

152595 - Can Your Maternal Uncle Be Your Marriage Guardian?

the question

Is it valid for the maternal uncle to be the wali in the marriage contract of his sister's daughter and to do the marriage contract for her?

Summary of answer

There are some cases in which it is valid for the maternal uncle to be the Wali: 1- When he has been appointed as a guardian by the father. 2- If he is the Wali when there are no male relatives. 3- When the maternal uncle does the marriage contract in the presence of the woman's guardian and with his approval. 4- When the Islamic state that follows the opinion that it is valid for the maternal uncle to do the marriage contract.

Detailed answer

It is confirmed that [guardianship in the case of marriage](#) belongs to the `Asabah, who are the male relatives on the father's side, such as the father, grandfather, son, brother, and paternal uncle.

With regard to the relatives on the mother's side, they are not among the `Asabah and there is no proof that they have the right of guardianship with regard to marriage.

We have previously discussed the `Asabah and their order of precedence with regard to guardianship in marriage in the answer to question number [99696](#) .

But there are some cases in which it is valid for the [maternal uncle](#) to assume guardianship with regard to the marriage contract. They are:

- When he has been appointed as a guardian by the father or the guardian who has the authority to do the marriage contract.

The scholars of the Standing Committee for Issuing Fatwas said:

“If a person has the authority to do the marriage contract for a woman when one who is closer to her than him has given it up to him, or the rightful guardian has instructed that he should do the marriage contract for the woman under his guardianship, then it is permissible for him to do the marriage contract and that marriage is valid, because it is a right that was given to the one who was appointed and acted in his stead.” (Shaykh ‘Abd Al-‘Aziz ibn Baz, Shaykh ‘Abd Al-‘Aziz Al AshShaykh, Shaykh ‘Abd-Allah ibn Ghadyyan, Shaykh Salih Al-Fawzaan, Shaykh Bakr Abu Zayd, Fatawa Al-Lajnah Ad-Da’imah, 18/174, 175)

- If he is the wali (guardian) when there are no male relatives on the father’s side.

This is the view of some of the scholars, such as Imam Abu Hanifah (may Allah have mercy on him). But the majority of the scholars are of the view that the Muslim judge should be given precedence over him.

This has been discussed in the answer to the question referred to above.

- When the [maternal uncle](#) does the marriage contract in the presence of the woman’s guardian and with his approval of the marriage contract. The silence of the guardian in this case is indicative of his approval, so the marriage contract is valid.

In Al-Mawsu`ah al-Fiqhiyyah (22/237, 238) it says:

“There is no doubt that negative silence is not indicative of approval or its absence. Hence the fiqhi principle is based on the idea that no opinion can be attributed to the one who remains silent, but silence in a context where there is a need to speak is a statement. This applies if it is accompanied by circumstantial evidence which may indicate his approval.

The jurists unanimously agreed that the silence of a virgin is indicative of her consent, because of the sahih hadith that was narrated concerning that, as the Prophet (blessings and peace of Allah be upon him) said: “A virgin should not be given in marriage until her permission has been sought.” They said: O Messenger of Allah, what is her permission? He

said: “If she is silent.” According to another report: “The previously married woman has more right to decide concerning herself than her guardian, and the father of the virgin should ask her permission concerning herself, and her permission is her silence.”

- Where the marriage contract has been completed and documented in an Islamic state that follows the opinion that it is valid for the [maternal uncle](#) to do the marriage contract for his sister’s daughter, or the view that it is permissible to do a marriage contract without a guardian, because the verdict of the ruler in matters that are subject to ijtihad is valid and cannot be overruled.

This has been discussed in the answer to question no. 98546 , where it says:

“If the judiciary system in your country follows the Hanafi School of Fiqh and they regard the marriage without a guardian as valid, then the marriage remains in effect and cannot be annulled. But if the judiciary system in your country does not follow that School of Fiqh, then the marriage contract is invalid. Moreover, if you both still want to be married to one another, a new marriage contract should be redone in the presence of your guardian.”

These are the cases in which the maternal uncle may act as the guardian with regard to doing the marriage contract and it will be valid.

And Allah knows best.