

CHAPTER VII

CONCLUSION

In the preceding chapters, particularly Chapter V and VI which deal with the law of marriage and divorce respectively, the author has cited the basis or bases of every provision of law from the Shari'ah. He has also stated briefly his comments and suggestions at the end of every topic when it was needed. This has been done to provide continuity and logical sequence of the discussion from the provision of the law to its basis or bases and then the necessary comments or suggestions. In view thereof, those comments or suggestions which serve as the findings of the author in this dissertation shall not be repeated in this Chapter. This Chapter shall deal only with the summary statement of the findings in the whole investigation.

At the ultimate analysis, all the provisions of the law of marriage and divorce under the Muslim Code have their basis or bases on the Holy Qur'an or from the Sunnah of the Holy Prophet (S.A.W.) or from the general principles laid down under Islamic Law or from the minority view of the Muslim jurists or scholars-all are in conformity with Islamic Law except the following:

(1) Some of the provisions of irregular marriage particularly Article 32 paragraph (3), (4) and (6) of the Muslim Code.

Article 32 paragraph (3) refers to the marriage wherein the consent of either party is vitiated by violence, intimidation, fraud, deceit or misrepresentation. These are concepts under the Civil Code of the Philippines which are grounds for the annulment of voidable marriage. They are now incorporated in the Muslim Code as a ground for making the marriage irregular. The author humbly suggests that such marriage is not merely irregular but void. See his argument on page 131-134 supra.

Article 32 paragraph (4) refers to marriage contracted by a party in

a condition of death-illness without the same being consummated. This kind of marriage is valid under Islamic Law as well as under the Civil Code of the Philippines. Hence, the author humbly suggests that this provision of the Muslim Code be modified to conform with Islamic Law and the Civil Code of the Philippines. See his argument on page 134-136 *supra*.

Article 32 paragraph (6) refers to those mixed marriages not allowed under Islamic Law. The marriage contracted under this law violates the clear *ayyat* of the Holy Qur'an. The prohibition is not temporary but of permanent nature. Therefore, the marriage contracted under this law is not irregular but void. See page 137-141 *supra*.

(2) The provision of the regime of property relations particularly Article 38 gives the spouses the legal right to stipulate in the marriage settlements a property relation other than that of a complete separation of property.

Complete separation of property regime is the one sanctioned under the Muslim Code and consistent with Islamic Law (see page 157-161 *supra*). The Muslim Code is silent on the other forms of property regime. Hence, should the spouses stipulate in the marriage settlement a property relation other than the one sanctioned by the Muslim Code, the law that shall govern their property relations shall be shifted to the Civil Code as amended by the Family Code of the Philippines.

To abandon the Muslim law and take other law to govern the property relations between Muslim spouses has no basis in Islamic Law.

Therefore, as the Muslim Code is like any other legislation which is dynamic for its continuing growth and development, it is humbly submitted that the above cited provisions of law which have no basis in Shari'ah be part of the proper subject of modification.