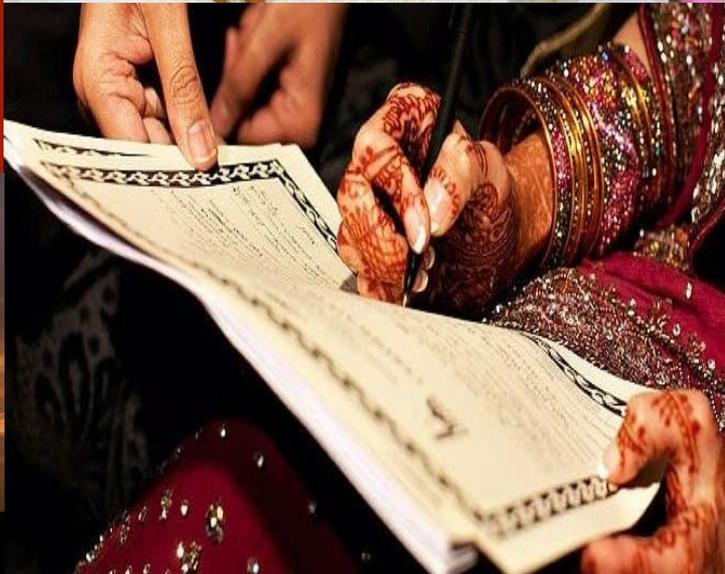


MODULE 7 FAMILY LAW



The Ground We've covered

- 'Aqida 101–what we believe (theology, doctrine, creed)
- The transmission of Islam
- Purification
- Prayer
- Fasting
- Zakat



What About Hajj?

- It is only *Fard 'Ayn* to know how to perform Hajj when it becomes an obligation on someone.
- Before that, the only obligation is to know when it becomes obligatory.
- After Hajj becomes obligatory on a person, or they intend to perform it, it is *Fard 'Ayn* on them to learn the rites.



When Is Hajj Obligatory?

When one is [1] Muslim, [2] at age of maturity, and [3] sane, the only condition is ‘ability’ (*istita’a*), which has three conditions:

- 1] *Aman*—security/safety for one’s route to Hajj and the dependents left behind.
- 2] *Zad*—the sustenance that will deliver one to Mecca for the rites.
- 3] *Sihha*—the physical ability to travel.



When Is Hajj Obligatory?

In the Maliki school, for those who fulfil the pre-conditions, ‘the obligation is ‘expansive’ (*muwassa*) until the age of sixty. After the age of sixty, delaying it becomes sinful. This is because the Prophet (Allah bless him and give him peace) said, ‘**The majority age of my nation will be from sixty to seventy.**’

In addition, if one has certainty that their ability will be cut short, delaying Hajj is sinful.’ (Kafrawi, *Sharh al-Risala*)



When Is Hajj Obligatory?

In the Hanafi school, ‘it is obligatory for one to perform Hajj as soon as one is able. It is obligatory on one who is Muslim, legally responsible, and able—at the time when the people of his locality leave for the Hajj—to afford provisions and transportation for the journey and other expenses, for both going and returning [in excess] of expenses for one’s dependents [until his return].’ (*Maraqi al-Falah*)



When Is Hajj Obligatory?

In the Hanafi school, the obligatory requirements for Hajj are:

- 1] Sound, healthy body, free of disease or condition that would impede one's ability to travel.
- 2] Prevention of any physical barrier on the journey to Mecca.
- 3] Safety of passage.
- 4] For a woman to not be on her 'idda (waiting period), and to be accompanied by her husband or unmarriageable male relative (mahram).



Module 7: Family Law

- 7.1 Marriage
- 7.2 Divorce
- 7.3 Rights of Children
- 7.4 Rights of Parents
- 7.5 Family ties



7.1: What We Will Learn (and Not Learn)



LEGAL MAXIM I

الأصل في الأشياء الإباحة

‘The default of things is permissibility’

- *هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا (‘It is He who created all things in the earth for you...’ (2:29))*
- *قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ (‘Say, “Who may prohibit the adornment of Allah that He brought forth for His servants, and the wholesome provision?”’ (7:32))*

LEGAL MAXIM II

وَالْأَصْلُ فِي الْأَبْضَاعِ وَاللُّحُومِ ... وَالنَّفْسِ وَالْأَمْوَالِ لِلْمَعْصُومِ

تَحْرِيْمُهَا حَتَّى يَجِيءَ الْحِلُّ ... فَافْهَمْ هَذَاكَ اللهُ، مَا يُمَلُّ

**The default rule concerning meat and sex,
And lives and wealth of those the Law respects,
Is prohibition till they're proved to be
Lawful, so may Allah guide you and me.**

WHAT IS NIKAH?

Linguistically, nikah means *sexual cohabitation*. This meaning is expressed in the Quran:

(فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ)

‘But if a man divorces his wife a third time, she is not halal for him until she has cohabited with (*tankiha*) another husband’

As a legal term, *Nikah* is:

‘A contract legalizing reciprocal gratification between a man and a women who are not prevented from union due to a legal impediment.’ (Ibn Rassa’, *Sharh Hudud Ibn ‘Arafa*)

BREAKDOWN OF DEFINITION

- 1] **Contract**—proposal and acceptance
- 2] **Legalizing reciprocal gratification**—sexual, sensorial, etc.
- 3] **Between a man and a woman**—excludes same gender marriage, etc.
- 4] **Who are not prevented from union due to a legal impediment**—there are several categories of people with whom it is haram to marry:

- A] Permanent: Unmarriagable kin (Muharramat)
- B] Temporary: Those in 'Idda, etc.
- C] Non-Muslim Man for a Muslim woman
- D] Non-Kitabi woman for a Muslim man
- E] Temporary marriage (Mut'a)

BASIS

- The bonds of marriage were established in Janna and endure in Janna:

وَقُلْنَا يَا آدَمُ اسْكُنْ أَنْتَ وَزَوْجُكَ الْجَنَّةَ وَكُلَا مِنْهَا رَغَدًا حَيْثُ شِئْتُمَا

‘We said, “O Adam, dwell, you and your wife, in the Garden and eat freely thereof, wheresoever you will...”’

- Marriage is one of the ‘signs of God’ in creation.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً □ وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ □ لِقَوْمٍ
يَتَفَكَّرُونَ

‘And from His signs is that He created for you, from yourselves, spouses to find repose in them, and He placed affection and mercy between you. Indeed in that are signs for people who reflect.’

THE RULING OF MARRIAGE

Is marriage:

- Obligatory (wajib)
- Unlawful (haram)
- Recommended (mustahabb)
- Neutral (mubah)
- Disliked (makruh)



FOR WHOM IT IS RECOMMENDED

- The default ruling on marriage is that it is recommended*
- But this 'default ruling' applies to a person who

1] Is of a balanced temperament

2] Desires marriage

3] Is able to restrain themselves sexually ('ifaf)

4] Is not afraid of falling into fornication

**The Hanafi school says marriage is a 'highly emphasized Sunna' and that one is sinful if they are capable, of a balanced temperament, and leave it.*

FOR WHOM IT IS OBLIGATORY

- One who desires marriage, is afraid of falling into fornication, for whom fasting does not sufficiently weaken their sexual desires.
- It is obligatory on this person to marry, even if it leads them to earn unlawful income, and even if he does not have sufficient income. In this case, he must inform his wife to be of this predicament.
- The basis for this is the principle of the lesser of two evils—and the evil of fornication is worse than the evil of unlawful income.
- We must make an exception with income derived from usury, as usury is a greater sin than fornication.

FOR WHOM IT IS UNLAWFUL

- One who desires marriage but is not afraid of falling into fornication, yet if he marries it is clear that it will bring harm to the wife. Harm here is defined as:
 - 1] Inability to provide her dowry
 - 2] Inability to provide the bare minimum of financial maintenance (and she does not know of this before the marriage)
 - 2] Inability to sexually gratify her (and she does not know of this before the marriage)
 - 3] Inability to provide financial maintenance except from unlawful earnings

FOR WHOM IT IS NEUTRAL

- One who does not have sexual desire
- One who does not expect to have offspring (e.g., infertile, erectile dysfunction, elderly, etc.)
- This person has a choice to marry or remain unmarried. If they resolve to marry, they must inform their potential spouse if they have erectile dysfunction or any other condition that prevents sexual intercourse.
- If this person is just infertile, some scholars say it is not a defect (and infertility is not always certain) and therefore he is not required to inform the potential spouse. Others say he must inform her beforehand.

FOR WHOM IT IS DISLIKED

- One who does not desire to get married and does not want offspring, and who is afraid that if they get married it will prevent them from recommended acts of devotion.

WHAT'S NEXT

- The proposal and betrothal process
- The marriage contract—conditions and pillars
- The guardian
- The dowry
- The witnesses
- Conditions for the husband and wife
- Suitability between spouses
- Rights and responsibilities
- Discord/rebellion/recalcitrance/resolution

