Family Law II SEM

Short Answer Questions (2 Marks Each)

1. **What is Iddat?**
   Iddat is a mandatory waiting period a Muslim woman must observe after divorce or her husband's death, during which she cannot remarry. Its duration is three menstrual cycles (divorce) or four months and ten days (widowhood), and it ensures clarity regarding paternity.

2. **Define Dower (Mahr).**
   Dower or Mahr is a mandatory payment by the husband to the wife, either in prompt or deferred form, as a mark of respect and part of the marriage contract under Muslim Law.

3. **Who is a Muslim?**
   A Muslim is a person who professes the religion of Islam and believes in the oneness of Allah and the Prophethood of Muhammad (PBUH). Legal recognition under personal laws depends on this belief.

4. **What is Probate?**
   Probate is a legal certificate granted by a court under the Indian Succession Act, authenticating the validity of a will and authorizing the executor to administer the estate.

5. **Primary Sources of Islamic Law.**
   The four main sources are: the Quran, Sunnah (traditions of the Prophet), Ijma (consensus of scholars), and Qiyas (analogical reasoning).

6. **Meaning of 'Quran' and 'Islam'.**
   'Quran' means "recitation" and is the holy book of Muslims. 'Islam' means "submission" to the will of Allah.

7. **Presumption of Legitimacy (Sec 112, IEA):**
   Section 112 of the Indian Evidence Act presumes that a child born during a valid marriage or within 280 days after its dissolution is legitimate unless non-access is proven.

8. **What is a Codicil?**
   A codicil is a legal document that modifies, explains, or revokes a part of an already executed will without writing a new will.

9. **Classification of Wills (ISA):**
   Under the Indian Succession Act, wills are classified as *Privileged Wills* (e.g., by soldiers) and *Unprivileged Wills* (by ordinary persons).

10. **Object of Muslim Marriage:**
    Muslim marriage is a civil contract aimed at legalizing sexual relations and procreation, though spiritually it is encouraged and holds religious importance.

Q2: Short Notes (6 Marks Each)

1. Types of Muslim Marriages (Sahih, Fasid, Batil)

Introduction

Marriage (*Nikah*) in Muslim law is not a sacrament but a civil contract with religious importance. It establishes lawful cohabitation and legitimizes children. For a marriage to be valid, certain conditions must be fulfilled. Based on the fulfillment or violation of these conditions, Muslim law classifies marriages into three types: Sahih (valid), Fasid (irregular), and Batil (void). These categories determine the legal rights and obligations of the parties involved.

Points and Explanation

1. **Sahih (Valid Marriage):**
   A Sahih marriage satisfies all legal essentials—proposal, acceptance, presence of witnesses (mandatory in Sunni law), absence of prohibited relationship, and lawful dower.
   It gives full rights to spouses, including inheritance, maintenance, legitimacy of children, and mutual obligations. A Sahih marriage can only end through divorce or death.

2. **Fasid (Irregular Marriage):**
   Lacks some formal legal requirements, e.g., no witnesses (in Sunni law), marriage during iddat, or a Muslim marrying a Kitabia (Christian/Jewish) without proper procedure.
   Such a marriage is not void but imperfect. It can be corrected and converted to a valid marriage if the defect is removed. Children are legitimate, and the wife is entitled to dower.

3. **Batil (Void Marriage):**
   A Batil marriage is completely unlawful and has no legal consequences—examples: incestuous relationship, polyandrous marriage, or marrying a non-Muslim idol-worshipper.
   It is treated as if it never happened. No legal rights arise, children are considered illegitimate, and the wife is not entitled to maintenance or dower.

4. **Legal Effects:**
   While a Sahih marriage leads to full legal rights, a Fasid marriage gives limited protection, and a Batil marriage is null from the beginning.
   The classification becomes crucial in deciding issues of inheritance, legitimacy, maintenance, and dissolution.

Conclusion

The classification of Muslim marriages serves to protect the sanctity of relationships and ensure compliance with Islamic principles.
It helps courts assess the validity and consequences of marital unions in disputed cases.
Therefore, understanding these distinctions is essential for legal clarity and social justice

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2. Kinds of Dower (Prompt, Deferred, Specified, Unspecified)

Introduction
Dower (*Mahr*) is a compulsory payment made by the husband to the wife under Muslim law. It is not a bride price but a symbol of respect and security for the wife. It can be fixed before, during, or after the marriage. Dower serves as a financial safeguard in case of death or divorce. Based on timing and agreement, dower is categorized into various kinds.

1. **Prompt Dower (Mu'ajjal):**
   Payable immediately after marriage or on demand by the wife. If not paid, the wife has the right to refuse conjugal duties.
   This ensures her financial independence from the beginning of marriage. She can even sue her husband for it.

2. **Deferred Dower (Mu'wajjal):**
   Payable on dissolution of marriage (by death or divorce). It becomes a debt upon the husband or his estate.
   Widows can claim deferred dower before receiving their inheritance, and even retain their husband's property until paid.

3. **Specified Dower (Mahr-e-Musamma):**
   The amount of dower is mutually agreed upon by the parties, either at the time of *Nikah* or later.
   It can be fully prompt, fully deferred, or divided. Courts generally uphold it unless it's excessive or unreasonable.

4. **Unspecified Dower (Mahr-e-Misl):**
   If no dower is fixed, the wife is entitled to a reasonable amount based on her social status, education, family background, etc.
   Courts take examples of similarly placed women to fix it.

5. **Legal Rights of the Wife:**
   Wife can file a suit for dower like a debt. Dower has priority over other unsecured debts from the husband's estate.
   She can even keep the husband's property in lien until dower is paid (right of retention).

Conclusion

Dower is not merely a ritualistic formality but a legally binding obligation under Muslim law. It safeguards the wife's dignity and ensures financial protection during and after marriage. The different kinds of dower reflect the flexibility and fairness of Islamic law in securing women's rights.

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3. Grounds for Divorce under Muslim/Christian/Parsi Law

Introduction
Divorce laws in India are governed by the personal laws of different communities. Each religious group—Muslims, Christians, and Parsis—has specific grounds under their respective laws. These grounds reflect both moral expectations and evolving social needs. While some grounds are common, like cruelty and adultery, others are unique to the religion's principles.

1. **Muslim Law (Dissolution of Muslim Marriages Act, 1939):**
   Wife can seek divorce on grounds like husband's cruelty, insanity, impotence, disappearance for 4+ years, non-payment of maintenance for 2+ years, or his imprisonment for 7+ years.
   Also includes *Talaq* by husband, *Khula* (divorce initiated by wife with consideration), and *Mubarat* (mutual divorce).

2. **Christian Law (Indian Divorce Act, 1869):**
   Grounds include adultery, cruelty, desertion for 2+ years, conversion, incurable unsound mind, leprosy, and venereal disease.
   Requires a court decree for validity. Special provisions exist for judicial separation and nullity.

3. **Parsi Law (Parsi Marriage and Divorce Act, 1936):**
   Allows divorce for adultery, cruelty, desertion (2+ years), conversion, non-consummation, and grievous harm.
   Divorce must be granted by the Parsi Matrimonial Court, which has a unique jury system.

4. **Common Themes and Differences:**
   Cruelty, desertion, and adultery are common across all three laws.
   Religious conversion is a ground in Christian and Muslim law, but not in Parsi law.
   Muslim law allows for extra-judicial divorce, unlike others.

Conclusion

Despite religious diversity, Indian personal laws aim to protect spouses from marital breakdowns due to cruelty or injustice.
The availability of diverse grounds gives legal relief and safeguards human dignity.
However, there is a growing demand for a Uniform Civil Code to unify divorce laws across communities

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4. Law of Domicile under the Indian Succession Act

Introduction
Domicile refers to the legal residence of a person for the purpose of succession, taxation, and other civil matters. It plays a vital role in determining which law will apply after a person's death. The Indian Succession Act, 1925, uses the concept of domicile to regulate inheritance, especially for movable property. The idea is that a person is governed by the law of the place they intend to permanently reside in.

1. **Domicile of Origin:**
   Acquired at birth based on the father's (or mother's, if illegitimate) domicile.
   It continues unless replaced by another domicile through conduct and intention.

2. **Domicile of Choice:**
   Chosen by an adult person when they settle in another country, intending to make it their permanent home.
   Mere residence is not enough—intention to stay permanently is essential.

3. **Domicile by Law:**
   Applicable to minors and persons of unsound mind who acquire the domicile of their legal guardians.
   It changes if the guardian's domicile changes.

4. **Importance of Succession:**
   For movable property, succession is governed by the law of the domicile of the deceased at the time of death.
   For immovable property, the law of the place where the property is situated applies.

5. **Related Example:**
   If a French national settles permanently in India and dies, Indian succession laws will govern their movable property.
   This avoids confusion over cross-border inheritance cases.

Conclusion

The law of domicile provides clarity in succession issues, especially for international residents.
It helps courts apply the correct legal system to the estate of the deceased.
Thus, it ensures a smooth and lawful transfer of property and prevents legal conflicts.

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5. Parsi Intestate Succession Rules

Introduction

Parsi intestate succession is governed by **Sections 50-56 of the Indian Succession Act, 1925**. Intestate succession means the distribution of the property of a person who dies without making a valid will. Parsi law follows a well-defined scheme that ensures fair distribution among close relatives. The Act distinguishes between degrees of kinship and provides a priority order in succession.

1. **Priority to Lineal Descendants and Spouse:**
   If a Parsi dies leaving behind a spouse and children (lineal descendants), the estate is divided equally among them.
   For example, if a man dies leaving a wife, 1 son, and 1 daughter, each will get **one-third share**.

2. **Absence of Children – Go to Parents and Siblings:**
   If no children survive, then the property goes to the **parents** and **siblings**.
   In such a case, the spouse gets **one-third**, and the remaining two-thirds go to other relatives in order of preference.

3. **Doctrine of Per Capita Distribution:**
   Parsi law follows the **Per Capita** rule – all heirs of the same category receive an **equal share** (not per stirpes).
   For instance, if a person has 3 sons and 6 grandchildren from them, all **9** heirs receive equal shares if they fall under the same category.

4. **Widow's Rights & Remarriage Clause:**
   The widow of a predeceased son is entitled to a share **only if she has not remarried** at the time of the intestate's death.
   If she has remarried, she loses her right to inherit.

5. **Illustration from Law:**
   Suppose a Parsi woman dies, leaving her husband, mother, and 2 sons. Her property would be divided equally between all four, ¼ each.
   This rule aims at a fair and balanced approach, respecting both paternal and maternal lineage.

Conclusion

Parsi intestate succession is based on equality, fairness, and logical proximity in kinship.
The use of the **per capita system** avoids complexities in share division.
This ensures justice to heirs and simplifies legal distribution.

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6. Essentials of a Valid Will

Introduction

A **will** is a legal declaration of the intention of a person regarding the distribution of their property after death. It must be made voluntarily and legally to be valid under the **Indian Succession Act, 1925**. A valid will ensures that a person's wishes are respected and their property is not subject to intestate succession.

1. **Testamentary Capacity:**
   The testator must be **of sound mind** and **not a minor** at the time of making the will.
   Insane persons or those under the influence (drugs/alcohol) at the time cannot make a valid will.

2. **Voluntary Intention and Consent:**
   A will must be made **voluntarily**, without coercion, undue influence, fraud, or misrepresentation.
   If a person is pressurized to make a will in someone's favor, it becomes voidable.

3. **Proper Attestation (Section 63):**
   A will must be signed by the testator and **attested by two or more witnesses**, each of whom has seen the testator sign.
   Witnesses should not be beneficiaries under the will (if they are, their benefit becomes void).

4. **Clarity and Certainty of Content:**
   A will must clearly mention the **distribution of assets**, the **names of beneficiaries**, and the **executor**.
   Ambiguities can result in disputes or rejection by probate courts.

5. **Revocability and Alteration:**
   A will can be revoked or altered at any time before death. Any new will cancels the old one, and alterations must be re-attested.
   Revocation can also happen by marriage, unless it was made in contemplation of marriage.

Conclusion

A valid will is an essential tool for ensuring smooth inheritance and preventing family disputes.
Strict compliance with legal formalities protects the testator's true intentions.
It ensures justice and clarity in the distribution of wealth after death.

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7. Difference between Sunni and Shia Inheritance

Introduction

Sunni and Shia Muslims follow different schools of jurisprudence—Sunni follow the **Hanafi** School, while Shias follow the **Ithna Ashari (Twelver)** school. Their **rules of inheritance** vary in terms of heirs' priority, share distribution, and recognition of certain heirs. Understanding these differences is important for settling estate disputes within Muslim families.

1. **Recognition of Heirs:**
   Sunni law recognizes **sharers, residuaries, and distant kindred**, whereas Shia law does **not recognize distant kindred**.
   Shia law focuses more on **agnatic** (paternal) succession.

2. **Doctrine of Representation:**
   Under Sunni law, the **doctrine of representation** is not followed. A grandson cannot inherit in place of his deceased father.
   Shia law, however, **allows representation**, so a grandson may inherit if the father is deceased.

3. **Priority of Heirs:**
   Sunni law gives equal preference to all heirs in the same class.
   Shia law follows a strict order of proximity—**nearest relatives exclude the remote ones**.

4. **Widow's Share in Remarriage:**
   In both schools, a widow receives **1/8 (with children)** or **1/4 (without children)**. But Shia law is stricter about remarriage rules affecting rights.
   Sunni law is comparatively flexible in approach.

5. **Examples of Inheritance:**
   In Sunni law, daughters may inherit alongside sons but receive **half their share**.
   In Shia law, daughters and sons also inherit, but the mother's side relatives are often excluded.

Conclusion

Although both Sunni and Shia inheritance laws aim for fairness and family support, they differ significantly in structure and application.
These differences can result in different inheritance outcomes for the same family scenario.
Courts must apply the correct law as per the sect followed by the deceased.

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8. Concept of Muta Marriage

Introduction

Muta marriage is a type of temporary marriage recognized only in Shia Muslim law, particularly by the Ithna Ashari sect. It is a contract of marriage for a fixed period, after which it automatically dissolves. This form of marriage is not recognized by Sunni law. It is intended to regularize sexual relations without committing to a permanent marital bond.

Points and Explanation

1. **Essentials of Muta Marriage:**
   There must be a clear agreement about the **duration** and **amount of dower**.
   If either is unspecified, the marriage may be treated as invalid or converted into a permanent one.

2. **Duration and Dissolution:**
   It may last from a few hours to several years. After the period ends, the marriage **automatically terminates** without divorce.
   If no period is fixed, it is treated as permanent under Shia law.

3. **Rights and Obligations:**
   The wife is **not entitled to inheritance**, but she is entitled to dower.
   The children are considered **legitimate** and have inheritance rights.

4. **Legal Status in India:**
   Muta marriage is **valid only for Shia Muslims**. For Sunnis, it is not recognized and may be considered void.
   In some cases, courts have recognized it only to grant rights to children born out of such unions.

5. **Social Debate and Criticism:**
   Many criticize it as a misuse of the marital institution for temporary pleasure.
   However, proponents argue it provides the legal framework for temporary companionship in certain conditions.

Conclusion

Muta marriage remains a unique feature of Shia law, combining flexibility with religious control.
It reflects Islamic jurisprudence's adaptability to different contexts and communities.
While controversial, it continues to have legal recognition among Shias and affects succession and legitimacy questions.

Q4) Long Answers (12 Marks Each)

1. **Classification of Muslim Marriages (Sahih, Fasid, Batil + Essentials)**

Introduction

In Islamic law, **marriage (Nikah)** is a civil contract rather than a sacrament. It legalizes sexual relations and lays the foundation of a family unit. Muslim marriage is governed by personal laws and is subject to classification based on validity. There are **three types** of marriages under Muslim law—**Sahih (valid), Fasid (irregular), and Batil (void)**. Each type has its own legal consequences concerning the legitimacy of children, dower, inheritance, and divorce rights.

Points and Explanation

1. **Sahih Marriage (Valid Marriage)**
   A Sahih marriage is one that fulfills all essential conditions under Islamic law.
   These include proper offer and acceptance, presence of witnesses, capacity of parties, no prohibitive relationship, and payment or agreement of dower.
   Legal effects: Right to dower, inheritance, legitimacy of children, cohabitation, and maintenance.

2. **Fasid Marriage (Irregular Marriage)**
   A Fasid marriage is one that violates **certain formalities or conditions** but is not absolutely prohibited.
   E.g., marriage without witnesses, or during a woman's iddat.
   Legal effects: Marriage becomes valid upon rectification. Children are considered **legitimate**, and dower is payable if consummated.

3. **Batil Marriage (Void Marriage)**
   A Batil marriage is completely **invalid and unlawful** under Muslim law.
   E.g., marriage with a woman during subsistence of another valid marriage in Shia law, or with a close blood relative (like a sister or aunt).
   Legal effects: No rights arise. No dower, inheritance, or legitimacy. It's void ab initio.

4. **Essentials of a Valid (Sahih) Marriage**
   - **Offer and acceptance** in one meeting
   - **Free consent** of both parties
   - **Competent parties** (must be of sound mind and age of puberty)
   - **Absence of legal prohibitions** (like consanguinity, fosterage)
   - **Presence of witnesses** (2 males or 1 male + 2 females)
   - **Dower (Mahr)** should be agreed upon, though not mandatory to fix at the time

5. **Legal Consequences of Each Type**
   - Sahih: All legal rights and duties enforced
   - Fasid: Rectifiable; rights depend on consummation
   - Batil: No legal standing or protection under law

6. **Case Law Reference**
   In *Yunisbi vs. Reshma*, it was held that children from Fasid marriage are legitimate if the marriage was consummated.

7. **Types of Prohibitions**

   - **Absolute Prohibition** (Batil): due to blood, fosterage, or affinity
   - **Relative Prohibition** (Fasid): temporary conditions like marrying a fifth wife or marrying during iddat

8. **Effect of Iddat on Classification**
   Marriage during iddat is **irregular**, not void, and becomes valid if remarried after iddat ends.

Conclusion:

The classification of marriages in Muslim law determines the rights and responsibilities of spouses and children.
It also impacts divorce, inheritance, and legitimacy. Courts often refer to these distinctions to uphold justice.
Therefore, a clear understanding is crucial to deal with matrimonial disputes in Muslim personal law.

2. Dissolution of Muslim Marriage (Talaq, Khula, Judicial Divorce)

Introduction
In Islam, marriage is a **contract**, and like any contract, it can be dissolved under specific conditions. Dissolution may occur by **act of the husband (Talaq)**, **act of the wife (Khula or Talaq-e-Tafweez)**, or by a **judicial decree under the Dissolution of Muslim Marriages Act, 1939**. The objective of allowing divorce is to maintain peace and avoid injustice when reconciliation fails. Islam, though it discourages divorce, allows it to avoid harm and uphold human dignity.

1. **Talaq (Divorce by Husband)**
   The husband has a unilateral right to pronounce Talaq without assigning reasons.
   Forms include:

   - *Talaq-e-Ahsan*: Most approved form (1 pronouncement + iddat)
   - *Talaq-e-Hasan*: 3 pronouncements over 3 tuhrs
   - *Talaq-e-Biddat* (Triple Talaq): Declared unconstitutional in *Shayara Bano v. Union of India*, 2017.

2. **Khula (Divorce by Wife with Husband's Consent)**
   Wife offers to return her dower or some compensation to obtain a divorce.
   Husband must consent.
   Used when a wife cannot live with her husband due to dislike or suffering.

3. **Talaq-e-Tafweez**
   Husband delegates the right of talaq to a wife in the marriage contract.
   Can be conditional or unconditional.
   Valid under Muslim law if pre-agreed.

4. **Judicial Divorce under the Dissolution of Muslim Marriages Act, 1939**
   Wife can approach the court on the grounds like:
   - Cruelty, desertion (2+ years), failure to maintain for 2 years
   - Impotence, insanity, or leprosy
   - Marriage during minority and refusal to attain puberty
   - Imprisonment of husband for 7+ years
5. **Effect of Divorce**
   Ends marital obligations. Wife must observe *iddat*.
   Rights like maintenance during iddat, dower (if unpaid), and custody of children apply.
6. **Mutual Consent: Mubarat**
   Both parties agree to dissolve the marriage.
   Requires mutual dislike and is quicker than Khula.
7. **Case Law: Shayara Bano v. Union of India (2017)**
   The Supreme Court held **Triple Talaq (instant talaq)** unconstitutional as arbitrary and against fundamental rights.
8. **Nikah Nama Clauses for Delegated Talaq**
   Many Muslim women now negotiate clauses in *Nikah Nama* allowing them rights of dissolution.

Conclusion

Dissolution of a Muslim marriage balances the rights of both spouses.
While Islam discourages divorce, it provides humane mechanisms for separation when living together becomes unbearable.
Recent judicial developments, like the ban on Triple Talaq, show a shift towards protecting women's rights while respecting religious principles.
Thus, both personal law and statutory law work together in regulating the end of **marriage under Muslim law.**

3. Grounds of Divorce under Parsi/Christian Law

Introduction

The **Parsi Marriage and Divorce Act, 1936,** and the **Indian Divorce Act, 1869 (for Christians)** govern divorce in their respective communities. Both acts provide specific **grounds** on which a spouse may seek divorce. These include cruelty, adultery, desertion, mental illness, and others. These communities follow a codified system that ensures judicial intervention and legal protections.

1. **Adultery**
   Voluntary sexual intercourse with someone other than the spouse.
   Under both laws, adultery is a valid ground for divorce.
   Christian law earlier required adultery + another ground; amended now to allow standalone.

2. **Cruelty**
   Physical or mental cruelty makes cohabitation unbearable.
   Includes abusive language, assault, and psychological trauma.
   The court must be satisfied cruelty is grave and repeated.

3. **Desertion (2+ years)**
   One spouse abandons the other without reasonable cause.
   Must be continuous for at least 2 years immediately before filing.

4. **Mental Disorder or Insanity**
   Continuous or incurable mental illness rendering life together impossible.
   Requires medical evidence and expert opinion.

5. **Conversion**
   In both communities, if one spouse **ceases to be a Parsi/Christian**, the other can seek divorce.
   E.g., conversion to Islam or Hinduism.

6. **Bigamy**
   Marrying again while the first marriage is still valid.
   Valid ground for divorce under both laws and punishable under IPC.

7. **Incurable Venereal Disease or Leprosy**
   Disease must be communicable and serious enough to affect marital life.
   Grounds under both laws before recent medical advancements.

8. **Non-consummation due to Impotency**
   Marriage never consummated due to physical incapacity of one party.
   Can be proved medically.

9. **Judicial Separation for 2 years (Christian Law)**
   If there's no resumption of cohabitation after 2 years of judicial separation, divorce can be sought.

Conclusion

The Parsi and Christian divorce laws ensure that divorce is granted on reasonable and just grounds.
Courts ensure proper evidence is provided, and the law protects both spouses equally.
Recent changes have made these laws more gender-equal and aligned with modern rights frameworks.
These laws reflect the dynamic blend of religious tradition and statutory justice.

4. Will: Essentials, Alteration, Revocation (Indian Succession Act)

Introduction:
A Will is a legal declaration of a person's intention regarding the distribution of their property after death. Under the Indian Succession Act, 1925, it applies primarily to Hindus, Christians, Parsis, and others, excluding Muslims (who follow personal laws unless opted otherwise). A Will must be executed with full mental capacity and free will. Alteration and revocation are also important concepts that affect the validity and operation of a Will. Understanding these elements ensures the testator's true intentions are carried out.

1. **Essentials of a Valid Will:** A Will must be made by a person of sound mind and above 18 years of age. It must clearly state the intention to be a Will and detail the distribution of property after death. It must be voluntary and not influenced by fraud or coercion.

2. **In Writing & Signed by Testator:** The Will must be in writing (except oral wills in certain communities) and signed by the testator. If the testator cannot sign, a thumb impression or mark made by another person in their presence is acceptable.

3. **Attestation by Witnesses:** The Will must be attested by at least two witnesses. Both must see the testator sign, and each must sign the Will in the presence of the testator, although not necessarily in the presence of each other.

4. **Clarity of Intent and Property Distribution:** The Will must clearly identify the beneficiaries, assets being bequeathed, and respective shares. Any ambiguity can lead to disputes or even render parts of the Will invalid.

5. **Alteration of a Will:** A Will can be altered by the testator during their lifetime by making a **Codicil**, which is a supplement to the Will. Codicils must be executed like a Will and must not conflict with existing terms unless meant to override them.

6. **Revocation of a Will:** A Will can be revoked by:

    - Marriage (for non-Hindus),
    - Execution of a new Will,
    - A written declaration with the intention to revoke,
    - Physical destruction by burning or tearing.

7. **Probate Requirement (for certain Wills):** In cities like Mumbai, Chennai, and Kolkata, probate (judicial proof of the Will) is mandatory for Wills by Hindus, Christians, and Parsis if immovable property is involved. Probate is optional elsewhere.

8. **Executor of the Will:** The testator may appoint an executor to carry out the directions of the Will. The executor has a legal duty to manage the estate and distribute it as per the Will.

9. **Invalid Will – Consequences:** If a Will is invalid due to lack of capacity, coercion, or improper attestation, the estate may be distributed as per intestate succession laws. Hence, fulfilling formal requirements is crucial.

Conclusion:
A valid Will ensures that the property of a person is passed on according to their wishes. The Indian Succession Act provides a structured legal framework to govern the execution, alteration, and revocation of Wills. Failing to follow these essentials can result in legal disputes and unintended consequences for heirs.

5. Dower (Mahr): Concept and Types

Introduction:
Dower, or *Mahr*, is a mandatory payment or gift promised by the husband to the wife at the time of marriage in Muslim law. It is considered a mark of respect and financial security to the wife. It is not a dowry, but a legal obligation and an integral part of a Muslim marriage contract. It can be prompt (payable immediately) or deferred (payable on demand or dissolution). Dower is both a personal right and a form of financial independence for women in Islamic jurisprudence.

1. **Definition of Dower:** Dower is a sum of money or property that the wife is entitled to receive from her husband as a mark of respect, and it forms a part of the marriage contract (*Nikah*). It is her right and not contingent on consummation.

2. **Legal Status:** The payment of dower is obligatory under Islamic law. Even if not specified in the marriage contract, the wife is entitled to a reasonable amount (customary or judicially fixed).

3. **Types of Dower – Specified and Unspecified:**

    - **Specified Dower:** Agreed upon during marriage.

    - **Unspecified Dower:** Not agreed upon, but determined later by the court based on social status and customs (*Mahr-i-Misl*).

4. **Prompt Dower (Mu'ajjal):** Payable immediately upon marriage or upon the wife's demand. The wife can refuse conjugal rights until the prompt dower is paid.

5. **Deferred Dower (Mu'wajjal):** Payable on dissolution of marriage by divorce or death of the husband. The wife has the right to claim this amount as a debt from her husband's estate.

6. **Importance of Dower in Islamic Law:** Dower acts as a form of protection for the wife and ensures financial stability in case of divorce or widowhood. It is her exclusive right, and she can deal with it as she pleases.

7. **Judicial Recognition in India:** Indian courts have consistently upheld the right of Muslim women to claim their dower. If unpaid, she has the right to recover it through legal proceedings.

8. **Effect on Marriage:** Non-payment of dower does not invalidate the marriage but may give rise to legal claims and affect the wife's rights in the marriage.

9. **Case Law – Abdul Kadir v. Salima (1886):** It was held that Muslim law governs the right to dower, and it is a debt payable by the husband or his heirs.

Conclusion:
Dower is not only a religious obligation but a legal right of the Muslim wife. It provides economic protection and reinforces the seriousness of the marriage contract. Courts in India treat it as a debt, ensuring enforcement even after the death of the husband.

6. Difference Between Sunni and Shia Inheritance Rules

Introduction:
Inheritance in Muslim law is governed by two major sects — Sunni and Shia — each having distinct rules and interpretations. The Sunni law is primarily based on Hanafi jurisprudence, while Shia law follows Ithna Ashari (Twelver) principles. The differences arise in the recognition of heirs, distribution methods, and exclusion rules. Understanding these differences is crucial for fair application of Islamic inheritance.

1. **Recognition of Heirs:**
    - **Sunni Law:** Recognizes heirs in three categories – Sharers, Residuaries, and Distant Kindred.
    - **Shia Law:** Classifies heirs into three classes – Class I (parents, children), Class II (grandparents, siblings), and Class III (others).
2. **Doctrine of Representation:**
    - **Sunni:** Does not accept the doctrine of representation; grandchildren may be excluded if children are alive.
    - **Shia:** Accepts representation; grandchildren can inherit through their deceased parent.
3. **Inheritance of Spouse:** Both Sunni and Shia laws give rights to spouses, but the calculation may vary in the presence of children or other heirs.
4. **Exclusion of Heirs:**
    - **Sunni:** Certain heirs can exclude others; e.g., father excludes brother.
    - **Shia:** No heir can exclude another if they belong to a different class.
5. **Residuary Heirs:**
    - **Sunni:** Recognizes residuaries (those who take the remainder after sharers).
    - **Shia:** Does not recognize residuaries; estate is distributed proportionately among heirs.
6. **Principle of Return (Radd):**
    - **Sunni:** Return applies only to sharers in absence of residuaries.
    - **Shia:** Applies to all heirs when there is surplus after distribution.
7. **Illegitimate Children:**
    - **Sunni:** Do not inherit.
    - **Shia:** May inherit from the mother, not from the father.
8. **Preference to Male Heirs:** Both give males double the share of females, but Shia law gives stricter preference to children of the deceased.
9. **Case Reference – Badruddin v. Aisha Begum:** The court highlighted differences in Sunni and Shia inheritance, showing the complexity and necessity of identifying sect-specific rules.

Conclusion:
Though both Sunni and Shia laws derive from the Quran, they differ significantly in interpretation and application of inheritance. Legal professionals and courts must apply the correct sectarian principles to ensure justice. Understanding these distinctions prevents errors in estate division.

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3. Situational Problems (6 Marks Each)

1. **Intestate Succession (Parsi):**
   If a Parsi dies intestate, leaving wife, sons, daughters, and parents:

- Spouse gets a fixed share (1/3 if parents are alive).
- Remaining divided equally among children, irrespective of gender.
- Parents get a share depending on the presence of a spouse/children.

2. **Conversion & Divorce:**
   If a Muslim husband converts to Christianity, the wife may seek divorce under the Dissolution of Muslim Marriage Act, 1939. Conversion alone does not dissolve the marriage, but it gives the wife grounds for judicial divorce.

3. **Will Attestation – Beneficiary as Witness:**
   A will must be attested by two witnesses. If a witness is also a beneficiary, the will remains valid, but the beneficiary loses the right to claim benefits under that will.

4. **Iddat Compliance:**
   If a Muslim widow remarries before completing iddat, the marriage is considered irregular (Fasid). Such a marriage can become valid if iddat is later completed.

5. **Dower Dispute – Death Before Payment:**
   If a husband dies without paying dower, the wife can claim it as a debt from his estate. She also has the right to retain his property in lieu of unpaid dower until payment.

6. **Per Capita vs. Per Stripes:**
   In intestate succession, *Per Capita* gives equal shares to surviving heirs, while *Per Stripes* gives shares by representation (e.g., grandchildren getting a share through deceased parent). Courts use Per Stripes for equitable distribution among generations.