



Fiqh of Marriage: Class Sixteen

الحمد لله و الصلاة و السلام على رسول الله و بعد:

The Hadith:

: وَعَنْ أَحْسَنٍ , عَنْ سَمُرَةَ , عَنْ النَّبِيِّ قَالَ

{ أَيُّمَا امْرَأَةٍ زَوَّجَهَا وَلِيَانِ , فَهِيَ لِلأَوَّلِ مِنْهُمَا }

رَوَاهُ أَحْمَدُ , وَالأَرْبَعَةُ , وَحَسَنُهُ التِّرْمِذِيُّ

Narrated al-Hasan from Samura: The Prophet said,
“If two guardians have given a woman in marriage, she belongs to the first man she was wedded to.” [Narrated by Ahmad]

The Explanation:

This hadith is regarding a case when there are more than one guardian for a woman. And as we mentioned, there are different levels of guardianship. The majority state, it's the Father, then

grandfather, then the brother, then the nephew, then the uncle. They are all guardians.

If two guardians wed the woman, say the father, and her uncle, or her grandfather. They both gave her away in marriage, and neither of the marriages have been consummated, then to whom will she belong? One of the guardians preceded the other. So she will be to the one who the first wali wedded, that is the one whom she was married to first.

The guardians can be from the same level, for example two brothers. The first brother weds her to a person, then the other brother weds her to another, to whom will she belong? To the first husband, the one to whom she was wedded first.

The Hadith:

وَعَنْ جَابِرٍ قَالَ : قَالَ رَسُولُ اللَّهِ

{ أَيُّمَا عَبْدٍ تَزَوَّجَ بِغَيْرِ إِذْنِ مَوَالِيهِ أَوْ أَهْلِهِ , فَهُوَ عَاهِرٌ }

رَوَاهُ أَحْمَدُ , وَأَبُو دَاوُدَ , وَالتِّرْمِذِيُّ وَصَحَّحَهُ , وَكَذَلِكَ ابْنُ حِبَّانَ

Narrated Jabir: Allah's Messenger said, "**Any slave who marries without the permission of his masters or owners is like a fornicator.**"

[Reported by Ahmed]

The Explanation:

This hadith is related to a slave getting married without permission. But does not a slave have a right to get married? Yes, but the Mahr he is going to give, and the time he is going to spend with his new wife, these things would belong to his Sayyid. So if he does not take permission from his Sayyid, he is like a fornicator, as the Prophet stated, which indicates that his contract is annulled.

A slave who marries another woman, whether she is a slave woman or a free woman, without the permission of his Sayyid, his contract is annulled. His relations with her would be like that of a fornicator.

But alhamdulillah, today slavery has been eradicated. {Islam eradicated slavery in a gradual fashion, by closing all the doors to taking slaves, such as debt or race, except one, which is in war time, and this was what was done to the Muslims, so it was reciprocation in kind. At the same time, Islam opened all the doors to freeing slaves, for example, expiation for accidental manslaughter, or for breaking fast in Ramadan, for Dhihaar, etc, and generally encouraging freeing slaves, and even using Zakah funds to free them.]

The Hadith:

: وَعَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ قَالَ

{ لَا يُجْمَعُ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا , وَلَا بَيْنَ الْمَرْأَةِ وَخَالَتِهَا }

مُتَّفَقٌ عَلَيْهِ

Narrated Abu Huraira: Allah’s Messenger said,

“A man must not join together (in marriage to him) a woman and her paternal aunt, or a woman and her maternal aunt.”

[Agreed upon]

The Explanation:

The study of this hadith has two aspects: One, relating to a foundational principle in Shariah, and another, relating to the specifics of this type of marriage.

Allah Most High mentions those women who are forbidden in marriage in Surah al-Nisaa’, in the verse that says, “Forbidden for you are your mother,

daughters, sisters...” until we reach the words, “and permissible for you are any women other than that...”

“Any women,” does not that include marrying a woman along with her aunt?

The Quran only mentions the prohibition of marrying two sisters at one time.

But the hadith mentions a woman and her aunt, or a woman and her neice.

The Quran says, “Permitted for you are any women other than that.” And only mentions the prohibition of joining together two sisters at once.

But the hadith prohibits something not mentioned specifically in the verses.

This leads us to an important principle, which is: From the purposes of the Sunnah is: to specify or restrict some generalities that are mentioned in the Quran.

Even though the Ulema differed regarding whether the Sunnah could abrogate the Quran. And the difference regarding abrogation of

Quran with Sunnah only pertains to those ahadith that are Mutawaattir, i.e. mass transmitted.

Shaikh Muhammad Amin Shinqeeti, may Allah have mercy on him, stated in his book Adwaa al Bayaan, that from a logical point of view, it is possible for the Mutawaatir Sunnah to abrogate the Quran. However, in reality this has not taken place. However, in terms of restricting the generality of some Quranic verses, this has taken place.

Allah says, “Forbidden for you are the dead, and blood.”
The Prophet says, “Made permissible for you are two dead things, and two [things made from] blood...”

Here, we see that the hadith is restricting what has come in general terms in the Quran, which is the general prohibition of dead [maitah] and blood. All Ulema agree regarding this.

Likewise, when Allah says, “(and prohibited for you) is joining between two sisters.” And then all other woman are made permissible.

Even though Uthman bin ‘Affan understood the verse to be referring to joining two sisters together who are right hand positions, not in terms of marriage contract. He said that a verse permitted it, “or

those whom your right hands possess,” and another verse prohibited it, “or joining between two sisters.”

In the case of relations with women, the scholars say we must take the safer of the two opinions, which is that we should give precedence to the prohibition.

Uthman understood it to mean that if a person had two sisters as right hand possessions, he is not allowed to have relations with both. He must free one of them, or marry one of them.

However, the vast majority of the Ummah understood the verse to refer to any two sisters in marriage. And then they tried to understand the ‘illah (legislative wisdom) behind the prohibition of joining two sisters at the same time in marriage.

What is apparent is that a co-wife does not readily accept her co-wife. If a sister is a co-wife to her sister, would their hearts be at ease, and feelings be comfortable? Or would there be hatred, and jealousy, and ghaira. And ghaira is a natural feeling that a woman cannot control. So in this case hatred and ill feelings, and jealousy, will spread, then the ties of kinship will be broken.

And likewise is the case between a woman and her aunt. A woman is married, then her niece become her co-wife. She will dislike her, and dislike her mother too.

She will dislike her own family, it will spread hatred and ill feelings between these people.

Some people expanded the prohibition. They said, any woman, if a man was put in her place, the two could not be married, because of kinship or breastfeeding, then it is not allowed to join them two in marriage.

What is important is that a woman and her aunt cannot be joined together in marriage to a single man.

And Allah knows best.