 177 مم]

لو ارجعي له (إذا للمستأمن) السلام .. يقية جاز - [هديه جلد رابع كتاب الوصايا صفعة 177 مم]

و .. المستأمن إذا وصي للرسول والذمي يصي - [طهطاوي جلد رابع كتاب الوصايا صفعة 177 مم]

رمية الذمي .. تجوز ندم من غير منته - [رمالعتار جلد خامس كتاب الوصايا صفعة 168 مم]

صنعت .. رمية المستأمن لا وارث له .. نى دارا .. بكل مكان .. ولواعي بقصه مثلما فقد .. ورابعه لوئته - [رمالعتار جلد خامس كتاب الوصايا صفعة 168 مم]

ولا وصي الذمي باكثر من الثلث اول بعض ورثة لا يجوز اعتبار بالسلميين - [هديه جلد رابع كتاب الوصايا صفعة 177 مم]

ولا تجوز لوزره .. إلا أن يجيءها الوئته - [هديه جلد رابع كتاب الوصايا صفعة 177 مم]


Article 478.

( مادة 78 مم ) - ويشترط في الوصية القبل مراءا أو إلالة و ذلك بان يرسبت

الوصي على قبل الرجل و اللول - [قدويا عالميكبري جلد سابع كتاب الوصايا صفعة 262 مم]

قبول الوصية أما يكون بعد الموت فإن قبلا في حال حياة الوصي او ردها اذا ذلك

بالفعل ولا القبول بعد الموت - [قدويا عالميكبري جلد سابع كتاب الوصايا صفعة 262 مم]

نقل الوصية بالتقبيل بعد موت الوصي وان لم تقبض و ان ردها ارتفت - [طهطاوي جلد رابع كتاب الوصايا صفعة 181 مم]

فان لم يقبل بعد الموت فهي مؤقتة على قبلا ليست في ملك الوارث ولا في ملك

الوصي على حين لا يقبل اويموت - [رمالعتار جلد خامس كتاب الوصايا صفعة 258 مم]

إذا مات الوصي ثم هويل القبول .. ولا رد فنور امال الوصي به لوئته بالقبول .. لا يكون مؤقتاً بلا رد كقول داله - [رمالعتار جلد خامس كتاب الوصايا صفعة 260 مم]

ARTICLE 479.

(مادة 3479، 5/4) — و... للموضعي الرجوع عنها يقلص وتمزك... يزيل اسمه...

بان ينكر الموضعي نه... أو... يزيد في الموضعي بما يقع تسلمه إلا... وترفض...

يزيل ملكه... وكذا إذا خلت الفضاعة بحيث لا يمكن تبييزه... وكذا أن أمككن ولكن...

بغير — [رد المعتار جلد خامس كتاب الوضايا صفحه 458 - 459]


ARTICLE 480.

(مادة 3480، 5/4) — والرجوع عنها... يفعل يزيد... كأنما في الدار الموضي بها...

بخلاف تخصيصها وفدم بذاتها... و... لا يكون بحظرها راجما فيها — [طعمناري...

جلد رابع كتاب الوضايا صفحه 318 - 319]

Tuhtavi, Vol. 4, pp. 318, 319.

SECTION II.

الفصل الثاني في استفتياق النومي لهم

ARTICLE 482.

(مادة 3482، 5/4) — لوازمي الذي ينكر من اللث... لا يجوز استنارا بالمسلمين —

] هدائه جلد رابع كتاب الوضايا صفحه 467 [ ]

وتجوز الكلل للجديبي عند عدم البالغ، وإن لم يجز الزوال ذلك للازديادة...

عليه — [رد المعتار جلد خامس كتاب الوضايا صفحه 450]

الوصية بأكثر من اللث إذا لم تتجزئت بالكليه ( وإنبا المواد بطلان الزائد ) فنجمٌ...

كأنه يوصي بالله — [رد المعتار جلد خامس كتاب الوضايا صفحه 455]


ARTICLE 483.

(مادة 3483، 5/4) — ومن أوصى لرجل بثلاث ماله وأكثر بثلاث ماله ولم يجز الورثة...

فالث الثالث — إنه يفتيان اللث... وقد نصيراك على السبب الاستجواب فيديونا —

] هدائه جلد رابع كتاب الوضايا صفحه 458 [ ]

وان أوصى بثلاث ماله لزيادة وأكثر بسدس ماله فالث الثالث — إنها أثناا... فيثمان...

الث الثالث على مقدارهما — إن ومن أوصى لأدمعا بجميع ماله وأكثر بثلاث ماله ولم يجز...
ملاحظه: بينها نص قصير ولا يضير الموضوع لبعض من الذمل... لا في... المعاينة والساعة
و الدراهم المولة... غير المقيدة بذلك الفن تقول و نحوهما - [ مخطأً جلد رابع
كتاب الرواية صفحه 322 - 323 ]

Hidayah, Vol. 4, p. 646; Tahārī, Vol. 4, pp. 322, 323.

Article 484.
( مادة 484 ) - إذا أوصى... بجيز أو اسم - ( مثلها... النصب ) - من ماله
فاليلي إلى الورثة... إلا معجب يتنازل القليل والكثير... والورثة قائمون مقام الموسي -
فقال لهم أعرضا ما شئت... و... لو أوصى لرجل ينتمي من ما له ولا ورث له نقله النصف
إلا بيتة المال بجزيلة ابن نصار كان له ابنين - [ رد الاعتبار جلد خامس كتاب الرواية
صفحة 326 - 327 ]


Article 485.
( مادة 485 ) - إذا أوصى... بثلاذة يزيد و عمرو و... عمرو ميت لزيد كل الثلث
و الإصل أن البيت أو المبعد لم يستحق شيئا فلا يباذم غيره... أما إذا خرج الورث
بعد صحة الإيجاب يخرج مصمه... و إذا ورثت أحدهما قبل الموسي - أما بعد
قال الورثة تقدم مقامه... وإصله... لمن مقت دخل في الورثة ثم خرج لعقد شرط لا يجب
الزيادة في حق آخر .. قل لا يدخل في الورثة لعقد الإلهية كان ذلك آخر -
[ رد الاعتبار جلد خامس كتاب الرواية صفحة 329 - 330 ]

ألقى ذلك ماله لثلاث و فلاني بن عبد الله ابنه مت و هو مستوفين الموسي و فلان
بن عبد الله غني كان اقل من نصف الثلث - [ رد الاعتبار جلد خامس كتاب الرواية
صفحة 329 ]

ولقال بين زيد و عمرو و هو ميت لزيد نصفه - [ رد الاعتبار جلد خامس كتاب
الرواية صفحة 330 ]


Article 486.
( مادة 486 ) - إذا أوصى - بثلث دراهمه و غنيه أو ثلثه - متقارنة للمرتبة
كالدراهم... أو عبيدة إن تلك ثلثة فلاته جميع ما بقي في... الدراهم والغنم إن خرج
من تلك حتى جميع إقدام ماله... و ثلاثة الباقين - في الديان و العبد و إن خرج...
من ذلك كل المال وكلا كل منتحب الجنس و ضابطه ما يقسم جنزا وكذالك نقل
مختلف الجنس و ضابطه ما يقسم جنزا - [ رد الاعتبار جلد خامس كتاب الرواية
صفحة 329 - 330 ]

Article 487.

(مادة 487) — إذا أوصى بالف وله دين من جنس الفف، فإن خرج الفف من ثلاث الدعاية دفع إليه، وإذا فلز الدعاية يدفع له، وكلما خرج شيء من الدين دفع إليه ثلاث حتى يستوفي حقه — [رد المشاكل جدل خامس كتاب الوضاءة صفحه 465-469]


SECTION III.

الفصل الثالث في الرميا بالمنافظ

Article 488.

(مادة 488) — صحت الرميا بالسكون في الدار، والمصرية بلغة الدار — مدة معلومة، وبدا، وانطلق، على لإذاء، فإن أوصى بسنين ثلاث — [رد المشاكل]

جلد خامس كتاب الوضاءة صفحه 481-484.

فإن كان ملك الموسيقى له عاد — ابي الموسيقى إلى ورقة الموسيقى — [هديه مع حاشية جدل رابع كتاب الوضاءة صفحه 468]


Article 489.

(مادة 489) — كان خرجت رقبة الدار في الرميا بالسكون واللغة — من الثلاث سهبت إلى الموسيقى، إلا الخروج من الثلاث تقسم الدار الأثناز في مصلحة الرميا بالسكون، أو الرميا باللغة ثلاث تقسم الدار نفسها، أو الرميا تقسم — إذا تقسم التوصيلية، والألف، وليست الدار، إلا إذا لم يكن له مال غير الدار، وليست الدار بقدر ذلك — جميع الحال — [رد المشاكل جدل خامس كتاب الوضاءة صفحه 482-483]

وليس للورقة أن بياعوا ما في أيديهم من ثلاث الدار — [هديه جدل رابع كتاب الوضاءة صفحه 498]


Article 490.

(مادة 490) — وليس للموسيقى له لسكني أن يبيعوا الدار، ولا الموسيقى له باللغة — [رد المشاكل جدل خامس كتاب الوضاءة صفحه 482]

ARTICLES 491, 492.

( مادة 491 - 492 ) — وثمرة بستانه نبات و... فيما ثمرة له هذه الثمرة نباتر وان زاد ابدا له هذه الثمرة وما يستقبل كما في الرومية بستانه - فان له هذه وما يحدث ضم ابدا اولا - وان لم يكن فيه ايات البستان... ثمرة حزين... الورت... في الرومية باللغة في تناولها الثمرة المعدومة - [ رد المختار جلد خمس كتاب الوضايا

Radd-ul-Muhtár, Vol. 5, pp. 483, 484.

ARTICLE 493.

( مادة 493 ) — لا رواية ببغاء نغلاه... ارجل ولاحش رجتونا - ولم تذكر ولم تحمل فاللغة في مبتهج... والخراج وما فيه إصلاح البستان و القيام عليها على صاحب الرقة... فإن ذكرت فاللغة على صاحب اللغة... فإن حملت عامة ثم احالت نلم تحمل شيا فاللغة على صاحب اللغة - [ طحاوتي جلد ربع كتاب الوضايا

Tahtavi, Vol. 4, pp. 334, 335.

SECTION IV.

الفصل الرابع في تصنفات الريش

ARTICLES 494, 495.

( مادة 494 - 495 ) — يعتبر حال العقد في تصرف منجز... فان كان في الصحة نائس كل ماله... والمراد تصرف الذي هو إشاع ويبين فيه معنى التبرع... والإ مضاع إلى مرونة... من الثلاث وان كان في الصحة - [ طحاوتي جلد ربع كتاب الوضايا

Tahtavi, Vol. 4, p. 328.

ARTICLE 496.

( مادة 496 ) — معاذاته وهبة ووقفه وضمانه كل ذلك حكمة محكم وصلة فيعتبر من ذلك... و... المشابهة تقع في الأجازة والاستنجاز والمرور الشراء والتبيع و... مما ذكر... [ طحاوتي جلد ربع كتاب الوضايا صفحة 338

و ورض مب من ذلك المقصة - [ طحاوتي جلد ربع كتاب الوضايا صفحة 338

Tahtavi, Vol. 4, p. 328.

ARTICLE 497.

( مادة 497 ) — والعقد والملء و... السلسل إذا تناول ذلك ( أو التوالـ

سنة — رد المختار جلد خمس كتاب الوضايا صفحة 370 )
456

نقار بالحال لا يخفي من الموت، لكنهم من جميع الحال، واما في أول ما

إبادة اذا... صار ماحب الشراف... بخاف به البلاد (... يكون كذلك إذا كان بالحال

يزداد حاولا فقاعة... حالية هدایة جلد رابع كتاب الوضايا صفحه 477

نعتبر هزمه من النثبت - فتاوى عالمي ينظف سبع كتاب الوضايا صفحه 77

Radd-ul-Muhtâr, Vol. 5, p. 373; Hidayah, Vol 4, p. 657; Fatâwa-i-

Article 498.

(مادة 989) - اقتراه بدين... لغيروث نانذ من كل ماله... وان احاط
ذلك بالله... ولربى ذكراً لا اذا علمن تملكها في موضعه - [ رد المختار جلد
رابع كتاب الإفتارات صفحه 507]


Article 499.

(مادة 990) - وان اقتراه برض لربه... بعين او دين بطل... الا اين بصدقة
بقوة الورث... ولو كان - (لوصلية) ذلك اقتراه بقبض دينه... من ورثه و... من
كذيل ورثه... بغض الافتراه... اقتراه... باستبلاء الوديعة... المعرفة... اقتراه بقبض
ما كان عنده ودية او بقبض ما قضى الورث بالركابة من مدرنة - [ رد المختار جلد
رابع كتاب الإفتارات صفحه 509- 510]


Article 500.

(مادة 500) - نفوذ الإفتارات مما لا طال له مع الإفتارات لعدم ارتحال الا اذا صار
وانتا وقت الموت بحب جديد... نفوذ.locale الإفتارات مما ذوجها ص غاظة افتاره لانه
المحموم ببكره أو انا اذا زال حظبه بإسلامه أو نبوه اثناء بلا يرث، لا يبهم ارسه ببقبد
لا جديد - [ رد المختار جلد رابع كتاب الإفتارات صفحه 495]

يعتبر كونه وانتا أو غيروه عند الإفتارات حتى لو اقتراه بكره جاز وان صار وانتا
بعد ذلك لكن بشرو ان يكون ارتحاله بحسب حادث بعد الإفتارات كما لو اقتراه الإفتارات مما ذوجها
بغض ما اذا كان السبب فناما وان منع منه مانع ثم زال بعدة كما لواقف الإفتارات الكاثرة...
ثم اسلام... ادلب المختار جلد خامس كتاب الوضايا صفحه 506.


Article 501.

(مادة 501) - وواقرر ( اوارث) - رد المختار جلد ثاني كتاب الطلق صفحه 182
لهم طلقنا - فاننا. في مرنى مونه غالب من... الدين و (ما... إلخ)
بهم من الإثر - ردامعتار جلد ثاني تلبت الطلق صفحه 171 ( ... وهذا إذا
كانت في العدة وطلقة بسواها ... و ان طلقنا بالسواها فلبلها الميراث بالغا ما بلغ...
] ردامعتار جلد رابع كتاب الأقرار صفحه 511

_Radd-ul-Muhtār, Vol. 4, pp. 511, 571._

**Article 502.**

(مارحه 503) - والابوؤ، مديون وهو مدربون غير جائز... إن كان اجنببا و ان
كل ورثة فلا يجوز مطالا سواء كان الرجل مديونا أو لا ... و سواء كان من دين
له عليه إصالة أو تخالة - [ردامعتار جلد رابع كتاب الأقرار صفحه 508

_Radd-ul-Muhtār, Vol. 4, p. 508._

**Article 504.**

(مارحه 504) - ثم تقدم ديونة ... ثم ... تقدم ودائة ... ثم ... يقسم البائتي...
بين ورثته - [طبطاطي جلد رابع كتاب الأقرار صفحه 577 - 578 - 579 - 580 - 581]

و في الصحة (هو ما كان نابا بالبيئة مطلقا بالاقرار - طبطاطي جلد رابع
كتاب الأقرار صفحه 577)

و ما لزمه في مزجه بسبب عروى ... قدم على ما أقربه في مرنى مونه ولوا القرية
وديحة ... و السبب السفاح ... كتاوت مشاهد ... بهم المثل ... ويع مشاهد و
الاثان ... مشاهد - [ردامعتار جلد رابع كتاب الأقرار صفحه 577]

_Tahtavi, Vol. 4, pp. 367, 368, 369; Radd-ul-Muhtār, Vol. 4, p. 507._

**Article 505.**

(مارحه 505) - والمريض ليس لم يضقي دين بعض الفقراء دون بعض
ولو كان ذلك أعظم صبر ويفاء اجتر فلا يلزم ليما ... بل يشاركهم غرام الصمت -
لا ... إذا قضى ما استقر في مرضه أو نقص مت ما استرى فيه ... مثلاقية ... وقد
ثبت كل منهما بالله من ... بخلاف ... ما إذا لم بين حقين مات دن البائع إسيرة
للفراء ... إذا لم تكن الصماد الجدبة في ... يد البائع فإن كانت كان أولى - [ردامعتار
جلد رابع كتاب الأقرار صفحه 508 - 509]

_Radd-ul-Muhtār, Vol. 4, pp. 507, 508._
CHAPTER I.

الباب الثالث في الوضي وتصريته

SECTION I.

الفصل الأول في إقامة الوضي

Article 506.

(مادة 506) — وإذا أوصى الله فقبل قبل موته أو بعد، ثم رد، لم يخرج
لأن الوضي ما أوصى إلا إلى من دعته عليه من الإسعاف والإخلاء. فلو اعتذر القبل.
بعد الموت، فلا يقبل فلا يجعل فرضه وهو الوضي الذي اختاره — [البحر الرائق]
جلد خامس كتاب الوضايا صفحه 521

ليس للوضي اختر نفسه بعد القيوم ولا العبالة فيد شيان ... أحدثها ان
يجعله وصياً على أن يعزل نفسه مني شاه — [رد المختار جلد خامس كتاب الوضايا
صفحة 588]


Article 507.

(مادة 507) — أوصى إلى زيد اق جعله وصيا وقبل عنده، فكان رداً عنده
إي بعمله يرد و لا يصير الوضي — [رد المختار جلد خامس كتاب الوضايا
صفحة 587]


Article 508.

(مادة 508) — أوصى إلى زيد ... فرد ... بعمله يرد نفرا لا يصير
قبله ... إلا إذا قبل في وجه ثانية — [طعطاوي جلد رابع كتاب الوضايا صفحه 537]

Tahtavi, Vol. 4, p. 337.

Article 509.

(مادة 509) — فإن سكت الموسي اليد فمات صميا فلم يرد ولا القبل —
[رد المختار جلد خامس كتاب الوضايا صفحه 587]

(Article 510.

(مادة 510) — و القبول تارة يكون بالقبول و تارة بالفعل فالقبل بالفعل تنفيذ
في رصينة أو شرع للورث أو قضاء دين — البحرالواقف جلد ثامن كتاب الوضايا صفحه


(Article 511.

(مادة 511) — ولجمال رجال وقصي في نوع صار رمي في الأذاع كلها —
[ردارالبعتار جلد خامس كتاب الوضايا صفحه 527]


(Article 513.

(مادة 513) — ونحو ابي الطفل احق بالله من جده و إن لم يكن وصية فالله
ليس للجديد العقار و امرؤ الغداء و تنفيذ الوضايا بخلاف الوضايا فان له
ذلك — [ردارالبعتار جلد خامس كتاب الوضايا صفحه 525]


(Article 514.

(مادة 514) — اشتر المعنى الى شروط الهيئة فالآخر العبرة و الثاني الإسلام
و الثالث العدالة فلولي من ذكر ماج يتبدل غيره [البحرالواقف جلد ثامن كتاب الوضايا
صفحة 526]


(Article 515.

(مادة 515) — يصح اخراجه عنها و لوفي غيبته — [ردارالبعتار جلد خامس
كتاب الوضايا صفحه 528]

قوله يصح اخراجه أي بعد قوله قوله و لوفي غيبته ظاهره الله يفعل و ان لم يبلغه
النزل — [ردارالبعتار جلد خامس كتاب الوضايا صفحه 527]


(Article 516.

(مادة 516) — و لو كان قادر على التصرف امينا فيه فإن يبلغه
[فلم القدير جلد رابع كتاب الوضايا صفحه 526 — هدایه جلد رابع كتاب الوضايا
صفحة 527]
عجز من القيام بها حقيقة لا مجد اخباره ضم الفاظي إليه غيروه... ولوظفر للواقي عجز ابتدال عزو - [رداً على معاصر جلد خامس كتاب الروميا صفحه 488]

عجز فاقم غير ثم قال الأهل بعد ايام صرته قاموا على القيام بها قالوا هو وسي على حاله - [رداً على معاصر جلد خامس كتاب الروميا صفحه 488]

لو استكى الوردة أو بعضهم في الواقي لا ينبغي ان يعزله حتى يظهر له منه [خيانة - [رداً على معاصر جلد خامس كتاب الروميا صفحه 488]


Article 517.

( مادة 417 ) - الوردة في مثل الصغر للبل ثم وصية ثم وصية لو بعد فلما باب ولم يصر الوردة لأبي الاب ثم وصية ثم وصية فان لم يكن فلاقلج و منصره - [رداً على معاصر جلد خامس كتاب الروميا صفحه 490]

لو كان الاب مجزاً ملفاً مثل ابنه الفاظي بينصب ومية ينجمن مال اتين من بسه ول يغفظه - [تلطيف الفئر الجامعية جلد ثاني كتاب الروميا صفحه 491]

إذا غاب وبي البيت نيبم منفظة جاز للواقي ان ينصب ومية ويرتب عليه [الحكم المذكورة في وصي الفاظي - [تلقؤ الخديرة جلد ثاني كتاب الروميا صفحه 492]


Article 518.

( مادة 418 ) - بطل فعل احد الوصيين... إذا كانا وصيين من جهة البيت...

او قاني واحد - [رداً على معاصر جلد خامس كتاب الروميا صفحه 490]

قوله بطل فعل احد الوصيين إلا إذا اجاز جديد ماسبة فانه يجوز - [رداً على معاصر جلد خامس كتاب الروميا صفحه 490]

الابن كفنة وتعضع وحفران ونحله في حفنة وشراء حاجة الطفل والنهب له واعتقاد عبد معي ورودية وتفنيد وصية معيتيقين... وار المضروب ومشترى شراء فاسدا وقسمة كيل ووزن وطيب دين وقضاء دين بجنس حلف ويع ما يغناي ناقل وجميع امراء ضائعة [رداً على معاصر جلد خامس كتاب الروميا صفحه 490]

و لو رحب على الانتقادات أو الاكساب انبع نفسه - [رداً على معاصر جلد خامس كتاب الروميا صفحه 490]

Article 519.


Article 520.


SECTION II.

الفصل الثاني في تصنفات الوصي

Article 521.

(مئة و مئة) — قال الملأون من أصحابنا لا يجوز للرسوم بيع عقار الصغير إلا أن يكون على الرضا دين أو يرغب المشتري فيه بضعف البين أو يكون للصغير حجة إلى الناس — [الضر الاوقاف جلد ثانى كتاب الروميا صفحه 450 م]\\n
الرسوم يملك بيع عرض الصغير من غير حجة — [تنقيح الفتاوى العامة]\\nجلد ثانى كتاب الروميا صفحه 460 م\\nأو دين الربط (يبيع بقدر الدين على الرغب به — رد المعتمار جلد خامس كتاب الروميا صفحه 469 م) أو وصيته مرسلة لإقتنا لبا مما قد أو تكون هناك لا تزيد على مؤنتها أو خريف خبره أو نقضه أو كونه في يد متعلق — [رد المعتمار جلد خامس كتاب الروميا صفحه 494 م]\\nصرح في الفتاوية إنغلاق من المشتري أن بيعه والعمل هذه بالمكمل — [الفتاوى\\nالمخدرة جلد ثانى كتاب الروميا صفحه 517]
Article 522.

( مادة 522 ) - إذا لم يكن على البيت دين ولا رخصة فإن الورثة كبارا حضروا لا يبيع شيئا و لو غيبا حل بيع العروض فقط ... جاز بيعة - أي الرخصي على الكبار الغالي في غير العقارات لا للديين - [رد المختار جدل خامس كتاب الروميا صفحه 590].


Article 523.

( مادة 523 ) - إذا لم يكن على البيت دين ولا رخصة فإن ... البعض صغارا والبعض كبارا ... فعدهم يبيع نصيب الصغار و لرخص الديين الكبار إلا إذا كانوا غيابا فيبيع العروض و قولوا القبض - [رد المختار جدل خامس كتاب الروميا صفحه 590].


Article 524.

( مادة 524 ) - إذا كان على البيت دين او رخصي - بوصية ولم يقل الورثة الدينون ولم يدفعوا الورثة من مالهم فإن يبيع الورثة كلما كان الدين محظيا وبقدر الديين لم يعت ولم يدفع الورثة لمقدار الثلاث - [رد المختار جدل خامس كتاب الروميا صفحه 590].


Article 525.

( مادة 525 ) - أن صي الورثة يملك بيع الورثة لقضاء دين الورثة بضائط الورثات - [رد المختار جدل خامس كتاب الروميا صفحه 590].

ثم إن بيع الورثة مما يجوز لبيع الورثات و الديين على الصغار ولا للديين الذي على

الميت أو نحنفس و ماتين - [رد المختار جدل خامس كتاب الروميا صفحه 590].

ورفع العروض المجرمة إلى القاضي ليبيع لهم بقدر دينهم - وكذا الروميا لهم -

[رد المختار جدل خامس كتاب الروميا صفحه 597].

ARTICLE 526.

( مادة 526 ) — فانها لا يمكِّن بيع العقار مطلقًا ولا شراء غير طعام وقصوة —

[ رد المعتن جلد خامس كتاب الرسوما صفحه 596 ]

وأما وضعي الان والان وم سائر ذوي الايراح... ان ايم بيع تركه البيت لديه او وصيته ان لم يكن أحد مس تتقدم لبيع عقار السفاران ليس لهم إلا حفظ المال ولا الشراء للتجارة ولا التصرف فيما يملك الصغير من جهة موضعهم مطلقًا ... نعم ايم شراء ما لابد منه من الطعام và الكرة وبيع منقول ورثة القيمة من جهة الموصى — [ رد المعتن ]

جلد خامس كتاب الرسوما صفحه 797


ARTICLE 527.

( مادة 527 ) — ولا يبغي الوضي في ... مال القيمة لنفسه ... وجاز لو انجر من مال القيمة للقيمة — [ رد المعتن جلد خامس كتاب الرسوما صفحه 969 ]

الرسوم يبقي ما هو خير للقيمة — [*الفتاوى* الغريدة في حاشية تتقع الفتاوى] العادمية جلد ثاني كتاب الرسوما صفحه 373


ARTICLE 528.

( مادة 528 ) — الوضي يبقي مبيع عريض الصغير من غير حاجة ولا يبغي بيع...

[ مقارنات لا لحافة — تتقع الفتاوى العادمية جلد ثاني كتاب الرسوما صفحه 532 ]

يجوز بيع القيمة وشراء بالعين السيسي ولا يجوز بالفتح في الفتاوى العادمية جلد ثاني كتاب الرسوما صفحه 532

باع ( الوضي ) صان لا يقبل شهادته له أو من ورث البيت لا يجوز — [ رد المعتن ]

جلد خامس كتاب الرسوما صفحه 976

وليس الوضي المادي الشراء لنفسه ولا يبغي من لا يقبل شهادته له — [ رد المعتن ]

جلد خامس كتاب الرسوما صفحه 575


ARTICLE 529.

( مادة 529 ) — إذا باع الوضي شيئًا من تركه البيت باحة فان كان ذلك ضررا على القيمة بان يغشي عليه الجمعين ومنع عند حلول الاجل لا يجوز وإن لم يكن ضررا
على البنينم بأن كان لا يعوض عليه المقدم و الفنخ من حلول الأجل بيعوز - [فتاوي
عالمغيبري  جلد سابع ناقب الروميا صادفة 301 ]

Fatawa-i- Alamgiri, Vol. 7, p. 103.

Article 530.

( مادة 300 ) - و إن باع الرمي أو أشارًا مال البنينم من نفسه ... إن كان ممي
الاب جاز بشرط منفعة ظاهرة للصغير - [در المختار جلد خامس كتاب الروميا صادفة 310 ]

تفسير المنفعة الظاهرة ان يبع ما يساوي خمسة عشر بعشرة من الصغير أو يشترى
ما يساوي عشرة بخمسة عشر لنفسه من مال الصغير ... في غير العقار و إما في العقار
فلا شك أن الخليفة في الشروط النصيحة وفي البدع التوضيف - [ رد المختار جلد
خامس كتاب الروميا صادفة 314 ]

فإن كان ممي النافع لا يجوز ذلك مطلقًا - [ رد المختار جلد خامس كتاب
الروميا صادفة 314 ]


Article 531.

( مادة 301 ) - لو قضى الرمي دون نفسه مال البنينم لا يجوز ... الرمي إذا أراد
ان يقرن مال البنينم من غيره نايس له بذلك - [ فتاوى عالمغيبري جلد سابع كتاب
الروميا صادفة 314 ]

ولا يقضى الرمي مال البنينم من نفسه ولا من غيره - [ تفسير الفتاوى
العامة جلد ثاني كتاب الروميا صادفة 314 ]

لو رمى الرمي ... مال البنينم ... يجوز في الاستحصال - [ فتاوى عالمغيبري
جلد سابع كتاب الروميا صادفة 314 ]

للرفي رمى ماله عند ولده الصغير بدون له أي للصغير عليه أي على الأب ... يغلاق
الرمي فإنه لا يملك ذلك ... و كما عكسه فالاب رمي منقطع طفلا من نفسه ... بغلاق
الرمي - [ رد المختار جلد خامس كتاب الروميا صادفة 314 ]

إن للرمي ان يأخذ الكفيف بعد الفرقة - [ البصوص الرائق جلد ثاني كتاب الروميا
صادفة 314 ]


Article 532.

( مادة 302 ) - المصرح به في الكتاب جواز توكيلة ( أي الرمي) لكل ما يجوز
له - [ فتاوى عالمغيبري جلد ثاني كتاب الروميا صادفة 312 ]

Article 533.

(مادة 533) — الرفيق لا يملك إبراء غريمه الميت ولا يعطي منه شيء ولا يؤجله إذا لم يكن الدين واجباً بعقده فإن كان واجباً فبعد صلاة الغائب والتأجيل والإبراء...

و يكون ضاماً —财务管理规则规定应支付剩余资金


Article 534.

(مادة 534) — ولو صالح الرفيق واحداً عن دين الميت فإن كان للنبي بيئة على ذلك أو كان الغرض من قارين بالدين أو كان الثاني علم بذلك الحق لا يجوز صلاة الميت وإن لم يكن على الحق بيئة على دين على النبي أو على اللطيف فإن كان للمدعي بيئة على حق أو كان الثاني قضى لبعدها جاز صلاة الميت —财务管理规则规定应支付剩余资金


Article 535.

(مادة 535) — ولا يجوز إقراره دين عن النبي ولا شيء من تزكية الله

(لفنان — راب المعتق جلد خايس كتاب الرسام صفحه 100)

Radd-ul-Muhtār, Vol. 5, p. 496.

Article 536.

(مادة 536) — أحد الورثاء أقر بالدين بلزمه حميتة... إحد الورثاء لو اقتربت الرسوم يؤدي منه ما يWEST — [رد المعتق جلد رابع كتاب الاقترار صفحه 100]


Article 537.

(مادة 537) — للرسوم لا يطبق على الصغيرة في النفقه بل يوضع عليه بلا شرائط ولا يتقاضى بينة مال ويتزوج يفتتح إلى مال ويتفق بحسب حاله —

(رد المعتق جلد خايس كتاب الرسام صفحه 100)


Article 538.

(مادة 538) — الكافن الرفيق من المال نفسه على النبي والرسوم مال ثابت فهو مطاعن... إلا أن يشهد... أنه يرجع به عليه — [رد المعتق جلد خايس كتاب الرسام صفحه 100]
Article 539.

(مادة ٤٣٥) — وال وكان العلاج عن دين على البيت... فإن لم يكـن للمدعى بيئة على حق و 의견 أن قضى القاضي بذلك لا يجوز — [نثر ي على عالمه ي رادع مع كتاب الرومايا صفحه ٥٠٠]... ولا يجوز إقراره بدون دين على البيت... فلا يجوز للمقرر له أخذ حقه حتى يقيـم برهاناً ويعلق بيناً و يفسـر الوصي لو دفع إلى المقرر - [رداع المختار جلد خامس كتاب الرومايا صفحه ٩٠٠]...


Article 540.

(مادة ٤٣٦) — للوصي أن يأكل من مال الصبي بالمعروفة، إذا كان معناها البهجة — [نثر ي على عالمه ي رادع مع كتاب الرومايا صفحه ٥٠٠ - نثر ي على عالمه ي رادع مع كتاب الرومايا صفحه ٥٠٠]...


Article 541.

(مادة ٤٣٧) — كرالصدار والصبر والصمود يرفيق في البيت على دعاية... وهذا إذا أدعى نفقة المنزل او أزيد بيسور إلا فلا يصدق و يضـى ما لم يفسـر دعاية بتفسير محتلف... فيصبح بينة — [رداع المختار جلد خامس كتاب الرومايا صفحه ٥٠٠]...

و الإصل أن كل شيء كان مسلطة عليه فانه يصدق فيه — أي بيبينه إذا لم يكذب


Article 542.

(مادة ٤٣٨) — لومات الوصي محقلا ولا ضمان عليه — [حمو كتب الفراذ]

Hamavi, p. 469.
ARTICLES 543, 544.

( مادة سماوة - عاصم - ) — الأصل أن كل شيء كان مسلطا على ناحية نفسية —

إلى بعينية وما لا فلأ — رداً على جلده خامس كتاب الرضا صفحة 467.


ARTICLE 545.

( مادة 544 ) — تقول فانه يصدق فيه وإي بعينية إذا لم يكذبه الظاهر —

رادبجاج جلد خامس كتاب الرضا صفحة 468.


ARTICLE 546.

( مادة 545 ) — يقبل قول الرمي فيما يدعى — إلا في مسائل — ادعى قضاء

دين البيت — بغير أمر الماضي — ضمن ًً ألم يجد بقاء — بدئام قضاء من

مالة — أوان اليتيم استلهك — مال آخر ... وصورتها قال له إنك استلمت مال ناين

في صفري ناينه من مالك ( وضعية عنك — وضعية جلد راع كتاب الرضا —

صفحة 469 )

تكذيبه ... فالرسومي ضاح إلا أن يبرهن ... أو اءن له بنجارة فركه ديون فشعا

إذن أُوادع حجر ارتج في وقت لا يصل للزروة ... فلا بد له من البيعة — أو الإفلاط

على مسعور، فلا يقبل قبول الرمي ... ويكون ذكاما للملل ما لم يقيم البيئة —

ربانة زوج اليتيم إمرأة ودفع مهرا من مالة في ميئة ... أنتجرو رزق ثم ادعى أنه كان

ضافارة — رداً جلده خامس كتاب الرضا صفحه 500، 501.


ARTICLE 547.

( مادة 546 ) — ادرك اليتيم لم يجعل الرمي بدفع المال عبد بل يثنى ويجبره

بالشعر بعد الشغف فان وجد مصلحا دفعه ماله — وضعية جلد راع كتاب

المحج صفحه 485.

Tahtavi, Vol. 4, p. 85.

ARTICLE 548.

( مادة 547 ) — ان ظلوم زوال السمع فيما إذا كان قبل الجُمع — إما بعد

الحكم ... فقد تأكد وثبت ... فبعد الحج من الماضي ... الظاهر باца — رداً جلده

جلد خامس كتاب الحجة صفحه 100، 105.

CHAPTER IV.

اءابن الربع في الحجر والبراهمة والبلاغ

SECTION I.

الفصل الأول في الحجر

Article 553.

(مادة 551) — الحجر... سبعة صغر و جنون يعم... المعنون... و... يعبر

بالسعدة والغفلة... والدين... [ردد المختار جلد خامس كتاب الحجر صفحة 97]

ARTICLE 554.

( مادة 469 ) — الحجج... هو نوع عن النصين قوله... بصغر... وجماع...
فلما تقدم صبي... ولا تقدم الحجج المغول بعال... و ان كان بين نارة
و يقنن أخرى نبر في حال اناقته كالعاقل - [ البعد - راقص جلد ثامن باب الحجج

Bahrul-Rayek, Vol. 8, pp. 88, 89.

ARTICLES 555, 556, 557.

( مادة 555 - 557 ) — تصرف الصبي والمعنوي الذي يقل - ( صفة
لكل من الصبي وال муته )... ان كان تاما معضا... صلى الله عليه... وان ذكر
كل وجه - رد المعتنر جلد ثامن كتاب الحجج صفاه 48

لا وان انن بين وليما وما ترد... بين نفسه وضرر... تعرف على النائي -
[ طختاوي جلد رابع كتاب الحجج صفاه 47 ]

اجاز ولاه اورد - [ رد المعتنر جلد ثامن كتاب الحجج صفاه 49 ]

ARTICLE 558.

( مادة 558 ) — فلما ابن يوم انقلب على قاررأة عيسى مثل فكروا يعـب
الضلايل عليه في الجدل - [ رد المعتنر جلد ثامن كتاب الحجج صفاه 49 ]
و المعنوى والصبي - [ البعد الرائق جلد ثامن باب الحجج صفاه 49 ]

ARTICLE 559.

( مادة 599 ) — الصبي الحجج مواخذ بالعلاقة ( و المعنوى والصبي — البعد
الراقي جلد ثامن باب الحجج صفاه 49)

فيضي... و اذا قنل نادمة على عائئته... ( ولايس التقيد بالحجج في هذه
الحثاريا حتى لا يكون ماجنا له... فالحكم كذلك ) - الا في مسائل او اتفام ما اقترضه
وما اورد عنه بل انن ولد - ( فقد ابعد الين انن انه ماجنا له ولد في الحد الوديعة
يضي... والى أولى حذف قوله بل انن ولد ويكون قرئ بعد بل انن ودعع الى المسائل
الترع ) وما ابناه وما يبع ممن بل انن - [ طختاوي جاد رابع كتاب الحجج صفاه

Bahrul-Rayek, Vol. 8, p. 89; Tahtavi, Vol. 4, pp. 82, 83.
Articles 560, 561.

(مادة 560 - 561) و ... ينجز من الحجر بالله ... بقضاء القاضي ... تكون
في احكامه كczęśir (أي يقث - رد المعتنار جلده خامس باب الحجّر صفحه 100)
ثم هذا ... في نصوص تحدي الفخ وبيطلي الهبل واما رياضتاه لا بيطلي الهبل فلا ينجز عليه ... فاذًا قال الافي كناج وغالق ... وزوال ولاية أبيه وجدته وفي
صفة أقراة ... علی نفسه بوجّب القصاص في النفس أو فيها دونها ... وفي النافاق ...
على ... من نجب عليه نفقته ... و في صحة وعذاء بالقرب من الذل ( يعني إذا كان
له ورث) - [ رد المعتنار جلده خامس باب الحجّر صفحه 2 - طبطاوي جلدت
رابع كتاب الحجر صفحه 58 - 59 ]

Article 562.

(مادة 562) - ينجز مفت ماجر يعلم العبید البايلة - و ... الذي يقت
عن جبل ... وطبيب جاهل وعكر مفس ... والحق بهذه ... الحكير - [رد المعتنار
جلد خامس كتاب الحجر صفحه 10 ]

Article 563.

(مادة 563) - لا باس ... ان ينجز ابن شیطا من صالح و يأذن له بالتجارة ...
و الواجب على الرزق ان لا ينجز ابن المال إلا بعد الاختيار - [رد المعتنار جلده خامس
 كتاب الحجر صفحه 100 - 103 ]
و الشرط لصحة الإذن ان يقتلي ابن بالملك ... و الأشرة جالبا له ... و يعرف
العدين البسيط من الفاحش وهو ظاهر - [رد المعتنار جلده خامس كتاب الحجر
صفحة 119 - 130 ]
Radd-ul-Muhtār, Vol. 5, pp. 102, 103, 119, 120.

Article 564.

(مادة 564) - فلدنم مطلقا ... مع كل تجارة منه ... فبيع و شرتو ولو
بغين فاحش ... و بيك يرجم و نبره و بغير ... ويصلح ... يأخذ الأرض اجارة
وساقة و مرازة ... و يجوز ... ويقر بويعة ... و دبى ... ويحل من البن بيب
... و يعى ويحل ... ولا ينجز إلا بابن ... ولا يقير ولا يب ... ولا يتفاؤل ...
... عنصي ... كعید ماءر في كل احكامه ... ان الولي لا ينجز من التصرف في
الفصل الثاني في سلسلة العلوم والمعرفة والبلاغة

**Article 565.**

(مادة 565) — و المعلومة ... الحق بالعلم حتى يستغني عن الناء وقدر

سبيع — [رد المعتار جلد ثاني كتاب الطباقة صفحة 111] و... بالجازية حتى بعثت حافلة البكتيريا (و قد بعث) — [رد المعتار جلد ثاني كتاب الطباقة صفحة 111]

و ادنى صدقة له أثبتها عشرة سنة ولها تسع مسلين ... فان رافعاً بالغا هذه السين...

لغ — [رد المعتار جلد خامس كتاب الحجر صادفة 110]


**Article 566.**

(مادة 566) — بلغ العلم بالاحتلام والإحذاء والأنزل ... والجازية بالاحتلام والعديد والصيحة ... فأنا لم يوجد فيما شيء ينفي يمكن لكل منهما خمس عشرة سنة — [رد المعتار جلد خامس كتاب الحجر صادفة 111]

_Radd-ul-Muhtār, Vol. 5, p. 105._

**Article 567.**

(مادة 567) — ولا تجرب الدالة — ولا الحشر البالغ ... على النكاح لإنقاط

الولاية بالبلاغ — [رد المعتار جلد ثاني كتاب النكاح صادفة 333]

لولا الصغير والصغيرة أن ينفكها وأنا لم يرضي بذلك ... المعترة والمتعلقة و المجتهد والمجتهدة كالتصرف والصغرية — [نافذة مغليزية جلد ثاني باب الولى

صفحة 12] و ... إذا بلغ ... منعاً قبل أن ينكشف حاله ويعلم رشدة وصلاحيته بالانحراف...

و الراجح ... إن لا يدنى إليه المال إلا بعد اختبار — [رد المعتار جلد خامس كتاب

الحجر صادفة 111]

ARTICLES 568, 569.

( صفحة 472 ) — ولا خيار للولد ... أي إذا بلغ السن الذي يذم من الام يأخذها الاب ولا خيار الصغير ... ذكرва كان واواني ... و هذا قبل البلوغ اما بعده في خيئر بين الابه والام ارادة الابه فله ذلك ... ثم الام إذا بلغ ظهرا فله ان يفرض إلا ان يكون مفسدا مثيرا عليه — [ رابط المحتار جلد ثاني كتاب الطلاق صفحه 695 - 696 ]


Article 570.

( صفحة 470 ) — بلغت البقرة مبلغ السناء ان بكرة إذا بلغها الأبد إلى نفسه إلا إذا دخلت في الابه واجتمع لها رأي فأحسن حيث احتجت ... و ان ثوبًا لا يضمنها إلا إذا لم تكن مبينة على نفسها فللاب ... ولاية الاب جديء ... و الجدي دونة الاب ... فيما ذكر ... من إحكام البكر والثوب — [ رابط المحتار جلد ثاني كتاب الطلاق صفحه 695 - 696 ]


CHAPTER V.

الفصل الخامس في إحكام البقون

Article 571.


Article 572.

( صفحة 472 ) — لو كان له وکيل له حقيق ماله ... على ما إذا رأى المصحة في ذلك ... ولا يعزل بفقد المؤملك ... و ... ليس للرزة ... نزع مال المفقود ... ادعا نفسه ... ليس لإهال بيت المال نزعه من بد من بيدة ... إنه فنذره زهاء — وان كان المفقود لا وارث له الا بيت المال ... فلو له وکيل فله حقيق ماله لا تعمر داره ... عند الحافة ... الا بان الراكم — [ Radd-ul-Muhtär, جلد ثالث كتاب المفقود صفحه 358 ]

Article 573.

(مادة 374) — ينصب القاضي ... وكيل إذا لم يكن له وكيل ... أخذ حقه...
كتاب المفقود صفعة 358

Article 574.

(مادة 375) — للقاضي بيع مال المفقود ... من المال ... والعقار ... إذا خشى عليه الفساد ... يحصف ثمنه ... فإن ظهَر حيا فله الدين ... أو إلى من بره ... بيوته ... ولا يبيع القاضي ما لا يخفق نفسه في نفسه ولا في غيرها — [رد المختار]
جلد ثالث كتاب المفقود صفعة 359 - 361

Article 575.

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