

**Void Marriage  
under Sharia Law-  
An analysis with  
special reference to  
a UAE Case**



As per Islamic law, marriage is considered to be a sacred bond between husband and wife and it is in the form of civil contract. However, there are certain conditions which need to be followed so as to call a Muslim marriage valid one. In the absence of any of these conditions, such marriage becomes void marriage or sometimes even void ab initio (void from its beginning).

A void marriage is having no existence in the eyes of law and it does not create any legal rights or obligations between the married couple. Such marriages are totally considered as invalid and against the Sharia law. In this article we will discuss the various grounds which makes a marriage invalid and void and further also try to explain it more clearly with the help of our client's case decided before Dubai Court as per **Federal Law No. (28) of 2005 On Personal Status**.

### **Essential Conditions for a Valid Marriage under Sharia Law**

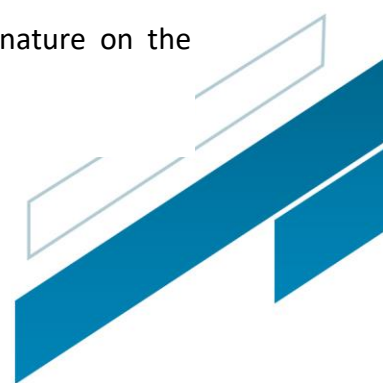
According to **Article 38 of Federal Law No. (28) of 2005 on Personal Status**, there are three essential conditions for a valid marriage and in the absence of these conditions the marriage becomes void.

#### **These conditions are as follows:**

- 1) The two contracting parties (the Groom and the wali from Bride Side).
- 2) Subject matter.
- 3) Offer and Acceptance.

#### **1. Two Parties**

For a valid marriage there must be two contracting parties to the marriage i.e. Groom and the wali (Guardian) from the bride side which is generally father and, in his absence, any male member from bride side. According to **Article 39 of the Federal Law No. (28) of 2005 on Personal Status**, the wali of the capacitated woman (bride) shall proceed with her marriage, with her consent and the religious authorized official shall obtain her signature on the contract. Any marriage contract without the presence of a guardian is void.



If the marriage is consummated, then the couple will be separated. Therefore, if a woman has no guardian, the judge will act as her guardian.

## **2. Subject matter**

The parties to the marriage must be free from any legal impediments and there must not be any hindrance to their marriage. The kinds of hindrance which can make a marriage void are mentioned below:

### **a) Prohibited Degrees of relationship**

Under Sharia Law, marriages between the parties who are related to each other through the same blood relationship or sharing close relationship is totally prohibited and void. For ex. Brother and Sister, Mother and Son, Daughter and father, uncle and niece, aunt and nephew etc.

### **b) Polyandry**

Polyandry means having more than one husband at the same time. As per Muslim law, a Muslim woman does not have permission to marry more than one man at a time. Therefore, at the time of marriage, if the woman is already married to someone such subsequent marriage is considered as void.

### **c) Differences of religion (Marriage with non-Muslim)**

As per Sharia law, a male can marry a Muslim girl or a Kitabia woman. Kitabia means a person who believes in revealed religion or divine holy books such as Christianity and Judaism. A Muslim male is allowed to marry a Christian or Jews female. However, a Muslim woman is not allowed to marry any male other than Muslim religion. Such marriage wherein Muslim woman is married to a non- Muslim male or kitabia male is considered to be void as per Islam laws.

### **d) Marriage during IDDAT**

Marriage during the Iddat period of a woman is consider to be a void marriage.



### **3. Offer and Acceptance**

**As per Article 41 of the Federal Law No. (28) of 2005 on Personal Status**, for a valid marriage, there must be an offer of marriage made by one of the parties to the marriage and at the same time acceptance of such proposal is mandatory. Both offer and acceptance must take place at the same meeting. The marriage shall not be concluded, if the contract is carried for a future date or the marriage is temporary. However, each of the contracting parties has to hear the words uttered by the other, being aware that the objective is marriage.

Under the Sharia law, the proposal and acceptance must be made in the presence of two male Muslims who are of sound mind, have attained puberty age and are Muslim or one male and two female witnesses who are sane, adult and Muslim. Absence of witnesses does not render marriage void but make it voidable.

#### **Other Condition**

##### **Free consent**

One of the essential requirements to make a marriage valid is to obtain free consent from the parties. In the absence of free consent, a Muslim marriage is void. A forceful marriage is not allowed in Islam. Therefore, when the consent to the marriage is obtained by force, fraud, the marriage is held to be invalid and against sharia law.

#### **Case Pronounced by Dubai Court on Void Marriage as per Federal Law No. (28) of 2005 on Personal Status**

The Dubai Court has taken great efforts and steps in protecting the laws of the Shariah while deciding the following case of our client.

#### **Facts of the Case:**

In this Case, the respondent (our client) who belongs to a religion other than Islam, got married to a woman (Claimant) who was a Muslim by religion outside UAE. They both were residents of Dubai (UAE), but belongs to different nationalities.

Later on, the wife filed a case for a divorce before the Dubai Court on the ground that her husband had promised her that he will convert his religion into Islam once the marriage will be performed but failed to kept his promise and continued to profess his own religion even after the marriage. Both parties agreed to be governed By UAE Personal Laws.

#### **Defense taken by Respondent (Our Client)**

As per Sharia Law, a Muslim woman is not allowed to marry any male person who is professing different religion. Therefore, this marriage is not considered as a valid marriage and totally void as per **Federal Law No. (28) of 2005 on Personal Status**.

#### **Court's Pronouncement**

After hearing to both the parties the Court has considered the defense taken by our client and held that as per Sharia law a Muslim woman is not allowed to marry a person who is from different religion. Such marriage is having no validity in the eyes of law and even considered as a crime of Adultery in UAE. Court has declared such marriage as a Void marriage as per Federal Law No. (28) of 2005 on Personal Status.