

Mumbai University  
3 Years LLB- Semester II (Sept 2022).  
Pattern: MCQ-30 Marks; DCQ- 30 Marks (10 Quest of 3 Marks)  
Family Law  
Descriptive Questions & Answers complied by RK

**Q1) What are the 5 grounds of dissolution of Marriage**

As per Section 10 of Divorce Act 1869 (as amended in 2001), Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent—

- (i) has committed adultery; or
- (ii) has ceased to be Christian by conversion to another religion; or
- (iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition;
- (iv) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or
- (v) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or
- (vi) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or
- (vii) has deserted the petitioner for at least two years immediately preceding the presentation of the petition; or
- (viii) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

In addition to above, a wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

**Q2) What is divorce by mutual consent?**

As per Section 10 (A) of Divorce Act 1869 (as amended in 2001),

Divorce by Mutual Consent or Mutual Divorce is when both husband and wife mutually agree that they cannot live together anymore and that the best solution being Divorce, they would present a Mutual Divorce petition jointly before the honourable court, without putting forth any allegations against each other.

The ground for Divorce by Mutual Consent is that they should have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

The petition for divorce can be withdrawn by any of the party within first 6 months of the petition, or with the consent of withdrawal by both the parties after 6 months till 18 months from the date of petition.

if the petition is not withdrawn by both the parties within 18 months, the Court shall, on being satisfied, after hearing the parties and making such inquiry, as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of decree.

**Q3) What do you mean by "Decrees for dissolution to be nisi" in relation to divorce act?**

"Decrees for dissolution to be nisi" means that every decree for dissolution of marriage made by a Hon'ble Court shall in the first instance, be a decree nisi i.e not to be made absolute till the expiration of such time which shall not be less than six months from the date of pronouncing thereof, as the High Court, by general or special order from time to time, directs i.e an order by a court of law stating the date on which a marriage will end unless a good reason not to grant a divorce is produced.

**Q4) What is Nullity of Marriage?**

As per Section 18 of Divorce Act 1869 (as amended in 2001), any husband or wife may present a petition to the District Court praying that his or her marriage may be declared null and void on the grounds mentioned in Section 19 of the act which are as under:

- that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- that the parties are within the prohibited degree of consanguinity (whether natural or legal) or affinity;
- that either party was a lunatic or idiot at the time of the marriage;
- that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force

**Q5) What are the provisions of alimony ?**

Section 36 of the Indian Divorce Act, 1869 governs the provisions regarding alimony pendent lite in India. Under Section 36, a woman can claim her right

to alimony and the husband will be entitled to pay the alimony, if directed by the Court.

Section 36 of the Indian Divorce Act, 1869 read as follows:

In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for expenses of the proceedings and alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied with the truth of the statements therein contained, may order the husband for payment to the wife of the expenses of the proceedings and alimony, pending the suit as it may deem just.

Provided further that the petition for the expenses of the proceedings and alimony pending the suit, shall, as far as possible, be disposed of within sixty days of service of such petition on the husband.

As per Section 37 of Indian Divorce Act, 1969:

Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall to the satisfaction of the court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

**Q6) Define Alimony?**

**Ans)** Alimony refers to court-ordered payments awarded to a spouse or former spouse within a separation or divorce agreement. The reason for alimony is to provide financial support to the spouse who makes a lower income, or in some cases, no income at all

**Q7) Provisions of Remarriage under Indian Divorce Act ?**

**Ans)** The provisions relating to remarriage are given under section 57 and 58 of Indian Divorce Act, 1869 which states as under:

Where a decree for dissolution or nullity of marriage has been passed and either the time for appeal has expired without an appeal having been presented to any court including the Supreme Court or an appeal has been presented but has been dismissed and the decree or dismissal has become final, it shall be lawful for either party to the marriage to marry again.

As per Section 58 of the Act, No clergyman in Holy Orders of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or

shall be liable to any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

**Q8) What is alimony pendent lite under Christian Law?**

**Ans) Section 36 of the Indian Divorce Act, 1869 governs the provisions regarding alimony pendent lite in India. Under Section 36, a woman can claim her right to alimony and the husband will be entitled to pay the alimony, if directed by the Court.**

**Section 36 of the Indian Divorce Act, 1869 read as follows:**

**In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for expenses of the proceedings and alimony pending the suit.**

**Such petition shall be served on the husband; and the Court, on being satisfied with the truth of the statements therein contained, may order the husband for payment to the wife of the expenses of the proceedings and alimony, pending the suit as it may deem just**

**Q9) Who can solemnized Christian Marriage?**

**Ans) As per The Indian Christian Marriage act 1872, the marriages may be solemnized in [India]:**

- a) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;**
- b) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;**
- c) by any Minister of Religion licensed under this Act to solemnize marriages;**
- d) by, or in the presence of, a Marriage Registrar appointed under this Act;**
- e) by any person licensed under this Act to grant certificates of marriage between 2 Indian Christians.**

**Q10) Who is marriage registrar?**

**Ans) As per Section 7 of As per The Indian Christian Marriage act 1872, the State Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration. Where there are more than one Marriage Registrar in any district, the State Government shall appoint one of them to be the Senior Marriage Registrar. Further, if there is only one Marriage Registrar in a district, and such Registrar is absent from office, or ill, or when his office is temporarily**

vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy.

**Q11) What are the normal timings for solemnizing the Christian Marriages as per Act?**

**Ans) As per Section 10 of The Indian Christian Marriage act 1872, every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening.**

**Q12) When a Christian marriage be solemnised outside church?**

**Ans) As per Section 11 of The Indian Christian Marriage act 1872, No Christian Marriage can be solemnised outside church unless there is no church within five miles distance by the shortest road from such place, or unless the clergyman has received a special license, authorizing him to do so.**

**Q13) On what conditions marriages of Indian Christians may be certified ?**

**Ans) Every marriage between Indian Christians applying for a certificate shall be certified, if the following conditions be fulfilled:**

- a) the age of the man intending to be a married shall not be under twenty-one years, and the age of the woman intending to be married shall not be under eighteen years;**
- b) neither of the persons intending to be married shall have a wife or husband still living;**
- c) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other: "I call upon these persons here present to witness that I \_\_\_\_\_, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, \_\_\_\_\_ to be my lawful wedded wife or husband"**

**Q14) Who is minister of church?**

**Ans) In Christianity, a minister is a person authorised by a church or other religious organization to perform functions such as teaching of beliefs; leading services such as weddings, baptisms or funerals; or otherwise providing spiritual guidance to the community.**

**Q15) What is a will under Indian Sucession Act, 1925?**

**Ans) A last will and testament is a legal document that communicates a person's final wishes pertaining to assets and dependents. A person's last will and testament outlines what to do with possessions, whether the deceased will leave them to another person, a group or donate them to charity, and**

what happens to other things that they are responsible for, such as custody of dependents and management of accounts and financial interests.

**Q16) What are different types of will?**

**Ans) The different types of will are as under:**

- a) Unprivileged Will: Will created by a person who is not a soldier employed in an expedition or engaged in actual warfare or a mariner at sea is known as an unprivileged will**
- b) Privileged Wills: They are wills that may be in writing or made by word of mouth by those in active services like a soldier, airman or mariner.**
- c) Contingent or conditional will: A Will can be expressed to take effect only in the event of satisfying certain conditions or can be contingent upon other factors. Such a Will, which is valid only in the event of the happening of some contingency or condition, and if the contingency does not happen or the condition fails, is called a conditional or contingent will.**
- d) Concurrent Wills: are written by one person wherein two or more Wills provide instructions for disposal of property for the sake of convenience. For instance, one Will could deal with the disposal of all immovable property whereas another Will deals with the disposal of all movable property.**

**Q17) Who is administrator under Indian Succession Act, 1925?**

**Ans) Section 2(a) of the Act defines administrator as a person appointed by a competent authority to manage the estate of a deceased person where there is no will or where there is a will but no executor.**

**Q18) Who is Executor under Indian Succession Act, 1925?**

**Ans) According to Section 2(c) of the Act, an executor is a person to whom the last will of a deceased person is confided by the testator for the execution of such last will. He is appointed to carry on the smooth functioning of the duties bestowed on him by the deceased.**

**Q19) What is testamentary succession?**

**Ans) It is defined as the succession of property by a WILL or TESTAMENT as per applicable rules of law. As per Hindu Law, any male or female can make a will to transfer his or her property or assets to anyone. The Will is treated as valid and enforceable by law.**

**Q20) To whom Indian Succession Act 1925 is applicable?**

**Ans) Laws relating to testamentary succession as per the Indian Succession Act, 1925 is applicable for Hindus. Intestate succession is applicable to**

Hindus as per the Hindu Succession Act, 1956. Intestate succession for Hindus is not as per the Indian Succession Act.

Laws relating to both testamentary succession and intestate succession is as per the Indian Succession Act, 1925 for Christians, parsis and Jews.

The Indian Succession Act, 1925 does not apply in both testamentary or intestate succession of Muslims. For Muslims, succession is based on the Quran and other sources

**Q21) What are requisites of Parsi Marriage under Parsi Marriage & divorce Act 1936?**

**Ans) Requisites to validity of Parsi marriages:**

- a) The contracting parties are not related to each other in any of the degrees of consanguinity or affinity
- b) such marriage must solemnize according to the Parsi form of ceremony called "Ashirvad" by a priest.
- c) in the presence of two Parsi witnesses.

**Q22) What is Bigamy? What is the punishment for bigamy in Parsi Marriage & divorce Act 1936?**

**Ans) Bigamy occurs when a person is married to two people at the same time. Bigamy can be intentional, where one spouse marries a second spouse knowing full well their initial marriage remains legally binding, or it can be unintentional, the result of an attempted divorce that was never legally finalized. Bigamy is distinguished from polygamy, which is a more general term for living in multiple marriages, which may or may not be legally binding. Polygamy is legal for muslim men.**

**As per Section 5 of Parsi Marriage and Divorce Act , Every Parsi who during the lifetime contracts a marriage without having been lawfully divorced from earlier wedding or such earlier marriage been declared null and void or dissolved, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code 1860 for the offence of marrying again during the lifetime of a husband or wife which is imprisonment upto 10 years and fine.**

**Q23) What is Fatwa e alamgiri?**

**Ans) Fatawa 'Alamgiri, also known as Al-Fatawa al-'Alamgiriyya is a 17th-century sharia based compilation on statecraft, general ethics, military strategy, economic policy, justice and punishment, that served as the law and principal regulating body of the Mughal Empire, during the reign of the Mughal emperor Aurangzeb Alamgir.**

**Q24) What is nikah halala?**

**Ans) Halala** Also known as **Tahleel Marriage** is a practice in which a woman, after being divorced by **Talaq**, marries another man, consummates the marriage, and gets divorced again in order to be able to remarry her former husband.

**Q25) Who can seek divorce under Divorce Act 1869?**

**Ans) Under Divorce Act 1869**, Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization of marriage, been guilty of adultery.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization of marriage, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; or has been guilty of adultery, or of bigamy with adultery, or of marriage with another woman with adultery, or of rape, sodomy or bestiality.

**Q26) What is privileged will?**

**Ans) Privileged Wills** are wills that may be in writing or made by word of mouth by those in active services like a soldier, airman or mariner. The legal requirement for the validity of a privileged will has been reduced to enable certain persons to quickly make a will.

**Q27) What is muta Marriage?**

**Ans) Muta marriage** is a temporary marriage. Muta marriage is recognized in Shia only. Sunni law doesn't recognize it. A Shia of the male sex may contract a Muta marriage with a woman professing the Mahomedan, Christian or Jewish religion, or even with a woman who is a fire worshipper but not with any woman following any other religion. But a Shia woman cannot contract a Muta marriage with a non muslim.

The essentials of Muta marriage are:-

- (1) The period of cohabitation should be fixed.
- (2) Dower should be fixed.
- (3) If dower specified, term not specified, it could amount to permanent or regular marriage.
- (4) If term fixed dower not specified, it amounts to void marriage.



**Q28) What is Bequest?**

**Ans)** Bequest is the act of transferring something by a Will. In particular, the bequest relates to the transfer of personal property such as money or household items. (Although some people may use the term "will" to refer to real estate, wills have traditionally been associated only with personal property.

**Types of Bequests.**

Bequests are classified mainly into three types:

(1) **Onerous Bequests**: Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

(2) **Contingent Bequests**: A contingent bequest is a bequest which is effective only on the happening or not happening of a contingency. Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

(3) **Conditional Bequests**. A conditional bequest is a bequest which depends upon the performance or non-performance of a certain condition.

**Q29) What is Mahr?**

**Ans)** When the marriage vows are recited in the Muslim religion, the husband promises to give or gives his wife a gift, that is known as Mahr, in other words also known as dowry or sadaq. It is an amount settled by the husband with the prior consent of the wife. It can be anything & can be in any form like property, money, gold, silver, ornaments, clothes etc , it is anything which can be owned.

It is indirectly can be termed as dowry which the husband pays to his wife in return of marriage, as the woman is marrying him, he has to pay or give her a gift in lieu of marriage which is a gift to her. It is not fixed that everyone has to pay that much of amount or property to her wife , it is decided by the wife that what she wants , whatever the wife wants the husband has to give that otherwise the wife can refuse to marry. There is no minimum or maximum amount fixed for Mahr. The woman should demand that much of Mahr which the husband is capable of paying, women should keep in mind the condition, status, financial situation of the husband & his family.

There are two types of Dower:

**Specified dower:** Specified dower is an amount of money or any valuable property which is fixed by both the parties, at their own wills, at the time of marriage or afterwards. In case of dower, the husband is under an

obligation to give the amount of money agreed upon or specified property to his wife.

**Unspecified Dower/Proper Dower:**

If the value of the dower hasn't been settled by the parties before or at the time of marriage or after the marriage, then it is known as unspecified dower. In such case, wife is entitled to get a reasonable amount. Such dower is not specified by both the parties at the time of marriage but such type of dower is settled by the court.

**Q30) Write Short note on Ashirwad Ceremony?**

**Ans)** The Parsi marriage is considered important for its validity to be a contract via an Ashirvad religious ceremony.

The word 'Ashirvad' literally means 'Blessing'. It relates to the invocation of the Divinity to bless the marital tie. It is performed by the priest of Parsi religion. Section 2(8) provides for two classes of Parsi priest - Dastur and Mobed. 'Ashirvad' may be performed by any of them. There is also requirement of two Parsi witnesses beside the priest.

**Q31) What are the sources of Muslim Law?**

**Ans)** The Muslim law has been derived from various primary sources. These are classified as:

- a) **Quran:** It is the original or primary source of Muslim Law. It is the name of the holy book of the Muslims containing the direct revelations from God through Prophet. The direct express or manifest revelations consist of the communications which were made by the angel, Gabriel, under directions from God, to Prophet Mohammed, either in the very words of God or by hints and of such knowledge which the Prophet has acquired through the inspiration (Ilham) of God. All the principles, ordinances, teachings and the practices of Islam are drawn from Quran.
- b) **Sunna (Traditions or Ahadis) :** The literal meaning of the term 'Sunna' is 'the trodden path.' It denotes some practice and precedents of the Prophet, whatever the Prophet said or did without reference to God, and is treated as his traditions. According to Muslim law, there are two types of revelations i.e. manifest (Zahir) and internal (Batin). Manifest or express revelations were the very words of Allah and came to the Prophet through the angel Gabriel. Such revelations became part of the Quran. On the other hand, the internal revelations were those which were the 'Prophet's words' & did not come through Gabriel, but Allah inspired the ideas in his sayings. Such internal revelations formed part of Sunna.
- c) **Ijma:** With the death of the prophet, the original law-making process ended, so the questions, which could not be solved either by the principles

of the Quran or the Sunna, were decided by the Jurists with the introduction of the institution of Ijma. Ijma means agreement of the Muslim Jurists of a particular age on a particular question of law, in other words, it is the consensus of Jurist's opinion.

- d) Qiyas means 'measurement, accord, and equality.' In other words, it means measuring or comparing a thing to a certain standard, or to 'establish an analogy.' If the matters which have not been covered by Quran, Sunna or Ijma, the law may be deducted from what has been already laid down by these three authorities by the process of analogy (Qiyas).

**Q32) What are the essentials of Muslim Marriage?**

**Ans) The essentials of a Muslim marriage includes:**

- a) Valid offer and acceptance by the parties to the marriage
- b) The parties to the marriage must offer and accept the offer at one and same meeting
- c) The presence of at least two Muslim male witnesses (or one male and two female witnesses) of sound mind and of the age of majority.

**Q33 ) Who can pronounce Talak?**

**Ans) Every Muslim husband of sound mind, who has attained the age of puberty, is competent to pronounce talaq. It is not necessary for him to give any reason for his pronouncement. A husband who is minor or of unsound mind cannot pronounce it. Talaq by a minor or of a person of unsound mind is void and ineffective. However, if a husband is lunatic then talaq pronounced by him during "lucid interval" is valid. The guardian cannot pronounce talaq on behalf of a minor husband. When insane husband has no guardian, the Qazi or a judge has the right to dissolve the marriage in the interest of such a husband.**

**Q34) Write a note on Talaq ul sunnat?**

**Ans) From the point of view of the mode of pronouncement and effect, there are two kinds of Talaq:**

1. Talaq-ul-Sunnat or revocable Talaq, and
2. Talaq-ul-Bidaat or irrevocable Talaq.

Talaq-ul-Sunnat is regarded to be approved form of Talaq and is effected in accordance with the traditions of Prophet (Sunna). Also, known as Talaq-ul-raje.

The Talaq-ul-Sunnat or revocable Talaq may be pronounced either in the Ahsan form or in the Hasan form. That is to say, Talaq-ul-Sunnat may be further sub-divided into: (i) Talaq Ahsan (most proper) and; (ii) Talaq Hasan (Proper).

**Talaq-ul-Biddat (Irrevocable Talaq/Disapproved Mode):** Biddat means sinful. It is a sinful and disapproved mode of divorce; also known as Talaq-ul-Bain. Under the Shia law, an irrevocable Talaq is not recognized. It is recognized only under Sunni law.

**Q35) What are the requisites to validity of Parsi Marriage?**

**Ans) Requisites to the validity of Parsi marriages:**

- a) Marriage is not valid if both the contracting parties are related to each other in any of the degrees of consanguinity i.e. people descended from the same ancestors.
- b) In Parsi Law, a marriage is not valid if it is not solemnized by the priest in presence of two Parsi witnesses.
- c) A marriage will not be considered if the male is not 21 years old and the female has not completed 18 years of age.

**Q36) What are the grounds of divorce under Divorce Act 1869?**

- a) **Ans) The following are the grounds of divorce mentioned under the Indian Divorce Act, 1869.**
- b) Adultery
- c) Conversion to another religion
- d) One of the couples suffering from an unsound mind, leprosy or communicable venereal disease for at least two years before the filing of the divorce.
- e) Not been seen or heard alive for a period of seven or more years.
- f) Failure in observing the restitution of conjugal rights for at least two years.
- g) Inflicting cruelty and giving rise to mental anxiety that can be injurious to health and life.
- h) Wife can file a divorce based on the grounds of rape, sodomy and bestiality.

**Q 37) What are the grounds of divorce under Parsi Marriage and Divorce Act, 1936**

**Ans) The following are the grounds for divorce in India included in the Parsi Marriage and Divorce Act, 1936 amended in 1988.**

- a) Continuous absence of seven years.
- b) Non-consummation of marriage within one year.
- c) Unsound mind provided the other spouse was unaware of the fact at the time of marriage and the divorce must be filed within three years of marriage.

- d) Pregnancy by some other man, provided the husband was unaware of the incident during the time of marriage and that he must not have undergone sexual intercourse after he came to know about the situation. The divorce must be filed within two years of marriage.
- e) Adultery, bigamy, fornication, rape, or any other type of perverse sexual act.
- f) Act of cruelty
- g) Suffering from venereal disease or forcing the wife into prostitution.
- h) Sentenced to prison for seven years or more
- i) Desertion for two or more years
- j) Non-resumption of cohabitation after passing an order of maintenance or a decree of judicial separation.

**Q 39) Write a note on Hanafi School?**

**Ans)** Hanafi School is the first and the most popular schools in Muslim law. Before being named Hanafi, this school was known as Koofa School which was based on the name of the city of Koofa in Iraq. Later, this school was renamed as Hanafi School based on the name of its founder Abu Hanafee. The Hanafi School is one of the four Madhhabs (schools of law) in jurisprudence (Fiqh) within Sunni Islam. The Hanafi madhhab is named after scholar Abu Hanifa whose legal views were preserved primarily by his two most important disciples, Abu Yusuf and Muhammad al-Shaybani. They laid down the systematic foundations for the work of later Hanafis. The method of making legal provisions for Abu Hanifa was based on the basic sources like Quran, Sunnah, Qiyas, Isthisan, Ijma, Orf.

**Q 40) What is an irregular marriage?**

**Ans)** When a marriage is conducted by violating certain or partial conditions of a valid marriage, it is called an irregular marriage. The best instance of an irregular marriage is the marriage between a Muslim and a Christian or a Jew. In general, an irregular marriage is voidable marriage and not void-ab-initio.

**Q 41) Write a note on Guardian ship of minor under muslim Law?**

**Ans)** Muslim law recognizes the following kind of guardianship:

- a. A natural or legal guardian: Natural guardian is a one that encompasses a right to regulate and supervise the activities of a minor. Father is recognized as the natural guardian of his kid underneath all the schools of Muslim law. The father's right to act as guardian of a minor is an independent right and is given to him underneath the substantive law of Islam

- b. **Testamentary guardian:** A testamentary guardian may be a one that is appointed as guardian of a minor under a will. Only father or, in his absence, paternal grandfather has the right to appoint a testamentary guardian. A non-Muslim and a feminine might also be appointed as a testamentary guardian in sunni, while a non muslim cannot be a guardian under Shia.
- c. **Guardian appointed by courts or statutory guardian:** In case of the absence of a natural and legal document guardian, the court is authorized to appoint a guardian for the aim of the minor's person or property or for both. The appointment of a guardian by the court is ruled by the *Guardianship and Wards Act, 1890* which is applicable to all the Indians irrespective of their religion. Such guardians are also called *Statutory Guardian*
- d. **De-facto guardian:** A de-facto guardian is a person who is neither a legal guardian nor a testamentary guardian or statutory guardian, but has himself assumed the custody and care of a child.

**Q 42) What is Domicile of origin?**

**Ans)** As per Section 7 of Indian Succession Act, 1925, the domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

**Q 43) Difference between Talak, Khulla and Mubarat?**

**Ans)** A divorce which is given by husband is called 'talaq' in muslim law and divorce by woman is called 'khula'. The difference between a khula divorce and a mubara'at divorce is that in khula the wife desires the divorce and initiates it, while in mubara'at both spouses desire the separation. The Hanafi school believes that all adult females have the exclusive right to enter into a khula.

**Q 44) What is divorce by mutual consent under Parsi Marriage and Divorce Act?**

**Ans)** Under Section 32B Divorce by Mutual Consent is defined. It provides that whether the marriage is solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1988 they can file for divorce by mutual consent. The suit has to be filed by both the parties and the parties must be living separately for a time span of one year and they are not able to live together and decided mutually to separate. The suit

cannot be filed unless the period of one year has expired from the date of marriage. If the court is satisfied from the facts and circumstances of the case, the Court can grant the decree for divorce.

**Q 45) What is Domicile? What are different types of Domicile?**

**Ans)** A person is said to have a domicile in a country in which he/she is considered to have his/her permanent home. A person cannot have more than one domicile. Domicile plays an important role in the writing of Will, intestate succession, and succession planning. The Indian Succession Act, 1925, provides that succession to immovable property in India is to be regulated by the law of India whenever a person has domiciled in India during his/her time of passing away. Hence, the concept of domicile is important while determining the distribution of property after the death of a person.

The different types of domicile are as under:

- a) Domicile by birth or origin is the domicile of a person which he/she acquires at birth from parents.
- b) A person can take on a domicile by choice by taking up fixed residence in a country different from the domicile of birth. If an Indian national move to the USA temporarily on an H1B visa, then obtains citizenship or Green Card to stay in the USA indefinitely with no intention of returning to India, then it could be said that he/she has adopted a new domicile by choice.

**Q 46) Write a note on Parsi District Matrimonial Court?**

**Ans)** For the purpose of hearing suits under Parsi Marriage and Divorce Act, 1936, a special Court shall be constituted in each of the Presidency-towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several State Governments as such Governments respectively shall think fit.

Every Court so constituted at a place other than a Presidency-town shall be known as the Parsi District Matrimonial Court of such place. Subject to the provisions contained in section 21, the local limits of the jurisdiction of such Court shall be within the limits of the district in which it is held. The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and in the trial of cases under this Act, he shall be aided by five delegates.

**Q 47) Write a note on Shayara Bano V/s Union of India?**

**Ans) The details of Shayara Bano Case are as under:**

- a) Shayara Bano, a 35-year-old woman from Uttarakhand, After 15 years of marriage, Rizwan Ahmed divorced his wife Shayara Bano in 2016 via instant triple talaq (talaq -e bidat).
- b) She filed a Writ Petition in the Supreme Court, asking to declare three Muslim practises unconstitutional: talaq-e-biddat, polygamy, and nikah-halala.
- c) She claimed that these actions were in violation of Articles 14, 15, 21, and 25 of the Constitution.
- d) Her claim that these practises are unconstitutional was supported by the Union of India and women's rights organisations such as Bebaak Collective and Bhartiya Muslim Mahila Andolan (BMMA).
- e) Following the acceptance of Shayara Bano's petition, the Supreme Court convened a five-judge constitutional bench.
- f) On August 22, 2017, a legal ban was announced by the five-judge bench on the Triple Talaq by 3:2 majority.
- g) The Court has declared that triple talaq in any form is illegal.
- h) In particular, triple talaq was declared unconstitutional by the Supreme Court in its judgement, with the husband facing up to three years in prison.
- i) According to the majority, the Triple Talaq or Talaq-e-biddat is not protected by the exception in Article 25, i.e. the court determined that the practice is not an essential component of Islamic religion.
- j) The court justified its position by stating that, while it is practised by the Hanafi School, it is considered sinful in it.
- k) The Triple Talaq judgement is widely regarded throughout the jurisdictions as a safeguard against social evils such as those promoted by this practice.
- l) No husband can now abandon his wife by breaking the marital ties based on his whims and fancies.
- m) The court ensured that the concepts of equality, particularly gender equality, are more than just theoretical ideologies.

**Q 48) Define Qiyas?**

**Ans) Qiyas means reasoning by analogy from 3 sources i.e., Quran, Sunna and Ijma. In Qiyas rules are deduced by the exercise of reason. Qiyas may be defined as a process of deduction by which the law of the text is applied to cases, which though not covered by the languages are governed by reason of text. Thus, it should be noted that Qiyas does not purport to create a new law, but merely to apply old established principles to new circumstances.**



**Q 49) What is guardianship in marriage under muslim law?**

**Ans) Under muslim law, it is one of the essentials of a valid marriage that the parties are competent to enter into a marriage, which means they must have attained the age of puberty. This general rule admits one exception- where the marriage is solemnised on behalf of the minor by the guardian.**

**Under Muslim law, the father has the power to give his children of both sexes in marriage without their consent to enter into marriage, but it is before the Shariri stage. Shariri or sariri stage means between 7 to 15 years of age, the father can give consent of marriage. The list of the persons who can act as a guardian in the marriage of minor in the following order:-**

- a) Father**
- b) Father's father, how high so ever.**
- c) Full brother and other male relations on father's side.**
- d) Mother**
- e) Maternal relations within the prohibited degree.**
- f) Kaazi or the Court.**

**Under Shia Law, only the father and failing him the father's father how high so ever, can act as a guardian in the marriage of a minor.**

**Q 50) Write a note on Ademption of Legacy?**

**Ans) Ademption means the extinction of a legacy by, or inferred from, an act of the testator before death, as by the disposal of the bequeathed property. As per section 152 of Indian Sucession Act, If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, then legacy is a deemed to be extinct by reason of the subject-matter having been withdrawn from the operation of the will.**

**Q 51) Who appoints delegates in Parsi law**

**Ans) The State Government shall, in the Presidency towns and districts subject to their respective Governments, appoint persons to be delegates to aid in the adjudication of cases arising under the Parsi Law, after giving the local Parsis an opportunity of expressing their opinion in such matter.**

**Q 52) Note on different kinds of marriages under muslim law?**

**Ans) Different kinds of marriage under muslim Law are:**

**Valid (sahih) When all the legal requirements are fulfilled and there are no prohibitions affecting the parties, then the marriage is correct or 'sahih'.**

- a) **Void (Batil):** The marriage being void ab initio creates no rights or obligations and the children born out of such marriage are illegitimate. A marriage forbidden by the rules of blood relationship, affinity or fosterage is void. Similarly, a marriage with the wife of another or a divorced wife during iddah period is also void.
- b) **Irregular (Fasid):** Due to lack of some formality, or the existence of an impediment which can be rectified, a marriage becomes irregular. However, this irregularity is not permanent in nature and can be removed. Thus, the marriage itself is not unlawful. It can be made valid once the prohibitions are rectified. Example: A marriage with a fifth wife.
- c) **Muta or Nikah mut'ah:** The term literally means "pleasure marriage". Muta marriage is a temporary agreement for a limited time period, upon which both the parties agreed. There is no prescribed minimum or maximum time limit, it can be for a day, a month or year(s). The marriage dissolves itself after the expiration of the decided period, however if no such time limit was expressed or written, the marriage will be presumed permanent. This type of marriage is seen as prostitution by the Sunni Muslims and thus, is not approved by Sunnis.

**Q 53) What is Fiqh?**

**Ans)** Fiqh, the term for Islamic jurisprudence, is a process by means of which jurists derive sets of guidelines, rules and regulations from the rulings laid down in the Quran and the teachings and living example of the Prophet Muhammad. Over the centuries, these have been formulated and elaborated upon by successive generations of learned jurists, through interpretation, analogy, consensus and disciplined research.

**Q 54) Note on Doctrine of Lapse under Indian Succession Act?**

**Ans)** As per Section 105 of Indian Succession Act, if the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appears by the Will that the testator intended that it should go to some other person. This is known as Doctrine of Lapse.

**Q 55) What is talaq e biddat?**

**Ans)** Instant Talaq or "Triple Talaq" or "Talaq-e-Biddat" is an Islamic practice that allows men to divorce their wives immediately by uttering the word "talaq" (divorce) three times. The pronouncement can be oral or written, or as in recent times, delivered by electronic means - telephone, SMS, email or social media. In Shaira Bano V/s Union of India, supreme court has declared that triple talaq in any form is illegal.

