



## Fiqh of Marriage: Class Seventeen

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

The Hadith:

وَعَنْ عُثْمَانَ ( قَالَ : قَالَ رَسُولُ اللَّهِ ( { لَا يَنْكِحُ الْمُحْرِمُ , وَلَا يُنْكَحُ }  
رَوَاهُ مُسْلِمٌ . وَفِي رِوَايَةٍ لَهُ : { وَلَا يَخْطُبُ } .  
{ وَزَادَ ابْنُ حِبَّانَ : { وَلَا يُخْطَبُ عَلَيْهِ }

Narrated Uthman: Allah's Messenger said, "One who is in Ihram may not marry, or be given in marriage." [Reported by Muslim]

In another narration it says, "He should not ask for someone's hand in marriage." Ibn Hibban added: "nor give someone in engagement."

: وَعَنْ ابْنِ عَبَّاسٍ -رَضِيَ اللَّهُ عَنْهُمَا- قَالَ

: تَزَوَّجَ النَّبِيُّ ( مَيْمُونَةٌ وَهُوَ مُحْرِمٌ { مُتَّفَقٌ عَلَيْهِ وَلِمُسْلِمٍ {

{ عَنْ مَيْمُونَةَ نَفْسَهَا { أَنَّ النَّبِيَّ ( تَزَوَّجَهَا وَهُوَ حَلَالٌ

Narrated Ibn Abbas: The Prophet married Maimuna when he was in the state of Ihram (during pilgrimage). [Agreed upon]. Muslim reports that Maimuna herself reports, “The Prophet married her when he was not in the state of Ihram.”

The Explanation:

The Author brings after the section on Nikaah ash-Shigaar, which is forbidden, with the section on the Nikaah of the Muhrim, which is also forbidden, according to the Jumhoor.

And perhaps we may not think this is a practical matter, but the scholars say, “Learning a Fiqh Mas’alah is better than 60 years of Ibaadah, even if one does not act according to it.”

The first hadith, that the Prophet said, “One who is in Ihram may not marry, or be given in marriage. He should not ask someone’s hand in marriage, nor give someone in engagement.”

The author bring this text first, which is a text addressed to the entire Ummah.

Then after this, he brings another hadith, which is a type of apparently contradictory evidence, which is narrated by Ibn Abbas, who says that the Prophet married Maimuna while he was in the state of Ihram.

And he brings a hadith narrated by Maimuna herself, where she says that the Prophet married her while he was not in the state of Ihram.

From here, we find that marrying in the state of Ihram is a matter over which the scholars differed, and there is a lengthy discourse about it in the books of Fiqh.

The summary of this difference, is that Imam Abu Hanifa and Ahlul Iraq view that marriage is permissible for the Muhrim. However, the majority of the other Imams, as well as the scholars of Hijaz and Misr and Shaam, view that it is not permissible for a Muhrim to marry or give in marriage.

Let us examine the first text which the Author began with.

“La yankihu al muhrim”

And the Usooliyoon state that what is meant here is that the prohibition extends to a new marriage, and not the continuation of a previous marriage. However, no one is permitted to make a new marriage contract. Thus, the prohibition for marriage is forming a new contract.

And because this prohibition is only for a person to initiate a new marriage contract, Imam Malik states that a person who divorced his wife with a revocable divorce can take her back during Ihram. Since

returning one's wife is not a new marriage, and for this reason he does not give her a new mahr.

Thus, this text “la yankih wa la yunkih”, that is he does not marry or give in marriage someone under his guardianship.

And Imam Malik states in the Muwatta that Ibn Mad'oon wanted to marry his niece to Talha, so he sent Aban ibn Uthmaan, and he said I wanted to marry my niece to so-and-so, who are both in Ihram, and I want you to attend.

So Aban refused, and said that, “I heard the Messenger of Allah say, ‘The Muhrim shall not marry or be given in marriage.’”

Because of this, I cannot attend this marriage that is prohibited.

So we find in this hadith a general prohibition that is not related to a particular personality, or individual set of circumstances.

The Prophet forbade a Muhrim from marrying or being married, or even proposing.

The Fuqahaa say that basis for this prohibition is in the Qur'an, Allah says, “Fa man farada fee hinnal Hajja fa la rafatha wa la fusooqa wa la jidaala fil hajj..”

And rafath linguistically means speaking about women in their presence, romantic speech, so if this speech is forbidden, then what it leads to is even more worthy of prohibition.

In fact the scholars state that if a man enters that state of Ihram, even his wife becomes forbidden for him. If Ihram prevents a couple who were married long before from having relations, then to prevent a new marriage from taking place and relations between them is even more evident.

Ihram has put a stop to any previous relations, so would it make sense to begin a new marital relationship? If a couple are married, but they cannot have relations, than what is the purpose of this marriage?

Thus, because even those who were previously married cannot have relations, the prohibition of any new marriage is more likely to be prohibited.

As for the Hadith of Maimoona, it is really a vast subject, and it deserves an independent study to gather all its points.

The short of the story is that Maimoona was from a noble and elite family, Maimoona bint al-Harith al Hilaliyya, she was from a home that was known for its early Islam and honor.

In the beginning, she married, who divorced her, then another, who died. Then after this, after the battle of Khaibar in the year of 7 AH, Ja'far proposed that the Prophet marry her. After that the Prophet left for the Umrah of Hudaibiyyah, and he was prevented from completing the Umrah by the Mushrikeen, then the terms of the Hudaibiyyah agreement were that they would come back and perform Umrah the next year.

So the next year the Prophet returned to perform the Umrah of Qadaah, and it was during this year that the Prophet married Maimoona. "When the Prophet arrived in Makkah, he married Maimoona."

As for the actual consummation of their marriage, and not the contract, all the Ulema agree that it took place after the Umrah, when the Prophet was returning from Makkah, at a place called Sarif, at this point was he in Ihram? No.

But the question is when did the marriage contract take place? Ibn Abbas says, "He married her and he was Muhrim." The Prophet left Madina in the state of Ihram, and arrived that way in Madinah. When did the marriage take place?

Did he marry her as soon as he arrived in Makkah while in the state of Ihram? In other words, was the first thing that he did when he arrived in Makkah was get married, before even finishing his Umrah?

Or is it more likely that the first thing he did when he arrived in Makkah was to go to the Ka'abah, and perform Umrah. This is more natural and more likely, since he would not have had time to get married before making Qadaa of his Umrah.

We find that Ibn Sa'd says, a man came to him and said Ikrimaah thinks that the Prophet married Maimoona while he was a Muhrim. Ikrimaah was the student of Ibn Abbas, along with 'Ataa and Mujahid and others.

Ibn Sa'd said, he is a liar. Go to him and tell him that the Prophet came to Makkah in the state of Ihram, and when he finished his Umrah, he came to the house of 'Abbas, and at that time Maimoona had been married to him.

This is the details of the marriage to Maimoona, when the Prophet finished his Umrah, and made tah'leel, he married her, and this is logical.

He performed the contract, and did not consummate the marriage. They had an agreement with the Mushrikeen to leave Makkah within three days. The Mushrikeen came and said, "The time between us has come to an end, so leave."

The Prophet said, "Give us some time, I have married from you, let us hold a waleema and eat, and you can eat with us."

“They said, we do not need your food or your waleema, leave, the time period has ended.”

So the caller of the Prophet called out, “Let not one of the believers spend the night in Makkah.” So they all left, and the Prophet left Abu Raafa’ behind, to bring Maimoona to him, and he caught up with the Prophet in Sarif, outside of Makkah, and this is where their marriage was consummated.

Later on, Maimoona died in that town, Sarif, and she was 70 years old, at the same place where she began her marriage with the Prophet.

Back to the Hadith, Ibn Abbas narrated with a sound chain that the Prophet married Maimoona and he was Muhrim. And Abu Hanifa took this text, and Ahlul koofa and Iraq, and they permitted marriage of a Muhrim.

Yet Abu Rafi’, her guardian, narrates that the Prophet married her and he was not in the state of Ihram.

So when examining the narrations, we have Ibn Abbas’ narration, with an authentic chain, in the Saheehayain, saying he was Muhrim.

But in opposition, we find that Abu Rafi’, and others, along with Maimoona herself, that the Prophet was not in Ihram.



So Ibn Abdul Barr says, “We have two daleels, both with authentic chains, that oppose one another. So we leave them both aside.”

But other scholars say, if texts seem to contradict, we try to reconcile them by interpreting both of them together. If this is not possible, we try to make one outweigh the other.

In this case, we cannot use both daleels together, since Haram and Halal are opposites, and two opposites cannot be joined.

So the Jumhoor tried to make one proof outweigh the others.

Abu Hanifa says, Ibn Abbas is the nephew of Maimoona.

But the Jumhoor said, Maimoona herself says that he was Halal. No one would know better than her. She was asked, and she said, “He married me and he was Halal (not in the state of Ihram).”

So the scholars of hadith say: The texts are contradictory, so it is not possible to join them together. So it is clear that we give precedence to the words of Maimoona herself.

Despite the fact that the people of Kufa give Ibn Abbas’ narration precedence since he is Maimoona’s nephew, and she is his aunt.

But Ibn Abbas' other aunts say otherwise, as did Abu Rafi' and of course, Maimoona herself, the subject of the story.

Imam Malik said, we can bypass both of these daleels, and look at external evidence.

What we find is that Umar prohibited someone in Ihram from getting married, and also two people who were married in Ihram were brought to him and he separated them.

This and other daleels are independent references. But how can we respond to the hadith of Ibn Abbas. The Usooliyoon state that of a Thiqa contradicts thiqaat, his narration is Shaadh.

Thus, the narration of Ibn Abbas, in the opposition to the many other narrations, including Maimoona herself, makes it Shaadh.

A Thiqa contradicted Thiqaat.

Also, Ibn Abdul Barr mentions that hadith about the prohibition of marrying in Ihram are Mutawaatir, and the Iraqiyyoon do not have any other evidence other than the hadith of Ibn Abbas. Some scholars mention that it is likely that Ibn Abbas misconceived that Maimoona was in Ihram.

Thus my beloved brothers and sisters, we see by studying the various texts, we are able to come to the conclusion that the Prophet married her and he was not in the state of Ihram.

It is not rational that the Prophet would come from his long journey, and enter Makkah to perform Umrah, and begin by first marrying Maimoona. Rather, he would begin by making Tawaaf, and Umrah, and think of other things. This is what the Mutawaatir narrations indicate, and this is how the Jumhoor reply to Abu Hanifa.

Would the Prophet enter Makkah and leave his companions to the enemies, the shaitan came to the Mushrikeen and said to them, Muhammad and his companions have come and they are tired, if you descend on them at once you will overwhelm them. Would he leave them at this moment and go getting married at the house of Abbas?

In conclusion, there is no proof that he got married while Muhrim, nor should others marry in Ihram because of that.