

# Hanbali Fiqh: Book of Divorce

Explanatory Notes on *Akhsar al-Mukhtasaraat* Based on Lectures of  
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- I. It is **disliked** to do **without** need
- II. If there is a **need**, then it is **permitted**
- III. It is **recommended** in the following cases:
  - A. If there is some sort of **harm** in the relationship if it were to continue
    1. It could be **physical** or **psychological** harm
  - B. She does **not** pray, does **not** abide by obligatory Islamic laws, does **not** keep chaste, dresses **inappropriately** around other men, etc.
- IV. It can **only** validly be given through a **husband** even if he is **mumayyaz** (at least 7 years of age until puberty)
  - A. It is **not** valid if he is **less** than *mumayyaz* or **not** sane
  - B. What if the **husband** was **drunk** when he gave the divorce, does it **count**?
    1. If he was **not** aware of what he was drinking, then it does **not** count
    2. If he **was** aware of what he was drinking, then it **does** count
- V. Divorce does **not** count in the following cases:
  - A. One who **loses** his **sanity** due to a **valid** excuse
    1. Ex: he gets drunk unintentionally by drinking something he did not realize was an intoxicant or temporarily loses his sanity due to a mental illness
  - B. One who is **below** the age of *mumayyaz*
  - C. One who is **forced**
    1. Ex: someone points a gun at the person and asks him to divorce his wife
  - D. One who is **threatened** by someone **able** to carry out his threat
    1. Ex: A dangerous criminal says, "If you don't divorce your wife, I'll break your bones!"
    2. This means if he was threatened by someone **unable** to carry out his threat, then the divorce **would** count
    3. If the threat was for **one divorce** but he gives **two divorces**, then the first would **not** count but the second **would** be counted. This is because the second one is seen to be given by **choice** and **not** required by the threat
- VI. Whoever can **validly** divorce his wife can also **appoint** someone else to do it on his behalf
  - A. This means he must be at least **7 years old** and **sane** to appoint someone else on his behalf
  - B. Ex: A man says to his friend, "I appoint you as my representative to divorce my wife on my behalf."
  - C. Unless the **husband** puts a **time limit** on the representation
    1. Ex: A man says, "I appoint you to be able to divorce my wife within the next 3 months." After the 3 months, the **representative** would **not** be able to do so
  - D. The **representative** should be sane, pubescent, and mature (*rashid*)
  - E. The husband can even **appoint** his **own wife** to divorce **herself**
    1. Ex: A man says to his wife, "I appoint you to be able to divorce yourself," and then she divorces herself, it would count
    2. The husband can even **appoint** one wife to **give** a divorce to **another**
- VII. Sunnah divorce vs innovative divorce
  - A. They both **count** when given, however, the **innovative** one incurs a **sin**, thus, is **prohibited**

B. **Sunnah** divorce consists of the following **characteristics**:

1. It is issued only **once** in **one sitting**
  - a) If it is issued **twice** in one sitting, then it is considered a **disliked** divorce
  - b) If it is issued **thrice** in one sitting, then it is considered a **prohibited** divorce
    - (1) This one is considered an **innovative** divorce
2. It is issued in a state of **purity**
  - a) Meaning the wife is **not** in the state of **menses**
  - b) If he gave her a divorce while she was in the state of menses, then it would be considered an **innovative** divorce
3. It is issued when he has **not** had **intercourse** with her since she became **pure** from her **menses**
  - a) If he did have intercourse with her since she became pure from her menses and issued a divorce, then it would be considered an **innovative** divorce

C. It is **sunnah** to take her **back** if it was an **innovative** divorce and **wait** until all the conditions apply for a sunnah divorce to take place

VIII. It counts as three divorces in one sitting no matter how he says it

IX. **Divorce** given in a state of **anger** falls into one of **three** categories:

A. **Early state** - when the husband's anger is just **building up** but has **not** yet reached its peak

1. The divorce **counts** according to all scholars

B. **Middle state** - when the husband is much **more** angrier than the previous state but **still** able to control himself and is **aware** of what he's saying

1. The divorce **counts** according to the **majority**
2. Ibn Taymiyyah opined that it does **not** count

C. **High state** - when the husband **completely** loses it due to his high state of anger and is **not** aware of what he is saying

1. The divorce does **not** count according to the **majority**. He is treated like the one who **loses** his **sanity**

X. A divorce is **neither** sunnah nor innovative in the following cases but considered **permissible** and can be given at **any** time:

A. While the wife is **pregnant**

1. After the divorce, her waiting period **ends** as soon as she gives **birth**

B. The wife is **below** the age of **puberty**

1. Because she does **not** go through menses

C. A wife who has reached **menopause**

1. Because she does **not** go through menses

D. The wife with whom he has **never** had **intercourse**

1. **Even** if he gave the divorce **while** she was in her **menses**
2. In such a case, there is **not** even a waiting period after the divorce

XI. The divorce **occurs** and is **counted** with the following **phrases**:

A. He **explicitly** uses a **phrase** that can have **no meaning** other than divorce **regardless** of his **intention**

1. Ex: "I divorce you!"
2. The word '**divorce**' or any of its **derivatives** are considered **explicit** expressions for divorce as well
  - a) Ex: "You are divorced!", "I'm divorcing you!", "We're divorced!", "I divorce my wife", etc.
  - b) The following phrases are **exceptions** to this rule, therefore, using them will **not** be counted as divorce:
    - (1) Command verb
      - (a) Ex: If he says to her, "Divorce me!"
    - (2) Present tense verb
      - (a) Ex: If he says to her, "You are divorcing!" or "We are divorcing!"
    - (3) He uses the word 'divorce' in Arabic as a *ismul Fa'il* (active participle)
      - (a) Ex: If he says to her, "You divorcer!"

B. If a phrase can have **multiple meanings**, then it would **only** count if he **intended** divorce by the statement

1. Ex: "Get out of my house!", "Go to your parents!", etc.

XII. The following **statements** are considered **dhihaar** even if he **intended** divorce:

1. "You are forbidden to me!"
2. "You are like the back of my mother!"
3. "What Allah made permissible for me (i.e. intercourse), I now consider forbidden!"

B. **Dhihaar** has **separate** rules that will be discussed later below in a **different** chapter *insha'Allah*

C. If he said to his wife, "You are like blood/dead flesh to me!"

1. If he intended **divorce**, then it **counts** as divorce
2. If he intended **dhihaar** or did **not** intend **anything**, then it is **considered dhihaar**
3. If he intended an **oath** by it, then it is **considered** an oath

XIII. If the husband said, "I divorced my wife yesterday", however, he is **lying** and did **not** do that:

A. If the case is **not** taken to a **Muslim judge**, then it does **not** count as divorce

1. Ex: A man says to his friend **lyingly**, "I divorced my wife yesterday", then goes home and lives his life normally like nothing happened. In this case, the divorce does **not** count because it **never** happened

B. If the case is **taken** to a **Muslim judge**, then he will rule based on the **apparent** and **consider** it a divorce

1. This is because there is **no way** to know whether he was lying or not. We can only **judge** by the **apparent** phrase. Only Allah knows whether he was lying or not. The issue deals with the **rights of others** (i.e. wife) which must be **protected**
2. Ex: A man says to his friend **lyingly**, "I divorced my wife yesterday", then this information reaches his wife. She takes the case to a **Muslim judge**. In this case, the Muslim judge will go by the **apparent**, count it as a divorce, and **rule** accordingly. He will **not** accept the husband's claim that he was lying because he can **only** go by the **apparent**

- XIV. If a husband is **free** or a **partially owned** slave, then he has **three** divorces. After that, he can **no longer** remain with his wife
- A. If he is a **slave**, then he has **two** divorces. After that, he can **no longer** remain with his wife
- XV. It is **valid** to make **exceptions** in divorce with only **half** or **less** than it
- A. Ex 1: A man with **four wives** says, "I divorce all my wives **except** one" or "I divorce all my wives **except** two", etc.
    1. These are **valid** because the **exceptions** are for **half** or **less**
  - B. Ex: 2: A man says to his wife, "You are divorced thrice **except** one". This will cause her to be divorced **twice**
    1. This is **valid** because the **exception** is for **less** than half
  - C. Exceptions **cannot** be **more** than half. They **must** be **half** or **less** than it
    1. Ex: A man says to his wife, "I divorce you thrice **except** twice"
      - a) This exception is **invalid** because it is for **more** than half. This will count as three divorces and **not** one
    2. Ex 2: A man with **three wives** says, "All my wives are divorced **except** two"
      - a) This exception is **invalid** so all three of his wives will **become** divorced
  - D. Conditions
    1. The **exception** should **not** exceed **half**
    2. Words of **exception** should be **spoken** out loud and it should **not** be something in the **heart** only
    3. The **exception** should be said in **one sitting** and **not** delayed. What constitutes one sitting is based on **custom**
      - a) Ex: A man says to his wife, "I divorce you thrice," then leaves the room. Then after 10 minutes returns and says, "Except one"
        - (1) This exception would be **invalid**
    4. The **intention** for the **exception** should **precede** the statement
      - a) Meaning, he should already have the **intention** for the exception **before** he says it
  - E. It is **valid** to **exclude** wives with one's **heart alone** but **not** divorces
    1. Ex 1: A man with four wives says, "I divorce my wives", but he **intends** in his **heart** that one of them is **not** included
      - a) This is **valid** because the word "wives" can mean two, three, or four. The phrase **allows** such a **possibility**
    2. Ex 2: A man says to his wife, "I divorce you thrice", but he **intends** in his heart "except one"
      - a) This is **invalid** because the **internal exception** does **not** work for giving divorces. The **apparent phrase** for it does **not** allow such a **possibility**
- XVI. If he said to her, "You're divorced **before** my death!"
- A. The divorce will happen **immediately** because the "before" **begins** in that moment
- XVII. If he said to her, "You're divorced **with/after** my death!"
- A. It will **not** count as divorce
  - B. If he divorced her in his **final illness**, then the same rule will apply

1. Because there is a **suspicion** now that he is **only** doing so to cut her out of inheritance
- XVIII. If he said to her, "You're divorced this month/day/year!"
- A. The divorce will happen **immediately**
  - B. If he said that he **intended** in his **heart** to be at the **end** of these times, then it will be **accepted** and the divorce will occur at the **sunset** of the **specified time**
    1. This is because the phrase **allows** the **possibility** of such a meaning
- XIX. If he said to her, "You're divorced tomorrow/Saturday!"
- A. The divorce will **happen** at the **sunrise** of the **specified day**
  - B. If he said that he **intended** in his **heart** to be during the **end** of those times, it will **not** be accepted
- XX. If he said to her, "When **a year** has passed, you are divorced!"
- A. She will be divorced in **12 months** after that statement
  - B. If he said to her, "When **the year** has passed, you are divorced!"
    1. She will be **divorced** as soon as the **current year ends**

## Conditional Divorces

- I. Whoever puts a condition on a divorce, it will **not** occur until the **condition** is **fulfilled**
  - A. A man says to his wife, "When the month of Muharram comes, you are divorced!"
    1. The divorce will **not** occur until Muharram arrives
  - B. He **cannot** take it back now **nor** cancel it because it relates to the **future**
  - C. If he did **not** verbalize the **condition** in the divorce but merely **claims** it, then it will **not** be accepted and the condition is **not** valid. We go by the **apparent**
    1. Ex: A man says to his wife, "You are divorced!" However, he later **claims** to the Muslim judge that in his **heart** he **intended** when the month of Muharram comes. In this case, the Muslim judge will **not** accept his conditional claim
    2. If there is some sort of **corroborating evidence** (*qareenah*) supporting his claim, then we will **accept** it
- II. **Conditional divorce** is **not** valid **except** by the husband. He can do so either:
  - A. Explicitly clear
    1. Meaning he is explicitly **clear** in his statement
      - a) Ex: He says to her, "If you get up, then you are divorced!"
  - B. Allusively with **intention**
    1. Meaning he uses **phrases** that can have **multiple** meanings, however, he **intends** divorce through them
      - a) Ex: He says to her, "If you get up, then go to your parents' house!"
        - (1) This could mean that she just leave him for a while or that she will be divorced so she should just go back to her parents. His **intention** will **determine** the judgement
- III. The **condition** and the **divorce** should **not** be **separated** with something that is **not** related to the **speech** because this would make the condition **invalid**
  1. Ex 1: He says to her, "You are divorced, SubhanAllah...SubhanAllah, if you stand!"

- a) The **interruption** with the words ‘SubhanAllah...SubhanAllah’ is considered speech that is **unrelated** to the topic, therefore, the condition mentioned after it does **not** count, thus, she is considered divorced **immediately**
  - 2. Ex 2: He says to her, “You are divorced...[very long pause]...when Muharram arrives!”
    - a) This condition is **invalid** because of the **interruption** of an **unrelated** long pause in between, thus, she is considered divorced **immediately**
  - 3. If there is an **interruption** with something **related** to the speech, then the condition **does** count
    - a) Ex: He says to her, “You are divorced, O Fornicator, if you stand!”
- IV. Conditional statements for **divorce** are made using **words** such as: if, whenever, when
  - A. It is **allowed** to say the condition **before** the divorce or **vice versa**. Therefore, both of the following are **valid** forms of conditional statements for divorce:
    - 1. “You are divorced, when Muharram arrives!”
    - 2. “When Muharram arrives, you are divorced!”
- V. If he said to her, “If I talk to you, then you are divorced!”
  - A. If he were to **communicate** with her with **any** type of speech after this, she would be **divorced**
    - 1. Even if he made a statement just to **verify** it with her
      - a) Ex: If he said to her, “If I talk to you, then you are divorced!...Got it?!”
        - (1) The phrase ‘got it’ after is considered **further** communication, thus, she would be **divorced**
- VI. If he said to her, “If I **begin** speaking to you, then you are divorced!”
  - A. If in response his wife says to him, “If I begin speaking to you, then my slave is free!” Then the oath is considered **dissolved** on his end and **no longer** binding, therefore, he can talk to her now **without** it resulting in divorce
    - 1. This is because **she** spoke to him **first** after he made the conditional divorce
    - 2. However, if he did **not** speak to her even after she responded to him in that way, then it is the **wife** that is under oath now. If she were to say **anything** to him, then her slave would **immediately** become **free**
- VII. If he said to her, “If you go out without my permission, then you are divorced!”
  - A. If she went out **without** his permission or he **permitted** her but she did **not** know, then she will be considered **divorced** when she goes out
    - 1. In the case of the latter, it must be realized that **permission** is considered a form of **notification** and in this case he did **not** notify her and this is why the divorce occurs
  - B. If he gave her **absolute permission** for all **future** going out **after** making this condition, then she can go out whenever she wants **without** being divorced
    - 1. Ex: He says to her, “I give you permission to go out whenever you want from now on”
- VIII. If he made the condition based on **her will**, then she will be **divorced** whenever **she** wills it provided it is **without** force
  - A. Ex: He says to her, “You are divorced if you will”

- B. If someone **forced** it on her, then the divorce does **not** occur
- IX. If he made the condition based on the will of **two individuals**, then she will **only** be divorced if **both** of those individuals will it provided it is **without** force
- A. It will **not** be valid if only **one** of them wills it
  - B. Ex: He says to her, "You are divorced if Fatima and Ahmad will"
  - C. If someone **forced** it on one of them or both, then the divorce does **not** occur
  - D. Same ruling applies when setting such a condition for **freeing a slave**
    1. Ex: A master says to his slave, "You are free if Fatima and Ahmad will"
- X. If he made the **condition** based on the will of **Allah**, then she will be divorced **immediately** because it is **impossible** to know this
- A. Ex: He says to her, "You are divorced whenever Allah wants it"
  - B. Same ruling applies when setting such a condition for **freeing a slave**
    1. Ex: A master says to his slave, "You are free if Allah wills"
- XI. If he **conditioned** that she will be divorced if he **enters/exits** from the house, then the divorce will **only** take place if he **fully** entered/exited from the house after it
- A. If he entered/exited **partially** from the house **after** setting this **condition**, then the divorce does **not** occur
    1. Ex: he only puts his foot out the door or he stands at the doorstep
- XII. If he **conditioned** that she will be divorced if he **wore** a garment that she **knit** for him, then the divorce will **only** take place if he wore a garment that was **fully** knit by her
- A. If he wore a garment that was knit together **partly** by her and **partly** by someone else, then the divorce will **not** occur
- XIII. If he **conditioned** that she will be divorced if he **drank** from a particular **cup**, then the divorce will **only** occur if he drank **all** of the water from that particular cup
- A. If he drinks only **part** of the water from that particular cup, then the divorce will **not** occur
- XIV. If he **conditioned** that she will be divorced if she **does** a particular action, then the divorce will **only** occur if she did the action **fully** not partially unless he **intended** it for both
- A. Ex: If he said to her, "If you drink the water from this cup, then you are divorced!" Then she drinks **some** of it. In this case, she is **not** divorced unless he **intended** it to be for both
  - B. However, if he said to her, "If you drink from this river, then you are divorced!" Then she drinks **some** of it. In this case, the divorce **will** occur because it's **not** imaginable that she could drink all of it, thus, there is no way to suggest that he could have meant that
- XV. If the husband did something out of **forgetfulness** or **ignorance** that he had made as a condition for divorce, then it **will** count as a divorce
- A. Ex 1: If he says to her, "If I leave the house, then you are divorced!" Then he **forgets** and leaves the house. In this case, the **divorce** has **occurred**
  - B. Ex 2: If he says to her, "If I go to the market, then you are divorced!" Then he goes out to a place **thinking** that it is **not** the market, however, it turns out to be a market. In this case, the **divorce** has **occurred**
  - C. The same rule applies for freeing a slave
    1. Ex 1: A master says to his slave, "If I leave the house, then you are free." Then he **forgets** and leaves the house. In this case, the slave is now considered **free**

2. Ex 2: A master says to his slave, "If I go to the market, then you are free." Then he goes out to a place **thinking** that it is **not** the market, however, it turns out to be a market. In this case, the slave is now considered **free**
- XVI. As long as a person is **not** an **oppressor**, we will **accept** his **figurative** worded **oath**
- A. Ex: A wife asks her husband, "Where did you sleep last night?!" So he responds to her, "By Allah, I was under the roof!"
    1. The word 'roof' here could mean the ceiling of a building, house, or it could even mean the sky
  - B. It is **not** accepted from an **oppressor** because he could use it to **violate** others' **rights**
- XVII. Doubts about giving divorce
- A. Whoever **doubts** whether a divorce was given or not or whether a **condition** for divorce was **set** or not, then we go by the **certainty** and assume that the divorce did **not** occur
    1. The **default** rule when it comes to **divorce** is that it did **not** occur and when it comes to **setting** conditions is that **none** were set
  - B. If there is a **doubt** in the **number** of divorces, then we go by the **lower** number
    1. Ex: If a husband is in doubt whether he gave two or three divorces to his wife, then we would assume two because this is **certain**
  - C. If a person said to a woman he **thought** was his wife, "You are divorced!" Then his **actual wife** would be **divorced** because this was his **intention**
    1. If he said to his wife **thinking** that she is **someone else**, "You are divorced!" Then his **actual wife** is **not** divorced because his wife was **not** the **intention**
  - D. If a husband is in **doubt** about whether he gave a **divorce** to his wife or a **dhihaar**, then we would assume **nothing** has occurred

## Revocable Divorce

- I. Def: this is a divorce given by the husband after which he has the **right** to take his wife back **without** a new marriage contract within a **specified** time period
  - A. The wife does **not** have a right to refuse if he **asks** her to return within the **specified** time period because of his **rights** over her
- II. A **free** husband, who has had **intercourse** with his wife or has been **alone** with her (*khulwah*), has the **right** to get his wife back **without** a **new contract** as long as she is in her **waiting period** and has **not** had **three** divorces. After the **third** divorce, he can **no longer** be married to her **until** she marries **someone else** and is **divorced** from that husband
  - A. If the husband went **insane** after giving the divorce, then his **guardian** can also **demand** her **return** on his behalf **regardless** of whether she is **pleased** with it or **not**
  - B. For a husband that is a **slave**, this can be done **only** after the **first divorce** because he **only** has **two divorces**
    1. After the **second** divorce, an **enslaved** husband can **no longer** marry her **until** she marries **someone else** and is **divorced** from that husband
  - C. If he did **not** have intercourse **nor** was he ever **alone** with her, then the divorce **occurs immediately** and she would **require** a **new marriage contract** to be with him since there would be **no** waiting period in such a case

- III. If he divorces her **after** the first or second divorce with some sort of **compensation** in **return**, then it would be **final** and she would **require** a new marriage contract to be with him
- IV. It is **recommended** to get **witnesses** when the husband **revokes** his divorce and takes her **back**
- V. How does he take her back? He can do one of **two** things:
- A. He can **explicitly say** that he is taking her back
  - B. He has **intercourse** with her
    1. It would be **considered** taking her back **even** if he did **not** intend to take her back while having intercourse
- VI. The wife who is in a **revocable** divorce gets **all** the rights of a wife **except** share of a night
- A. Meaning if the husband has **multiple** wives, then the wife that is in a **waiting period** after a revocable divorce has **no right** to share a night with the husband
    1. However, she **will** be given **all other rights**, such as, spending, inheritance from his wealth after his death, etc.
      - a) If the waiting period **ends** and the husband does **not** take her back after a **revocable** divorce, then she becomes a **stranger** and **loses** all her rights. If they wanted to get back together, then they would need to do a **new marriage contract**
        - (1) If during **this period** he were to **divorce** her, it would **not** count because they are **not** married anymore
- VII. When is the waiting period for a **revocable** divorce over?
- A. It is **valid** until **after** she becomes **pure** from her **third** menses **before** taking a **bath**
    1. As soon as she takes a **bath** after her **third** menses **ends**, the waiting period is over
- VIII. If the waiting period **after** a **revocable** divorce is over, then what happens?
- A. She can now **only** return to him **after** a new marriage contract
    1. The **number** of divorces for the husband do **not** start from zero, rather, they continue even **after** a new marriage contract
      - a) Ex: If the husband divorced his wife once and then her waiting period ended. Now, they want to get back together again so they do a new marriage contract. The husband now has two more divorces left
  - B. She has the **right to refuse** if he asks her to return with a **new marriage contract** after the **waiting period** for a revocable divorce ends
- IX. If a woman **claims** that her waiting period has **ended** and this is **possible**, then it would be **accepted** without requesting proof
- A. If she claims that it ended in **one month**, then we would **not** accept it **except** with **proof**
    1. The 'proof' is another **woman** that can be a **witness**
  - B. If she claims **less than a month**, then we will **never** accept it because this is **impossible**
- X. If a **free** man divorced his wife **thrice** or an **enslaved** husband **twice**, then she is **no** longer permitted for him **until** she has **intercourse** with another **husband** with the following **conditions**:
- A. It occurs in the **vagina**
  - B. **Valid** marriage contract

- C. **Insertion** of the **penis** into the vagina **suffices** even if he did **not** ejaculate **nor** reached the age of 10
  - 1. It also **requires** that the penis be **erected** when inserted
- D. The intercourse should **not** have happened in the following ways because they are **forbidden**:
  - 1. While she was in her **menses**
  - 2. While she was in her **nifaas** (bleeding after birth)
  - 3. While one or both of them were in a state of **ihraam** for Umrah or Hajj
  - 4. While **fasting** in the month of **Ramadan**
  - 5. One of them had **apostated** when it occurred

## Taking an Oath to Not Have Intercourse With One's Wife (*Elaa'*)

- I. Def: this is when a husband takes an oath not to have intercourse with one's wife for more than four months
- II. It is **forbidden** to take such an oath
- III. For it to qualify as *elaa'*, the following **conditions** must be **fulfilled**. If **any** one of them is **missing**, then it is **not** considered *elaa'*:
  - A. It is done by the **husband**
  - B. He is **sane**
  - C. It is **possible** for him to have intercourse
    - 1. A husband who is impotent or castrated does **not** count
  - D. He takes an oath by the name of **Allah** or one of His **Attributes**
  - E. He takes an oath to **not** have intercourse with his wife in the **vagina**
  - F. The time period for the oath is **more** than **four months**
    - 1. Ex: He says to her, "By Allah, I will never have intercourse with you ever again!"
    - 2. Any oath taken for **four months** or **less** is **not** considered *elaa'*
      - a) Ex: He says to her, "By Allah, I will not have intercourse with you for a month!"
- IV. If the four months are over **after** his *elaa'* and he **still** has **not** had intercourse with her **without** an **excuse**, then the **judge** does the following:
  - A. Commands him to have **intercourse** with her
    - 1. If he **refuses**, then he is commanded to **divorce** her
      - a) If he **refuses**, then the judge can **divorce** her on his behalf
  - B. If he has intercourse with her **within** four months **after** his *elaa'* or he **agrees** with the judge's command to have intercourse, then he is **obligated** to give **expiation** for **breaking an oath**
- V. Whoever **abandons** having intercourse with his wife for the purpose of **harming** her **without** an excuse, then it is **also** treated like *elaa'* **even** if he did **not** take any such oath
  - A. If the **wife** is **ok** with it, then it is **not** treated like *elaa'*
  - B. This means that the **judge** will go through the **same** process as *elaa'* if the wife takes her case to him

## Dhihaar Divorce

- I. It is **forbidden** to do this
- II. Def: this is when the **husband** makes a **similarity** between his **wife** and someone with whom he is **forbidden** to **ever** have **intercourse** (mother, sister, daughter, man, etc.)
  - A. Ex: Husband says to his wife, "You are like the back of my mother!" or "You are like my sister!"
    1. The **comparison** could be to the **person as a whole** or a **part** of him/her
      - a) The following **parts** and **their like** do **not** count as *dhihaar* because they can be **separated** from the body
        - (1) Hair, teeth, nails, saliva, etc.
          - (a) Ex: "You are like the hair of my mother!"
            - (i) This would **not** be considered *dhihaar*
- III. If the **wife** uses a statement of **dhihaar**, then it is **not** considered *dhihaar*
  - A. However, it **would** require an **expiation** of *dhihaar* from her if she **willingly** had intercourse with him
    1. This is the official position in the school, however, there is some dispute over it
- IV. *Dhihaar* is **valid** for the **husband** who **fulfills** the **requirements** to give a divorce
  - A. The exact conditions needed have already been discussed earlier above in the Book of Divorce
- V. It is **prohibited** to have **intercourse** with the wife **before** paying the **expiation**
  - A. **Any** type of action which can **lead** to it is also **forbidden**
    1. Ex: touching, kissing, etc.
- VI. The **expiation** for *dhihaar* is as follows:
  - A. Free a **slave**
  - B. If he **cannot** find one, then **fast** two months consecutively
    1. What happens if he is **interrupted** in the middle due to a **valid** excuse?
      - a) Ex: Eid, Ramadan, he falls ill, etc.
      - b) It's **acceptable** and he does **not** need to worry about starting over and can just **continue** from wherever he left off
    2. If he starts in **mid-lunar** month, then he **must** complete 60 days but if he **begins** in the **beginning** of the lunar month, then he just **completes** two months even if it is **less** than 60 days
  - C. If he **cannot** fast, then he must **feed** 60 poor people the **same** amount as that given to a poor person as *zakat al-fitr* on Eid al-Fitr
    1. Only **five** items are **accepted** just like *zakat al-fitr*: wheat, barley, dates, raisins, or cottage cheese
      - a) It **suffices** to give 1 *mudd* of **wheat** for every poor person. If it's something other than wheat, then it should be at least 2 *mudd*
      - b) If you do **not** have these five categories of foods available or cannot give them due to an **excuse**, then you may give **any** type of grain that someone can use for **nourishment** or be supported with
- VII. The **expiation** must be **chosen** based on the **sequence** listed above, if he does **not**, then it will be **invalid**

- A. Meaning he can **only** select option B if there is a **valid excuse** for him to **not** be able to do option A and so on
- VIII. If the couple are **non-Muslims** living in a Muslim country, then the **expiation** is as follows in **sequence**, thus, he can **only** go to option B if A is unavailable:
  - A. Free a slave
  - B. If he cannot, then feed 60 poor people
- IX. If the husband is a **slave**, then the **expiation** is only to **fast** two months consecutively
  - A. Because a slave does **not** legally own property nor wealth
- X. The following **conditions** apply to slaves **freed** for the purpose of **paying** expiations or when a master **vows** to free a slave **without** setting any conditions:
  - A. The slave **must** be Muslim
  - B. The slave should be **free** of any **defects** that **harm** his/her ability to **work**
    - 1. Ex: the slave has a missing limb, thus, is unable work
    - 2. This is because such slaves will find it **difficult** to get hired for work, thus, they will **not** be able to support themselves. Therefore, they become the **responsibility** of the **master** to take care of them

## Imprecation (*Li'aan*)

- I. Def: this is when a husband **accuses** his wife of adultery **without** proof in front of a **judge** but she **denies** it, thus, it leads to **both** of them invoking **curses** on each other that results in **dissolving** the marriage
- II. It is **permitted** with the following conditions:
  - A. It is done between **spouses** only
    - 1. They **both** do it to each other
  - B. They are both **pubescent**
  - C. They are both **sane**
- III. It is done when the husband **verbally** accuses his wife of **fornication** without proof but she **denies** it
  - A. The **accusation** must be **clearly** stated and **not** just hinted at
  - B. How it is done
    - 1. The **husband** gives testimony:
      - a) He says **four** times: "I bear witness with Allah that I am truthful in accusing her of fornication"
        - (1) The word 'witness' **must** be used
      - b) He says the **fifth** time: "May Allah curse me if I am lying"
    - 2. The **wife** also gives testimony:
      - a) She says **four** times: "I bear witness with Allah that his accusation of me fornicating is a lie"
        - (1) The word 'witness' **must** be used
      - b) She says the **fifth** time: "May Allah's anger be upon me if he is telling the truth"
- IV. If the **conditions** are **fulfilled** and the **mutual curses** completed, then it **drops** the *hadd* punishment from **both** of them

- A. The *hadd* punishment for adultery and falsely accusing someone of fornication are discussed in the Book of Hudood
- V. Once the **imprecation** is **completed** by **both**, the following takes place:
- A. There is **no** *hadd* punishment for **either** party
1. Husband receives **no** *hadd* punishment for accusing his wife of fornication without evidence
  2. Wife receives **no** *hadd* punishment for fornication
- B. They are **immediately** separated **forever** and can **never** get back together again under **any** circumstance
1. She will **remain** a **non-mahram** to him though
- C. If there is a **pregnancy** in the case but the husband **denies** that it is his child, then the child will **not** be attributed to him
1. The child will take the **mother's** name
  2. However, if the husband does **not** deny the child being his, then it **will** be attributed to him
- VI. What happens if a child is **born** after marriage in following cases:
- A. If she delivers a child at **6 months** of marriage, then it **would** be considered their child
1. The **minimum** time for pregnancy is **six months** and **maximum** is **four years** for the Hanbalis
    - a) If the wife delivers a child in **less** than **six months** after marriage, then it will **not** be attributed to the **husband** because this is **not** conceivable
    - b) If the wife has a child **after** four years of separation from the husband, then it will **not** be attributed to the husband<sup>1</sup>
  2. The husband **cannot** deny the child in this case **unless** he provides evidence even if he is only **10 years old** because it is **possible** to have reached puberty at this age
    - a) If there is a **doubt** whether a particular husband has reached **puberty** or not, then the **default** is that he has **not** unless there is **evidence** to suggest otherwise
      - (1) Then how can we attribute the **newborn** to the 10 year old if we are uncertain?
        - (a) We do this as a **precaution** in order to **safeguard** the **lineage** and **assume** that the 10 year old has reached puberty
        - (b) Evidence for **puberty** for **males** are **either** one of three:
          - (i) He is able to ejaculate
          - (ii) Pubic hair
          - (iii) Having reached 15 years of age
      - b) If the husband is **less** than 10 years of age, then the **newborn** will **not** be attributed to him because it is **difficult** to imagine a child having reached **puberty** at that age
- B. If a **master** freed or sold a **slave-girl** that he **admits** to having **intercourse** with and then she gives **birth** to a child, then it falls under one of **two** cases:

<sup>1</sup> There is some dispute over this in modern times since it is not scientifically proven that a pregnancy could last this long.

1. If she gave birth in **six months** or less **after** being sold, then the child will be attributed to the **previous master**
  - a) If sold, the selling **contract** would be considered **invalid** and she will be **returned** back to him because it is **not** allowed to sell *Umm al-Walad*
    - (1) Rules regarding *Umm al-Walad* were discussed in the Book of Emancipation
  - b) If she gave birth **after** six months of being sold, then the child will be considered the **new master's**

## Waiting Period After Separating From the Husband

- I. The **purpose** of the **waiting period** is to **assure** that she is **not** pregnant
  - A. She is **not** allowed to marry someone else **before** the waiting period is over
- II. The **separation** could be due to divorce, annulment of the marriage contract, or death
- III. If the wife **separated** from a **living** husband **before** intercourse or *khulwah*, then there is **no** waiting period
  - A. *Khulwah* is when the husband and wife are **alone** together in a place
  - B. Ex: a husband divorces his wife but has never been alone with her
- IV. **Conditions** for **intercourse** to be considered **valid** for establishing a wife's **waiting period** after **separation** from her husband
  - A. She should be biologically **mature** enough to be able to have intercourse
    1. This means she must be at least 9 years old
      - a) If there was **any** intercourse **before** this age, it would **not** be considered valid to establish a waiting period
  - B. The **husband** should be able to have kids **attributed** to him
    1. In the Hanbali school, the **minimum** age for this is 10 years old
      - a) If the husband is **below** 10 years of age, then there is **no** waiting period for the wife **after** separation **even** if they had intercourse because there is **certainty** that she cannot be pregnant
- V. **Conditions** for *khulwah* to be considered **valid** for establishing a wife's **waiting period** after **separation** from her husband:
  - A. Two conditions
    1. They **both** are **alone** together by **choice** and **not** force
    2. The husband **knows** that this woman is his **wife**
  - B. If the above two conditions are **met**, then it **would** be considered a **valid** form of *khulwah* **even** if there was some sort of **hindrance** to **assume** that they could **not** possibly have had intercourse
    1. Examples of hindrances: one of them is sick, fasting, etc.
- VI. If the husband **dies**, then there **will** be a waiting period **regardless** of whether there was intercourse, *khulwah*, or neither
- VII. **Waiting periods** are of **six** types:
  - A. Pregnancy
    1. Ex: when a husband divorces his wife while she's pregnant or he dies while she's pregnant

2. Her waiting period ends **whenever** she gives **birth**
  - a) If she has **twins** in the womb, then it **ends** when she gives birth to **both** not just one
  - b) If it is a **miscarriage**, then if it can be **distinguished** as a **human** then same rule applies, otherwise, there is **no** waiting period
  - c) If she is a **slave**, then she officially **becomes** *Umm al-Walad* after giving birth
3. Conditions
  - a) The fetus **must** be from the **husband**
    - (1) If it turns out that the fetus does **not** belong to the husband, then her waiting period will **not** end when she gives birth, rather, it will be based on **three** menstrual cycles **after** birth
  - b) **Time limits** for pregnancy according to Hanbalis
    - (1) Minimum: 6 months
      - (a) This means if she gave birth to a child in **less** than 6 months after marriage, then it will **not** be attributed to the husband
    - (2) **Majority** of cases: 9 months
    - (3) Maximum: 4 years
4. It is permitted to **abort** the fetus **before** 40 days after inception with **permissible** medication
  - a) This means two things:
    - (1) It is **not** permitted with **forbidden** medication
    - (2) It is **not** permitted **after** 40 days

**B. Widow** who is **not** pregnant

1. If she is a **free** woman
  - a) Four months and 10 days
2. Wife who is a slave
  - a) **Half** of the free woman
    - (1) Two months and five days
3. Wife who is a **partial** slave
  - a) We will **calculate** it based on her **percentage** as a slave vs being free
    - (1) Ex: if she is 50% free and 50% owned, then her waiting period will be three months and eight days
4. If the husband **divorces** his wife in his **final** illness **before** death
  - a) It will fall under one of **two** cases:
    - (1) He is **suspected** of divorcing her in order to **block** her from **inheritance**
      - (a) Her waiting period will be whichever is **longer** of the two: **four months and 10 days** or **three menstrual cycles**
        - (i) She will also be made to **inherit** him
    - (2) He is **not** suspected of divorcing her in order to **block** her from **inheritance**
      - (a) Her waiting period will be **three menstrual cycles**
        - (i) She will also **not** inherit him

- C. A woman who is **separated** from a **living husband** and **actively** gets **menses**
1. Ex: a woman divorced by her husband
  2. The waiting period in such a case would be as follows:
    - a) If she is **free** or a **partially** owned slave
      - (1) Three menstrual cycles
        - (a) It **ends** as soon as she takes a ritual bath (*ghusl*) **after** the third cycle **ends**
      - b) Wife who is a full **slave**
        - (1) Two menstrual cycles
          - (a) It **ends** as soon as she takes a ritual bath (*ghusl*) **after** the second cycle **ends**
- D. A woman who is **separated** from a **living husband** but does **not** actively get **menses** due to **small age** or having reached the age of **menopause** (50 years). In such a case, her waiting period is as follows:
1. If she is **free**
    - a) Three months
  2. If she is a **wife** who is someone's **slave**
    - a) Two months
  3. If she is a **partially** owned slave
    - a) It will be **calculated** based on what percentage she is owned vs free
- E. A woman who **stops** getting her **menses** falls into one of **two** cases:
1. If she does **not** know why the menses stopped
    - a) Then her waiting period will be determined as follows:
      - (1) We assume she is **pregnant** so she waits **nine months**
      - (2) If there is **no baby** after nine months, then we assume she has reached **menopause** so she waits **three months**
    - b) Her waiting period in **total** is **12 months**
  2. If she **knows** why her menses stopped
    - a) Then her waiting period will be determined as follows:
      - (1) If she has **hope** for its **return**, then she **remains** in it until her menses **return**. Then she will **calculate** it based on **Type C** above
        - (a) Ex: she is sick so she will wait until she gets better and her menses return. After it returns, she will **complete** her waiting period based on **Type C** above
      - (2) If it does **not** return or she has **no hope** for its return, then she waits **until** she reaches the age of **menopause** (50 years). Then she will **calculate** it based on **Type D** above
        - (a) There is a **second** opinion in the school which says that her waiting period will **only** be **one year**
- F. A woman or slave-girl whose husband is **missing** and she does **not** know whether he is alive or dead
1. If it is **most likely** that he is **dead**
    - a) Ex: a husband who went off to war or is missing after a natural disaster
    - b) In this case, she waits **four years** and then does a **widow's** waiting period

2. If it is **most likely** that he is **alive**
    - a) Ex: he went off to study/work abroad but has not contacted the family since
    - b) In this case, she waits until he is **90 years old** and then does a **widow's** waiting period
      - (1) If she does **not** want to wait that long, she can **appeal** to a judge to **cancel** (*faskh*) the marriage contract
- VIII. The **waiting period** for following three types of women is **three months**:
- A. A woman who reaches **puberty** but does **not** have **menses**
  - B. A woman who has **continuous istihadha** **after** the **first time** she bleeds so she does **not** yet know her **habit** days in which she **usually** bleeds
  - C. A woman who is going through *istihadha* but **cannot** remember the usual days she gets menses **nor** can she **distinguish** between her different types of blood
- IX. If a husband **divorces** his wife or **dies** while **missing** and then this news **reaches** the wife, then her **waiting period** will begin when it **happened** and **not** when the news reached her
- A. Ex: A husband went missing 1 year ago and then the news reaches her that he actually died five months prior. In this case her waiting period of four months and 10 days after becoming a widow has already ended
- X. The **waiting period** for a woman who **mistakenly** had **intercourse** with someone she **thought** was her husband or she committed **fornication** before marriage is the **same** as a **divorcee**:
1. Birth of the child if she gets pregnant
  2. Three menstrual cycles if she gets menses
  3. Three months if she does not get menses
- B. **Exception**: a slave-girl **not** married in a **similar situation** will have her waiting period as **one menstrual cycle** and a slave-girl who is **married** will have **two menstrual cycles**
- XI. If a woman committed **fornication** or **mistakenly** got married **before** her waiting period is **completed**, then she **must** first **continue** her **previous** waiting period and then **start** a **second one**
- A. If it is fornication
    1. In this case, she will **complete** her first waiting period and then **begin** another waiting period cycle the **same** as a **divorcee**
      - a) Ex: A woman committed fornication and currently is in her waiting period of three menstrual cycles. After the first menstrual cycle, she commits fornication again. In this case, she must first complete the remaining two menstrual cycles and then begin another cycle for the second fornication (i.e. another three menstrual cycles)
  - B. If it is an invalid marriage
    1. In this case, we **separate** her from the **current husband** because it is considered an **invalid marriage**. Then she must **continue** to finish the **previous** waiting period and then **begin** another waiting period cycle the **same** as a **divorcee**

- a) Then she can get married to the second one **again** if she wants to with a new **valid** marriage contract
- b) Ex: A woman's husband dies so she must observe four months and 10 days as a waiting period. However, due to her lack of knowledge, she gets married after one month to another husband. In this case, they will be separated, due to the invalid marriage contract, and she will first need to complete the waiting period of three months and 10 days from the first husband and then begin a second waiting period the same as a divorcee

XII. It is **prohibited** to **mourn** over the death of **anyone** for **more** than **three days**

A. **Exception**: a woman for her husband

- 1. It is **obligatory** on her to do so for **four months and 10 days**
- 2. It is **permitted** for the wife who is in her waiting period **after a third divorce** but **not** obligatory
  - a) Ex: a woman is divorced thrice and while in her waiting period the husband dies

B. Meaning of '**mourning**' in the context of a **wife** here means the following:

- 1. She leaves **beautifying** herself
- 2. She avoids putting **perfume** on
- 3. She avoids anything that **attracts** others towards her
- 4. She must **remain** in the **house** in which her husband **resided** with her and is **forbidden** to **move** her residence to another place **unless** there is a **need**
  - a) She can go **outside** the house during the **day** due to **need**
    - (1) Ex: job, grocery, retrieve money from the bank, etc.
  - b) During the **night**, she can **only** go out due to **necessity**
    - (1) Ex: fire, danger, fearing loss of life or limb, etc.

XIII. A **master** must **assure** that a **newly** purchased **slave-girl** is **not** pregnant **before** intercourse

A. The **waiting period** for a newly purchased slave-girl **before** intercourse is as follows:

- 1. If she is pregnant
  - a) When she gives **birth**
    - (1) He will also need to **return** the slave-girl in this case to her **previous male master** because she is now *Umm al-Walad*
      - (a) If a slave-girl gives **birth** to her **master's** child, she can then **never** be sold again and becomes automatically **free** upon her master's death
        - (i) More details regarding this are mentioned in the Book of Emancipation
- 2. If she has **menses**
  - a) One menstrual cycle
  - b) This **must** be done even if the previous master is a **female**
- 3. If she is **too young** or **too old** and does **not** get **menses**
  - a) One month
  - b) This **must** be done even if the previous master is a **female**

## Breastfeeding

- I. The one who **drank** milk from a woman's breast becomes her *mahram*
  - A. The ruling **only** applies to the **breastfed child** and his/her **descendants**
    1. It does **not** apply to the breastfed child's **siblings** or his/her **ascendants**
      - a) Ex: the father/brother of the child that was breastfed would still be a **non-mahram** to the wet nurse
- II. **Conditions** for breastfeeding rulings to be **applicable**
  - A. It must be at least **five** full breastfeeding sessions
    1. The child **must** drink until he/she is **satisfied**
    2. Any feedings **less** than five would **not** be considered sufficient to apply the breastfeeding rulings
  - B. All **five** feedings **must** be done **within** the **first two lunar years** of the child's **birth**
    1. Ex: If three are done within the first two years and the remaining after two years of the child's birth , it would **not** count
- III. Milk can be **given** through the **mouth** or the **nose** as long as it goes to the **throat**
  - A. It even **counts** if it is given through a **bottle** and does **not** necessitate sucking on the breast
- IV. It **counts** even if the baby drank the milk from a **dead woman's** breast
  - A. Meaning if a child was given **five feeding sessions** from a **dead** woman's milk, the child would become her *mahram*
- V. It **counts** even if the woman got **pregnant** by someone she **thought** was her husband
  - A. Meaning it does **not** matter if the milk was a result of an **illicit** relationship
- VI. It **counts** even if the breast milk was **mixed** with something
  - A. As long as the **majority** of the liquid remains **breast milk**
- VII. Every **female** the woman breastfed at least **five sessions** becomes a *mahram* to the **males** who also **drank** her breast milk in at least **five sessions**
  - A. This means they would all become like **siblings**, therefore, they will **not** be allowed to marry each other
    1. The woman's **biological children** would also become their *mahram* because they would **also** be like their **siblings**
  - B. The woman's **husband** would **also** become their *mahram* because they would be like his **stepdaughters/stepsons**
  - C. If a man's **grandmother** breastfed a **girl** with at least **five sessions**, then the girl would become his *mahram* because she would be like his **aunt**
- VIII. If the **wife** of a **man's** brother, father, or son breastfed a **female child**, she would **become** a *mahram* to him. This is because the brother/father/son is the **reason** for the wife's breast milk to **appear** in the first place
  - A. Brother example
    1. If a man's **brother's wife** (i.e. sister-in-law) breastfed a female child, the female child would become like the man's **niece**
  - B. Father example
    1. If a man's **father's wife** (i.e. stepmother) breastfed a female child, the female child would become like the man's **sister**

- C. Son example
  - 1. If a man's **son's wife** (i.e. daughter-in-law) breastfed a female child, the female child would become like the man's **granddaughter**
- D. If a man **impregnates** five women and a female child **drinks** one session from **each** woman, he would become her *mahram* because he is the **reason** for the breast milk to **appear** by **impregnating** them
- IX. If a husband **claims** that his wife is his **sister through breastfeeding**, then this would **invalidate** his marriage contract
  - A. If the wife **acknowledges** this, then there is **no dowry** to be given if they did **not** have intercourse/*khulwah* yet
  - B. If the wife **denies** this **before** intercourse/*khulwah*, then he is **obligated** to give her **half** of the dowry
  - C. If they had intercourse/*khulwah* already, then she is **obligated** to be given **all** of the dowry **regardless** of whether she denies being his sister through breastfeeding or not
- X. If it is the **wife** that **claims** her husband is her **brother through breastfeeding** but the husband **denies** it
  - A. In this case, she will **continue** to be considered his wife **unless** she brings **evidence**
    - 1. This is to **avoid** the case where the wife is just trying to get out of the relationship through **lying**
    - 2. How come the husband is **not** required to bring evidence of the claim due to fear of lying?
      - a) Because there is **no need** for him to lie since he has the **power** of divorce. He would be **invalidating** the marriage contract by making such a claim, therefore, why would he **need** to lie to get out of the relationship when he can just **give a divorce**?
- XI. Whoever is **doubtful** whether they are **siblings** through breastfeeding or whether the **number** of breastfeedings had **reached** five or not, then we will go with the **certainty**
  - A. Ex 1: a couple is **unsure** whether they breastfed from the same woman as babies or not. The certainty is that they did not because that is the **default**. Thus, they would **ignore** the doubt and continue the marriage
  - B. Ex 2: a couple is sure that they breastfed from the same woman as babies, however, they are **unsure** whether it was four or five times. The certainty in this case is four because the **lower** number is **agreed** upon. Thus, they would **ignore** the doubt and continue their marriage
- XII. Claim for breastfeeding can be **proven** by either:
  - A. A report from a **reliable** accepted **breastfeeding woman**
    - 1. Ex: A reliable woman says, "Yes, I breastfed both of them at least five times"
  - B. Any single **just witness** that comes forward to testify **regardless** of gender
    - 1. Ex: a just and reliable woman comes forward and says, "Yes, I testify that I witnessed them both breastfed by the same woman at least five times"

## Maintenance of Wife

- I. It is **obligatory** to **spend** on the following: wife, owned properties (slaves or animals), blood-relatives (parents, kids, etc.)
  - A. The wife can ask for **missed** payments but the others **cannot**
- II. It is **obligatory** for the husband to **spend** on his wife with regards to her eating, drinking, clothing, and residence according to **custom**
  - A. According to custom means that it will **vary** with time and place
    1. If there is a **dispute** between a **rich man** and a **rich wife** and they take their case to a Muslim judge, the judge will **mandate** the husband to provide her the **best** type of food, clothing, and residence in the land according to local **custom** for the rich in their land
      - a) What is the food, clothing, residence, etc. for rich people varies according to **place** and **time**
        - (1) The 'rich' in wealthy countries are **not** the same as the 'rich' in poor countries
        - (2) The 'food' consists of bread and whatever is eaten with it among the rich in their custom
    2. If there is a **dispute** between a **poor man** and a **poor wife** and they take their case to a Muslim judge, the judge will **mandate** the husband to provide her the **cheapest** type of food, clothing, and residence in the land according to local **custom** for the poor in their land
      - a) What is the food, clothing, residence, etc. for poor people varies according to **place** and **time**
        - (1) The 'poor' in wealthy countries are **not** the same as the 'poor' in poor countries
        - (2) The 'food' consists of bread and whatever is eaten with it among the poor in their custom
    3. If there is a **dispute** between any of the following and they take their case to a Muslim judge, the judge will **mandate** the husband to provide her with **moderate** type of food, drink, clothing, and residence. Meaning it would **neither** be too expensive **nor** too cheap
      - a) Average man with an average wife
      - b) Poor man with a rich wife
      - c) Rich man with a poor wife
      - d) Average man with a rich wife
      - e) Average man with a poor wife
      - f) Poor man with an average wife
      - g) Rich man with an average wife
- III. Husband is **not** permitted to give his wife **price** instead of the food, clothing, and residence **except** through **mutual agreement** between **both**
  - A. Meaning he **cannot** just hand her gold, silver, cash, etc. **instead** of providing these things because it could cause her **hardship**. However, if she **agrees** to it, then it is **permitted**

- IV. Husband is also **obligated** to provide her with things she needs to keep herself **clean**, such as, soap, water, shampoo, etc.
- A. He is also **obligated** to spend on things she needs to **live** in the house
1. Pots, cooking supplies, furniture, etc.
- V. Husband is **not** responsible to **pay** for her medication, doctor's fees, or [optional] 'good' things she **desires** for herself (perfume, makeup, etc.)
- A. These **optional** things are considered a **luxury** and **not** a necessity that's why
1. However, if **he** is the one that **wants** her to use such things for **himself**, then he is **responsible** to provide them
- B. With regards to medication and doctor's fees, there is **another opinion** in the school that says it goes back to **custom**
1. According to Sh. Bajabir, during the author's time the people did not go to doctors unless it was an emergency, thus, they did not consider it a necessary expense. Today, it is part of the custom that the husband spends on medication as well as doctor's fees after marriage
- VI. He is **obligated** to **continue** to provide **maintenance** to his wives in the following situations:
- A. The wife who is in **waiting period** after a **revocable divorce** until the waiting period **ends**
- B. The wife who is **pregnant** after an **irrevocable divorce** until she gives **birth**
- VII. A **widow** is **not** obligated to be spent on from the husband's wealth because she **receives** her full **inheritance** from his wealth after his death
- VIII. A wife **drops** her **right** to be spent on in **some** situations. Meaning the husband is **not** obligated to **provide** for her **maintenance** in the following cases:
- A. She is confined
1. Ex: she is in jail
- B. She is disobedient (*nushooz*)
- C. She is keeping a **supererogatory** fast
- D. She is keeping fast due to a **penalty** (*kaffarah*)
- E. She is **making up** her days of **fasting** from Ramadan but there is a **long time** left until the next Ramadan
- F. She is performing a **supererogatory Hajj** **without** his permission
- G. She is traveling for **herself** due to a **need** with his permission
- IX. He is **obligated** to spend on her **clothing** at least **once a year**
- A. It should be done in the **beginning of the year** because that is when she is usually in need of them to last her a year
1. The 'year' is considered based on when it **became obligatory** on him to spend on her, thus, the 'beginning of the year' will **vary** from couple to couple
- X. Whenever the husband does **not** spend on his wife's **expenses** that he is **obligated** to cover, he is considered to be under her **debt**
- A. Ex: a wife goes grocery shopping and pays for the food with her own money. She has the right to request him to compensate her for it
1. However, if she spends **more** than **customarily acceptable**, then he is **not** required to cover more than the customary amount. If they have a **dispute**, then a **judge** will define the customary amount

- B. If the husband **dies**, it would be **taken** from his **inheritance** to cover this debt
- XI. If the wife **spent** from her husband's wealth in his **absence** and she later **learned** that he was in fact **dead**, then his **inheritors** have a **right** to either **claim** the spent amount from her or to let her keep it as **charity**
- A. This is because the deceased's wealth **after** death becomes the **property** of his **inheritors**
- B. Ex: a husband overseas dies and his wife continues to spend from his wealth for a month. Then she learns that he died a month ago. In this case, the inheritors have the right to ask her for their appropriate shares from the amount that she spent
- XII. If **newlyweds** are **not** yet living together but then later she is **handed over** to him by either the wife **herself** or her **guardian**, then from that **instance** he is **obligated** to spend on her **even** if he is young, sick, impotent, or castrated
- A. This is the case **even** if he **refuses** to accept her moving in with him for now, thus, he **must** cover her **necessary expenses** even though they may **not** be living together
- XIII. The wife has the right to **refuse** herself to him **before** intercourse if he has **not** fully paid her the **dowry**, however, he is **still** obligated to spend on her because it is **his** fault
- A. But if she **agreed** to delay the dowry, then she does **not** have the right to refuse herself to him
- XIV. The **wife** has the **right** to request **cancellation** of the **marriage contract** through a **judge** in the following cases:
- A. He **cannot** afford to **provide** for her **basic needs** even the **minimum** necessary for a **poor person**
1. Basic needs include: food, clothing, residence, etc.
    - a) However, if it relates to the **dowry** that he **cannot** afford at the moment which she had **agreed** to have it **delayed**, then she does **not** have the right to request cancellation
- B. He is **absent** and she has **incurred debts** to cover **living expenses** that she **cannot** pile on any more because her husband is **not** providing for her
1. Whatever she **borrowed** to cover **living expenses** for **herself** and/or **their young kid(s)** would be considered a **debt** on the husband and **not** her
    - a) She is **not** required to seek a judge's permission **before** borrowing to cover the necessary living expenses

## Maintenance of Relatives, Slaves, and Animals

- I. It is **obligatory** on a man to spend on the following if they are in **need** provided he has **extra** to give them. The **exact amount** will be determined by **custom**:
- A. Parents, grandparents and so on up the line
1. But it is **compulsory** on their son(s) **before** the grandson(s). If the son(s) are **unable** to do so, then it falls on the grandson(s)
- B. Kids and so on down the line through **patrilineality**
1. But it is **compulsory** on their fathers **before** the grandfather. If the father is **unable** to do so, then it falls on the grandfather
- C. Anyone the man is going to **inherit** from through either **fixed portion** or **ta'seeb**

1. This **only** applies to **relatives**, such as, siblings, brothers' kids, paternal uncles, paternal aunts, paternal uncles' kids, etc.
    - a) If the man does **not** inherit from them due to being **blocked**, then it is **not** compulsory to spend on them **even** if they are in need
  2. The previous two categories mentioned do **not** require this condition, thus, they **must** be spent on **regardless** even if the spender is blocked from inheriting from them
  3. Rules for inheritance were discussed in detail under the chapter related to inheritance law
- II. When is it **obligatory**?
- A. When the **relative** is **poor** or is **unable** to earn
  - B. The **provider** has **enough** to nourish himself, wife, kids, and slaves for **a day and night**
    1. Meaning he has **enough** left over to have **zakat al-fitr** be **obligatory** on him
- III. The provider is **not** obligated to give from the following:
- A. Trade capital
    1. Meaning it's being **used** in the **trade** and is **not** something saved on the side
      - a) Ex: a man does not have any extra wealth to give his poor relatives. He has money but it is invested in trade. In this case, he is not obligated to take that money out in order to spend on them
  - B. Price of an **owned** item
    1. Ex: A man does not have any extra wealth to give his poor relatives. In this case, he is not obligated to sell some of his possessions in order to spend on them
  - C. Any instrument **necessary** for his **work**
    1. Ex: a man drives a taxi which he owns. He does not have any extra wealth to give his poor relatives. In this case, he is not obligated to sell his taxi in order to spend on them
- IV. Poor relatives **cannot** seek **compensation** for **missed payments**
- A. Ex: a man does not provide for his poor son for a year. In this case, the son cannot demand the father to pay him for all the missed payments
  - B. However, they **can** seek the missed payments in the following cases:
    1. A judge **ordered** him to spend on them but he has **not** done so
    2. The relatives **borrowed** with his **permission**
      - a) Ex: a relative borrows money to pay for his rent with agreement from his brother that the latter will pay him later to cover the debt
- V. If someone **abstains** to help those of his relatives that he is **obliged** to and an **outsider** pays with the **intention** of requesting it back from the one who is abstaining, then this outsider has the **right** to **request** his payment back from him
- A. Ex: Zayd is not covering his poor brother Ibrahim's basic expenses. A neighbor of Ibrahim pays for his expenses with the intention that he will request it back from Zayd
  - B. If the outsider intended it as a **charity**, then he/she does **not** have the right to request it back
- VI. The **contribution percentage** will be based on their **share** of inheritance from the poor family member if he/she were to die

- A. Ex: if a man was poor and he had two rich brothers who would inherit  $\frac{1}{2}$  each from his wealth if he were to die. In this case, each brother would be responsible for covering  $\frac{1}{2}$  of his expenses
  - B. If it is the **father** that is rich and his children poor, then it is **fully** the father's responsibility to cover **all** their needed expenses
- VII. Rights of slaves
- A. It is **obligatory** to spend on the slave even if the male slave is an **escapee** or a female slave is **disobedient** because they are the master's **responsibility**
  - B. A slave **cannot** be asked to do **more** work than he/she can **bear**
  - C. The slave should be given **breaks** for nap, sleep, and for obligatory prayer
- VIII. Rights of owned animals
- A. It is **obligatory** to provide them with food and drink and they **cannot** be left to die
    - 1. If the owner is **unable** to do so, then the **owner** will be **forced** to either:
      - a) Sell it
      - b) Rent it out
        - (1) Because the one who is **renting** it will be **responsible** for feeding it
      - c) Slaughter it for food
  - B. The following are **forbidden**:
    - 1. Make it carry more weight than it can handle
    - 2. Curse it
    - 3. Milk it in a way that will **harm** its child
      - a) Ex: not enough milk left for its child
    - 4. Hit it in the face
    - 5. Place a **brand** with a hot iron on its face
      - a) It is **permitted** in some **other** part of the body as long as it is done for a **valid purpose**

## Custody

- I. Def: It means to take care of someone who cannot do so himself/herself
- II. It is **obligatory** to **safeguard** and **look after** the following:
  - A. Small child
  - B. Insane person
  - C. A dim-witted person
    - 1. Meaning he/she is immature or foolish and cannot take care of himself/herself
    - 2. Ex: someone with a mental disability
- III. The following is a list of those who have the **most right** to custody in the following order. If the person is **unavailable**, then the **responsibility** falls **down** to the next person in the list:
  - 1. Mother
  - 2. Maternal grandmother
    - a) If she is unavailable, then her mother and then her mother and so on above the chain
  - 3. Father
  - 4. Paternal grandmother

- a) If she is unavailable, then her mother and then her mother and so on above the chain
  - 5. Paternal grandfather
  - 6. Paternal great grandmother
    - a) If she is unavailable, then her mother and then her mother and so on above the chain
  - 7. Full sister
  - 8. Maternal sister
  - 9. Paternal sister
  - 10. Maternal aunt
  - 11. Paternal aunt
  - 12. Niece through the brother
    - a) If unavailable, then niece through the sister
  - 13. Daughter of paternal uncle
    - a) If unavailable, then daughter of paternal aunt
  - 14. Daughter of father's paternal uncle
    - a) If unavailable, then daughter of father's paternal aunt
  - 15. The **remaining** according to laws of '**asabah** discussed under **inheritance law**. Those **closest** in relation will be given precedence
    - a) If the child is a **female**, then the caretaker **must** be a **mahram** (someone whom she is **not** allowed to marry due to close blood relations)
  - 16. Those **linked** to the **subject** through the **mother**
    - a) Ex: mother's brother, son of the mother's brother, etc.
  - 17. The Muslim judge
    - a) He will **assign** someone to take care of the subject
- IV. The following are **not** given custody:
- A. A slave
  - B. A disbeliever is **not** given custody over a Muslim
  - C. A sinful individual
  - D. A **divorced** woman who marries **another man** is **not** given custody of the child through a **previous marriage**
    - 1. If the **new** husband is a **relative** of the child, then it is fine
- V. If **one** of the parents wants to **move** to another **safe city** which is **far enough** to **shorten** the prayer, then who is given custody?
- A. If the **father** is the one who wants to move, then he is given **precedence** for custody as long as the place he is moving to is **safe**
    - 1. The **mother** is given **precedence** for custody if the distance is **not** long enough to shorten the prayer
  - B. If one of them is **temporarily** traveling due to a **need**, then **whoever** is **resident** and **remaining behind** in the city would be given precedence
    - 1. Ex: a mother temporarily going overseas due to medical treatment, then in this case the father would be given precedence
- VI. When a **boy** reaches the age of **seven** and he is **sane**, then he is given a **choice** between the two **parents**. He can **choose** to either stay with the mother or the father

- A. If the **assigned parent** does **not** properly take care of the child or is **unable** to provide benefit, then the custody **transfers** to the **other** parent
  - 1. Ex: the parent is sinful or is financially unstable
- VII. When a **girl** reaches the age of **seven**, then she goes to the **father** until she is **married**
  - A. If the father is **unavailable**, then the next **male** in line who is **responsible** to take the father's place
    - 1. Ex: brother