NO. 05-21-00216-CV

In The
Fifth Court of Appeals at Dallas, Texas

IN RE

MARIAM AYAD,

RELATOR

FROM THE 416th DISTRICT COURT OF

COLLIN COUNTY, TEXAS

AMENDED PETITION FOR WRIT OF MANDAMUS

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Identity of Parties and Counsel:

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Real Party in Interest:	Ayad Hashim Latif (hereinafter "Husband")
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Table of Contents

Index of Authorities

CASES

STATUTES

SECONDARY SOURCES

Statement of Case

The underlying proceeding was filed by Relator, MARIAM AYAD, as a suit for divorce. Real Party in Interest, AYAD HASHIM LATIF, countersued for divorce, sought to validate the Islamic Pre-Nuptial Agreement and compel arbitration. The trial court compelled "ADR", then upon rehearing, vacated her order and compelled arbitration. It is from the order compelling arbitration that Relator seeks mandamus relief.

Statement of Jurisdiction

The Texas Constitution vests this Court with jurisdiction to consider and to grant this *Amended Petition for Writ of Mandamus*. Tex. Const. art. V, § 6; see also Tex. Govt Code § 22.221 ("Each court of appeals may issue a writ of mandamus and all other writs necessary to enforce the jurisdiction of the court.").

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TO THE HONORABLE JUSTICES OF SAID COURT:

Relator, MARIAM AYAD, submits this *Amended Petition for Writ of Mandamus*, complaining of the Honorable Judge Andrea Thompson, presiding judge of the 416th District Court of Collin County, Texas. MARIAM AYAD will be referred to herein as "Wife" or "Relator"; AYAD HASHIM LATIF will be referred to herein as "Husband" or "Real Party in Interest".

Issues Presented

Issue One: **The *Islamic Pre-Nuptial Agreement* and the alleged arbitration clause therein requires application of Islamic Law and specifically disavows the laws of the United States and the State of Texas; therefore, the agreement and the alleged arbitration clause are void as against public policy and therefore invalid as a matter of law.**

Issue No. 2 **The *Islamic Pre-Nuptial Agreement* was involuntarily executed and therefore void under the *Moore v. Moore* factors.**

Issue No. 3 **The trial court clearly abused its discretion in finding that the *Islamic Pre-Nuptial Agreement* contains a clause that constitutes an arbitration clause.**

Issue No. 4 **The trial court clearly abused its discretion by enforcing the *Islamic Pre-Nuptial Agreement* between the parties, compelling arbitration, and denying Relator a trial on her defenses.**

Summary of Argument

The trial court clearly abused its discretion in failing to properly analyze the law when it validated and enforced the *Islamic Pre-Nuptial Agreement* and compelled arbitration in front of a Muslim Court applying soley Islamic Law and totally disregarding the laws of the U.S. and the State of Texas. Such agreement is void as a matter of law against public policy on its fact. Further, the *Islamic Pre-Nuptial Agreement* was involuntarily executed and is unconscionable. It was derived by fraud or duress. Under the factors set forth in *Moore v. Moore*, it is invalid and unenforceable. Mandamus should be granted and the *Islamic Pre-Nuptial Agreement* should be declared void.

Statement of Facts

The parties were married on December 26, 2008. (App. 1 at 2.) During the marriage ceremony, Wife was presented with certain contractual documents to sign. (App. 34, 17:22-25; 18:1-5.) Prior to the ceremony, she was generally aware that her marriage would require her to sign a customary and cultural marriage contract affirming the couple's commitment to their religion. (App. 34, 21:13-17.) During the ceremony, Wife was presented with certain documents to sign and, believing them to be multiple copies of the expected customary marriage contract, she signed what was in front of her. (App. 18:12-17; 34, 21:13-17.)

The couple has a son who is now 6 years old. (App. 1 at 2.)

When the parties began to have marital difficulties, Husband informed Wife that she signed a premarital agreement that significantly altered her rights to divorce. This discussion occurred in September of 2020, twelve years after the marriage. (App. 31 at 121.) This was the date Wife learned that she had been defrauded into signing a premarital agreement. (App. 34, 17:22-25; 18:1-5.)

Wife filed for divorce on January 25, 2021. (App. 1.) Husband countersued for divorce and sought relief from the trial court. (App. 3.) Thereafter, Husband filed his *Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel* to have the trial court validate and enforce the premarital agreement and compel arbitration on all issues related to the divorce including entitlement to divorce, spousal support, conservatorship, child support, alimony, and marital property division. (App. 4.) Wife opposed the validity and enforceability of the agreement as a whole and also the validity and enforceability of the alleged arbitration agreement. (App. 5.)

The trial court held its first hearing on the premarital agreement on March 22, 2021. (App. 33.) Husband offered evidence from Iman Bakhash, who is with the Islamic Association of North Texas, Inc.[1] (App. 33, 5:11-25.) After a short presentation, the trial court undertook inquiry of Wife's counsel regarding her position on the premarital agreement. Wife sought to introduce evidence as to her defenses to the

[1] This is the same organization that drafted the premarital agreement. (Islamic Association of North Texas, Inc.). (App. 4 at 7.)

validity and enforceability of the agreement. The trial court denied Wife's request:

> "THE COURT: …but I've heard enough argument on this. Do you have any final comments?
>
> MR. ANDERSON: No. Your Honor.
>
> MS. WOELFEL: I'd just like to call my client just to get some testimony laid, Your Honor.
>
> THE COURT: We don't need testimony for a legal question. So I am going to require the parties to arbitrate under the premarital agreement."

(App. 33, 35:3-11.)

Thereafter, the trial court entered its order referring the matter to "ADR". (App. 8.)

Wife filed her *First Amended Motion to Reconsider Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim court for Fiqh Panel* on May 25, 2021, laying out her specific challenges to the arbitration provisions of the agreement as well as her defenses to the agreement as a whole. (App. 20.) The trial court agreed to hold a hearing on her motion on June 11, 2021. (App. 34.)

At the hearing, the trial court allowed Wife a very brief amount of time to put on testimony of Wife and, reluctantly, Wife's expert witness. The trial court only wanted to hear brief testimony on the voluntariness

fact issue as to the arbitration agreement, but not on any other topic or defense. (App. 34, 5:12-13.) Even so, Wife testified as follows:

Transcript Dated June 11, 2021	**Page:line**
The date of marriage was December 26, 2008.	17:21
The first time she saw the marriage contract was on the date of marriage.	18:2
The first time she saw the premarital agreement was in September 2020.	18:3-5
The documents were presented in the middle of the ceremony.	18:8-11
The document on top was the marriage contract and she was unaware there was a different document underneath it.	18:24-19:1, 18:24
She had no advance opportunity to read the documents.	19:11-13
She was never given financial disclosures about Husband's marital property.	20:24-21:3, 27:4-6
She was not given an opportunity to ask for such disclosures.	21:5-8
No one read the document to her.	21:10-12
She thought she was signing a cultural document to effect the marriage.	21:13-17
She was unaware that she was waiving significant legal rights under U.S. and Texas law.	22:9-13. 23:1-3, 23:23-25, 24:9-11

She was not given time to read the document when it was presented to her.	22:14-22
She was unaware that she agreed to submit everything about your divorce to Islamic Law.	23:4-6
She was not given an opportunity to consult with an attorney regarding the agreement.	25:5-12
She believes that the arbitration before the Fiqh panel of three men will not have her voice heard and her testimony will be given less weight.	28:4-24

Further, Dr. Zuhdi Jasser provided expert testimony about the duress that Wife suffered. "Your Honor, the harm is not only physical. It is a psychological sense of honor. The parents tell them that they're going to dishonor the family by asking any questions. They don't see the documents before. It is coercive. They aren't allowed to ask any questions and simply told it's ceremonial, it's traditional. They can't defend the family." (App. 34, 48:15-21.) Further, he opined that she had no choice but to sign the agreement. (App. 34, 49:15-18.)

Ultimately, the trial court entered its *Order of Referral to Arbitration* where she ordered the case submitted to arbitration. (App. 29.)

Wife requested findings of fact and conclusions of law on March 22, 2021, which have not been filed herein. (App. 7.)

Wife also request the trial court to hold a temporary orders hearing as requested by the pleadings of both parties. (App. 35.) In a hearing on June 17, 2021, the trial court denied Wife's request because the proceedings are stayed for arbitration. (App. 35, 4:10-21.) The effect of this ruling leaves Wife living with Husband in the same house, unable to work, with no financial support other than what Husband voluntarily provides. She has no ability to obtain discovery of the marital finances or ensure that Husband is not fraudulently disposing of marital assets while the case pends.

It is from the *Order of Referral to Arbitration* that Wife seeks relief by way of mandamus.

Argument and Authorities

To obtain a writ of mandamus, the Relator must show that the trial court's order is void or a clear abuse of discretion and that there is not an adequate appellate remedy. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016). A trial court abuses its discretion if its ruling is arbitrary and unreasonable or made without regard for guiding legal principles or supporting evidence. *Id.* A trial court also abuses its discretion if it fails to analyze or apply the law correctly. *Id.*

Mandamus is appropriate when reviewing an order granting a motion to compel arbitration. *In re Wolff*, 231 s.W.3d 466, 268-69 (Tex. App. – Dallas 2007, no pet.); *see also In re Castro*, 246 S.W.3d 756, 760 (Tex. App. – Eastland 2008, no pet.). There are no cases addressing the available appellate remedy specifically in the context of a trial court's pretrial finding on the validity of a premarital agreement. This is likely because no trial court has, until now, denied a litigant a trial on the merits of their defenses to such. Even so, the remedy here should be no different than the remedy in any other preliminary ruling in a family law matter – that of mandamus. *See generally In re Derzapf*, 219 S.W.3d 327 (Tex. 2007). Mandamus relief is appropriate if the trial

court fails to correctly analyze or apply the law, including in the context of temporary orders in a family law matter. *In re C.J.C.*, 603 S.W.3d 804, 811 (Tex. 2020). Likewise, mandamus relief is appropriate to protect the fundamental rights under the United States and Texas Constitutions. *Id.* at 812.

Further there is no adequate remedy on appeal. The benefits of mandamus outweigh the detriments considering the time, effort, money, and disparate bargaining power of the parties if this case were to be referred to a Muslim Court or Fiqh panel under Islamic Law. See *In re Islamorada Fish Co. Tex., L.L.C.*, 319 S.W.3d 908, 913 (Tex. App.—Dallas 2010, no pet.) (op. on reh'g) (en banc) (citing to *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex.2004)).

Moreover, the "practical and prudential" considerations support a finding that there is no adequate remedy on appeal. This case involves the application of clear legal standards and it would be a waste of resources to require the parties to go to an Islamic court and have this case heard, to go to the district court to have the findings from the Islamic court challenged or entered into a decree, and then to appeal the issue of whether the premarital agreement is valid. *City of Houston*

v. Houston Mun. Empls. Pension Sys., 549 S.W.3d 566, 580 (Tex. 2018); *In re Essex Ins.* 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding); *In re Prudential*, 148 S.W.3d at 136; *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 469 (Tex. 2008).

There is no ability to undo the damage caused by referring this case to an Islamic court or Fiqh Panel. It is clear on the face of the trial court's ruling that the premarital agreement is void as against public policy. The trial court's order seems to put in place a series of unnecessary hoops: first, go to arbitration to see if the Muslim Court or Fiqh panel will follow the express terms of the agreement to disavow the law of the U.S. and the State of Texas and apply only Islamic Law; then, come back to the trial court to invalidate the Muslim Court or Fiqh panel's application of Islamic Law after the fact. To be clear, there is no doubt what law the Muslim Court or Fiqh panel will apply in the process – Islamic Law. The very terms of the document make that abundantly clear. There is no reason to ponder or wonder about it. To wait until the end of the arduous process while Wife remains shackled to a marriage from which she seeks her rights as a U.S. Citizen to be relieved provides an extremely inadequate remedy.

ISSUE ONE: The *Islamic Pre-Nuptial Agreement* and the alleged arbitration clause therein requires application of Islamic Law and specifically disavows the laws of the United States and the State of Texas; therefore, the agreement and the alleged arbitration clause are void as against public policy and therefore invalid as a matter of law.

A. Premarital agreements in Texas

The Texas Family Code authorizes parties to a premarital agreement to contract with respect to all matters "not in violation of public policy…." Tex. Fam. Code §4.003(a)(8). A premarital agreement in Texas is not enforceable if the party did not sign the agreement voluntarily or if the agreement was unconscionable when it was signed. Tex. Fam. Code §4.006. An agreement that violates public policy is unconscionable. *See Sheriff v. Moosa*, 2015 LW 473567 (Tex. App. – Dallas 2015, no pet.).

B. Opposition to the agreement containing an arbitration clause

When a party opposes an application to compel arbitration and asserts that the contract containing the agreement to arbitrate is invalid or unenforceable, the trial court must hold a trial on the validity and enforceability of the agreement as a whole, including the party's

defenses to the agreement. Tex. Fam. Code §§6.6015 and 153.00715. Under these code sections, if a party to a divorce and/or suit affecting the parent-child relationship asserts that the agreement containing the arbitration clause is invalid or unenforceable and opposes the requirement to arbitrate, the trial court cannot order the parties to arbitrate until after it determines at a trial that the agreement as a whole is valid and enforceable. S*ee* *O'Connor's Texas Family Law Handbook* Ch. 2-D §3 "Premarital Agreements" (2021 ed.).[2]

C. Agreements void against public policy

It is well established that an agreement that changes the application of the laws of the State of Texas is void as against public policy. The U.S. Supreme Court has explained that a state is not required to enforce a contract founded upon a foreign law where to do so

[2] According to the O'Connor's Texas Family Law Handbook, the purpose of these code provisions is to avoid splitting up the determination of the validity of an arbitration clause from the validity of the entire agreement, as in civil contract law generally, as opposed to determination of the validity of an agreement to arbitrate in a family law proceeding specifically. *O'Connor's Texas Family Law Handbook* Ch. 2-D §3 "Premarital Agreements" (2021 ed.) citing Senate Cmte. on State Affairs, Bill Analysis, Tex. S.B. 1216, 82nd Leg., R.S. (2011); cf. *Prima Paint Corp. v. Flood & Conklin Mfg.*, 388 U.S. 395, 403–04 (1967) (challenges to the validity of a contract as a whole, and not specifically to the validity of an arbitration clause, are decided by the arbitrator and not the court when the scope of the arbitration clause is broad enough to cover such claims). Under the Family Code, the trial court, rather than an arbitrator, has the initial authority to decide whether the agreement that contains an arbitration clause is valid and enforceable. See Tex. Fam. Code §§ 6.6015(a), 153.00715(a).

would be "repugnant to good morals, … or, in other words, violate the public policy of the state where the enforcement of the foreign contract is sought." *Griffin v. McCoach*, 313 U.S. 498, 506 (1941); *see also* *United Paperworkers Intern. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 42 (1987). "Due process requires that no other jurisdiction shall give effect... to a judgment elsewhere acquired without due process." *Griffin v. Griffin*, 327 U.S. 220, 228 (1946). Similarly, if a foreign law "violates good morals, natural justice, or is prejudicial to the general interests of our own citizens," a court may refuse to enforce it. *Robertson v. Estate of McKnight*, 609 S.W.2d 534, 537 (Tex. 1980).

Going a step further, "a court may refuse to enforce a contract provision that requires the application of foreign law to a dispute if doing so would violate the public policy of this State." *Tex. Att'y Gen. Op. No. KP-0094* (2016). To the extent that any contract term violates the public policy of this State, a court may refuse to enforce it. *See* *City of Willow Park v. E.S. & C.M., Inc.*, 424 S.W.3d 702, 710 (Tex. App.—Fort Worth 2014, pet. denied); *Southwestern Bell Tel. Co. v. Gravitt*, 551 S.W.2d 421, 427 (Tex. App.—San Antonio 1976, writ ref'd n.r.e.).

Specifically as it relates to the application of Islamic Law in Texas courts, the authority is clear that a Texas court should decline to apply Islamic Law. For example, where parties were attempting to validate a bigamous marriage under Islamic Law, the Fort Worth Court of Appeals found that when the application of Islamic law "runs so counter to our notions of good morals and natural justice," Islamic law will not be applied. *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). Further, this Court has held that a premarital agreement requiring the application of Islamic Law and changing the laws of the State of Texas was *per-se* unconscionable and therefore unenforceable. *Sheriff v. Moosa*, 2015 WL 473567 (Tex. App. – Dallas 2015, no pet.).

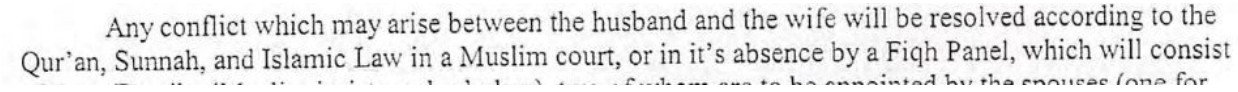
D. De novo review

A court's decision regarding whether a contract, arbitration award, foreign judgment, or application of foreign law violates public policy is a question of law that is reviewed *de novo* by a reviewing court. *See* *Sanchez v. Palau*, 317 S.W.3d 780, 785 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (court's ruling on recognition of a foreign country judgment is reviewed de novo); *Xtria, L.L.C. v. Int'l Ins. All,*

Inc., 286 S.W.3d 583, 591 (Tex. App.—Texarkana 2009, pet. denied) (judgment confirming an arbitration award is reviewed *de novo*); *Johnson v. Structured Asset Servs., L.L.C.*, 148 S.W.3d 711, 726 (Tex. App.— Dallas 2004, no pet.) (whether a contract violates public policy is a question of law, which is reviewed de novo). Thus, as a matter of law, a court is without discretion to apply foreign law in a circumstance where doing so violates a party's right to due process or the clearly established public policy of this State. *Tex. Att'y Gen. Op. No. KP-0094* (2016).

E. Application to the facts herein

Here, the *Islamic Pre-nuptial Agreement* requires the application of Islamic Law to any divorce or suit affecting the parent-child relationship matters and specifically disavows the application of the law of the United States or of this State:


Any conflict which may arise between the husband and the wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in it's absence by a Fiqh Panel, which will consist

(App. 4 at 7.)

> In the case where a conflict is to be solved by a court of law in the United States or abroad, the court will solely apply Qur'anic injunctions, the Sunnah of the Prophet (peace and blessings be upon him) and Islamic Law (Fiqh). The law of the land will not be applied in these conflicts, except in cases where public order, safety, and/or health justly demand so. If, however, a Muslim court or a substituting institution is available, the case will be addressed to this court or institution.

(App. 4 at 8.)[3]

Without further analysis, the face of the document illustrates that the *Islamic Pre-Nuptial Agreement* is void against public policy based on the authority referenced *supra*. But to be specific, the agreement is substantively unconscionable, illegal, and against the public policy of the State of Texas for at least the following reasons:

1. *Violates the Establishment Clause*

The Establishment Clause requires separation of government determination from religious activities under the United States Constitution. U.S. Const. amend. I. The *Islamic Pre-nuptial Agreement* as a whole and the alleged arbitration agreement specifically require the application of Islamic Law in a Texas court with complete disregard for the laws of the U.S. and the State of Texas, thereby invoking the Establishment Clause. Shiva Falsafi, Religion, *Women, and the Holy*

[3] Where the document references "this court or institution" presumably it references the Islamic Association of North Texas, Inc. which drafted and presented the document. (App. 4 at 8.)

Grail of Legal Pluralism, 35 Cardozo L. Rev. 1881, 1926 (2014); Allison Gerli, *Living Happily Ever After in a Land of Separate Church and State: Treatment of Islamic Marital Contracts*, 26 J. Am. Acad. Matrim. Law 113, 119 (2013); Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 214-15 (2002) ("The question of whether the couple meant to waive community property and equitable distribution rules implicates the Establishment Clause because interpreting mahr agreements necessarily entails an analysis of Islamic religious doctrine.").

2. Violates Equal Protection to obtain a divorce

The *Islamic Pre-nuptial Agreement* as a whole and the alleged arbitration agreement specifically violate Wife's right to Equal Protection under the United States Constitution and equality under the law in the Texas Constitution. U.S. Const. amend. XIV, §2; Tex. Const. art. I, § 3a. The application of Islamic Law limits the rights of a woman to obtain a divorce absent consent of the husband and applies the laws differently to women versus men. Falsafi at 1918, 1933. "The Quran gives married men a right to divorce their wives. Nothing in the Quran

gives married women the same right. In the Islamic law on divorce, in keeping with the Quran's provision, the husband has a unilateral right to obtain a divorce." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 553 (2016).

3. Violates Equal Protection to present evidence

The *Islamic Pre-nuptial Agreement* as a whole and the alleged arbitration agreement specifically violate Wife's right to Equal Protection under the United States Constitution and the Texas Constitution. U.S. Const. amend. XIV, §2; Tex. Const. art. I, §3a. The application of Islamic Law means that the weight and credibility of the evidence provided by Wife will be half of that of any male who testifies or provides evidence, including Husband. Thus, Wife will neither be meaningfully heard nor afforded a meaningful opportunity to present evidence material to the controversy.

> "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness, whereas a woman is not."

Massie at 554.

"Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 499 (2013). "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal Protection Clause." Rizwan at 512.

4. Violates Due Process and Due Course of Law

The *Islamic Pre-nuptial Agreement* violates Wife's right to Due Process under the United States Constitution and Due Course of Law under the Texas Constitution. U.S. Const. amend. XIV, §1; Tex. Const. art. I, §19. She will not have a meaningful right to be heard and present evidence material to the controversy and cross-examine any witnesses.

> "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness, whereas a woman is not."

Massie at 554.

"Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Rizwan at 499. "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal Protection Clause." Rizwan at 512.

5. Violates Wife's right to obtain a divorce

The *Islamic Pre-nuptial Agreement* violates Wife's right to obtain a divorce and dissolution of her marriage because Islamic Law limits the rights of a woman to seek divorce. Nathan B. Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 302 (2011). "The Quran gives married

men a right to divorce their wives. Nothing in the Quran gives married women the same right. In the Islamic law on divorce, in keeping with the Quran's provision, the husband has a unilateral right to obtain a divorce." Massie at 553.

6. Violates right to determination of the child's best interests.

The *Islamic Pre-nuptial Agreement* violates the right to a determination of the child's best interests according to Texas Family Code §153.002 because Islamic Law does not consider the best interest of the child as the primary consideration in making determinations regarding conservatorship. Instead, Islamic Law determines conservatorship based on a formulaic determination of the age of the child and the gender of the parent.

7. Violates Wife's right to a just and right division of the marital estate.

The *Islamic Pre-nuptial Agreement* violates Wife's right to a just and right division of the marital estate. Islamic Law makes no provision for a marital estate, community property, or separate property. Nathan Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 306, 311 (2011); Nathan B. Oman, *Bargaining in the Shadow of God's Law: Islamic*

Mahr Contracts and the Perils of Legal Specialization, 45 Wake Forest L. Rev. 579, 590 (2010) ("There is nothing in Islamic law analogous to community or marital property."); Blenkhorn at 226. ("The Shari'a – whereby the wife is not permitted to work without permission but then is not allowed to claim ownership in anything that she does not herself earn – is so repugnant to public policy that it outweighs any other choice-of-law concern.").

8. No financial disclosures

The *Islamic Pre-nuptial Agreement* did not provide that Wife knowingly waived her rights under the Texas Constitution to a determination of the community property and separate property of the marital estate of the parties. No disclosure of assets and liabilities was made between the parties, and none was waived; thus, the agreement is invalid as a premarital agreement under the laws of the State of Texas. Tex. Fam. Code §4.003(a)(2); see Falsafi at 1917. ("…[T]here is neither a requirement for the 'fair and reasonable disclosure of the property' nor much sanction against what might be considered unconscionable behavior under statutory prenuptial regimes [in Islamic Law].")

F. Mandamus should be granted

For all of these reasons, the *Islamic Pre-nuptial Agreement* is unenforceable under U.S. and Texas law because it requires imposition of Islamic Law against a U.S. Citizen in substitution for a U.S. Court and the protections of the U.S. Constitution, the Texas Constitution, and the laws of this State. It violates public policy and is, therefore, unconscionable and void. The trial court clearly abused its discretion in validating and enforcing the *Islamic Pre-nuptial Agreement*. Mandamus should be granted, finding that the *Islamic Pre-nuptial Agreement* is void as a matter of law.

ISSUE TWO: The *Islamic Pre-Nuptial Agreement* was involuntarily executed and therefore void under the *Moore v. Moore* factors.

The Texas Family Code provides that a premarital agreement is unenforceable if the party against whom enforcement is sought proves that they did not sign the agreement voluntarily. Tex. Fam. Code §4.006. This Court set forth the factors to consider for the voluntariness evaluation in *Moore v. Moore*:

> "In determining whether any evidence of involuntariness exists, the following factors should be considered: (1) whether a party has had the advice of counsel, (2) misrepresentations made in procuring the agreement, (3) the amount of information provided and (4) whether information has been withheld."

Moore v. Moore, 383 S.W.3d 190, 195 (Tex. App. – Dallas 2012, pet. denied). Evidence of fraud and duress may also provide proof of involuntariness; however, fraud and duress are not themselves defenses to a premarital agreement. *Id.*

The question of voluntariness of a premarital agreement is a question of fact. *See e.g.* *Moore*, 383 S.W.3d at 197; *see also* *Nesmith v. Berger*, 64 S.W.3d 110 (Tex. App. – Austin 2001, pet. denied).[4]

[4] Presumably, a party is entitled to a final trial upon proper notice and opportunity to conduct discovery prior to trial on questions of fact in a suit.

Here, Wife did not sign the *Islamic Pre-Nuptial Agreement* voluntarily. The agreement was presented to her for the first time during the marriage ceremony where she was forced to sign it without reading it or having a meaningful opportunity to negotiate its contents.[5] (App. 34, 17:22-25; 18:1-5.[6]) Wife did not have any advice of counsel. (Appendix App. 34, 20:14-16.[7]) She believed according to the representations of Husband an all others involved that the contents of the document were a ceremonial marriage contract affirming the parties' religious beliefs. (App. 34, 21:13-17.[8]) No one advised her that the agreement waived significant rights under the U.S. Constitution and the laws of the State of Texas. (App. 34, 22:9-13.[9])

Analysis here fails under every prong of the *Moore* factors. Wife had no ability to review or negotiate the contents of the document in advance and no advice of counsel. (App. 34, 17:22-25; App. 34, 20:14-

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[5] Culturally, Muslim women do not have the right or freedom to contract for themselves, but must do so by and through a male family member. Blenkhorn at 231.

[6] See *Bill of Exceptions* and attached declarations of witnesses. (App. 31.)

[7] Id.

[8] Id.

[9] Id.

16.[10]) The contents of the documents were misrepresented to Wife in order to procure her signature. No information was provided to her regarding the documents before or while she signed them. No financial disclosures were made. And, information was affirmatively withheld from her regarding the documents. As such, the *Islamic Pre-Nuptial Agreement* was involuntarily executed. Mandamus should be granted, and the agreement set aside as void.

[10] Id.

ISSUE THREE: **The trial court clearly abused its discretion in finding that the *Islamic Pre-Nuptial Agreement* contains a clause that constitutes an arbitration clause.**

An agreement to arbitrate must necessarily contain a meeting of the minds about the fact that the parties are submitting all matters in controversy to arbitration. Necessarily, the Texas Arbitration Act requires that such agreement actually be an agreement *to arbitrate*. Tex. Civ. Prac. & Rem. Code §171.001. There must be a valid agreement *to arbitrate* between the parties. *In re Dillard Dep't Stores*, Inc., 186 S.W.3d 514, 515 (Tex. 2006). A contract is ambiguous when its meaning is uncertain and doubtful or reasonably susceptible to more than one interpretation. *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003). A contract may be ambiguous on its face or ambiguous when applied to the subject matter. *Id.* A court determines whether a contract is ambiguous as a question of law. *Id.* If a contract is determined to be ambiguous, a fact question exists such that a factfinder must look to the parties' intent. *Id.* The factfinder resolves the contract's ambiguity by determining the true intent of the parties through parol evidence. *Murphy v. Dilworth*, 137 Tex. 32, 36, 151 S.W.2d 1004, 1005 (1941).

The relevant portion of the agreement follows:

> Any conflict which may arise between the husband and the wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in it's absence by a Fiqh Panel, which will consist of three Faqaihs (Muslim jurists and scholars), two of whom are to be appointed by the spouses (one for each spouse). The third Fiqh is to be appointed by the other two Faqihs and is to head the Panel. The
>
> appointees will not represent the parties in conflict, but rather, serve as impartial arbitrators and judges, guided by Islamic Law and it's principles.
> It is understood by both parties that the majority decision of the Fiqh Panel will be binding and final.

(App. 4 at 7-8.)

The *Islamic Pre-Nuptial Agreement* provides that conflict between husband and wife would be resolved according to Islamic Law in a Muslim court. This provision does not invoke an intent to arbitrate.

Second, in the absence of the availability of a Muslim court, the *Islamic Pre-Nuptial Agreement* provides that conflict between husband and wife will be resolved by a Fiqh panel and the *Islamic Pre-nuptial Agreement* sets forth the procedure for choosing the three members of the panel. This provision does not invoke an intent to arbitrate.

Third, the *Islamic Pre-Nuptial Agreement* states that the members of the Fiqh panel will serve as "impartial arbitrators and judges, guided by Islamic Law and it's principles" (sic). This phrase is the only place that a derivative of the word "arbitration" is used. Even so, this

provision does not invoke an agreement to arbitrate, as the panelists are to serve as arbitrator and *judge* in the Muslim court. Thus, this provision does not invoke an intent to arbitrate.

Fourth, the *Islamic Pre-Nuptial Agreement* states that both parties understand that the majority decision of the Fiqh panel will be binding and final. Nothing in this provision invokes an agreement to arbitrate, but instead states that the Muslim Court or Fiqh panel judges' decision will be binding applying Islamic Law.[11]

Fifth, the *Islamic Pre-Nuptial Agreement* states that a time when a conflict between husband and wife is to be determined by a U.S. court, the U.S. court will apply the following:

> In the case where a conflict is to be solved by a court of law in the United States or abroad, the court will solely apply Qur'anic injunctions, the Sunnah of the Prophet (peace and blessings be upon him) and Islamic Law (Fiqh). The law of the land will not be applied in these conflicts, except in cases where public order, safety, and/or health justly demand so. If, however, a Muslim court or a substituting institution is available, the case will be addressed to this court or institution.

(App. 4 at 8.) This phrase does not invoke an intent to arbitrate, but to be bind not only on the parties but also the Texas court system to Islamic Law.

Thus, nothing herein evidences an intent to arbitrate a divorce proceeding or suit affecting the parent-child relationship. The trial court clearly abused its discretion in enforcing these provisions as an arbitration clause.

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[11] It is ironic that the trial court applies Texas Law to interpret an agreement that on its face requires the application of Islamic Law to interpret its true meaning. This irony perfectly illustrates the voidness of the document itself under Texas law and the U.S. Constitution.

ISSUE FOUR: The trial court clearly abused its discretion by enforcing the *Islamic Pre-Nuptial Agreement* between the parties and compelling arbitration and denying Relator a trial on her defenses.

Texas Family Code §§6.6015 and 153.00715 provide that a trial court may only order arbitration in a family law matter after the agreement containing the arbitration clause is determined to be valid and enforceable. Tex. Fam. Code §§6.6015 and Tex. Fam. Code § 153.00715. On the face of the record, the trial court summarily concluded that the agreement was valid and the matter should be sent to arbitration. The trial court made no accommodation for Wife's ability to rebut the presumption of validity of a premarital agreement in a trial on the merits. The trial court barely made accommodation for Wife's request to present evidence on the second setting asking for such.[12]

The trial court failed to comply with the Texas Family Code's specific provisions and failed to hold a meaningful trial on all of Wife's defenses to the *Islamic Pre-Nuptial Agreement* as a whole including the

[12] At the first hearing, the trial court allowed Husband to present limited evidence but denied Wife's request to do so. (App. 33.) Upon request for reconsideration, the trial court granted Wife a very limited right to present evidence regarding the voluntary execution of the agreement as it relates to the alleged arbitration clause specifically. (App. 34, 5:21-25.) The trial court's actions limited Wife's right to meaningful access to the courts through the severe restriction of time limits such that a violation of Wife's right to Due Process and Due Course of Law occurred. U.S. Const. XIV, § 1; Tex. Const. art. 19.

alleged arbitration agreement. Mandamus should be granted to require the trial court to set the matter for a meaningful trial on the merits of the validity of the agreement.

Prayer

WHEREFORE, PREMISES CONSIDERED, MARIAM AYAD prays this Court to grant this *Amended Petition for Writ of Mandamus*, and find the *Islamic Pre-Nuptial Agreement* void.

Respectfully submitted,

/s/Michelle May O'Neil
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Attorneys for Relator

Certificate of Service

I certify that a copy of this *Amended Petition for Writ of Mandamus* was served on the following parties or their counsel via e-service and via electronic mail on June 22, 2021:

Respondent:	Hon. Andrew Thompson 416th Judicial District Judge Russell A. Steindam Courts Building 2100 Bloomdale Road, Suite 20030 McKinney, Texas 75071
Counsel for Real Party In Interest:	Jeffery O. Anderson State Bar No. 00790232 jeff@ondafamilylaw.com Brad LaMorgese State Bar No. 00796918 brad@ondafamilylaw.com Orsinger, Nelson, Downing, & Anderson, LLP 2600 Network Blvd., Ste. 200 Frisco, Texas 75034 Tel: (214) 273-2400 Fax: (214) 273-2470

/s/Michelle May O'Neil
Michelle May O'Neil

Certificate of Compliance

I certify that this *Amended Petition for Writ of Mandamus* was prepared with Microsoft Word 365, and that, according to the word-count function, the sections covered by TRAP 9.4(i)(1) contain 5,853 words.

/s/Michelle May O'Neil
Michelle May O'Neil

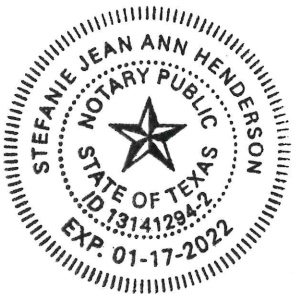
Verification

BEFORE ME, the undersigned notary, on this day personally appeared Michelle May O'Neil, a person whose identity is known to me. After I administered an oath to affiant, affiant testified as follows:

"My name is Michelle May O'Neil. I am over the age of 18 years and capable of making this affidavit. The facts in this affidavit are within my personal knowledge and are true and correct. I am the attorney for relator. All the documents included with the *Amended Petition for Writ of Mandamus* are true copies."

Michelle May O'Neil

Subscribed and sworn to before me the undersigned authority on June 22, 2021.



Notary Public, State of Texas

NO. 05-21-00216-CV

In The

Fifth Court of Appeals at Dallas, Texas

IN RE

MARIAM AYAD,

RELATOR

FROM THE 416th DISTRICT COURT OF

COLLIN COUNTY, TEXAS

APPENDIX TO AMENDED PETITION FOR WRIT OF MANDAMUS

Clerk's Record

1. Original Petition for Divorce – January 25, 2021

2. Respondent's Original Answer – February 5, 2021

3. Original Counterpetition for Divorce – February 5, 2021

4. Motion to Enforce Prenuptial Agreement and Islamic Pre-Nuptial Agreement – March 4, 2021

5. Response to Motion to Enforce Islamic Prenuptial Agreement – March 17, 2021

6. Counterrespondent's Original Answer – March 22, 2021

7. Notice of Appearance of Counsel and Findings of Fact and Conclusions of Law – March 22, 2021

8. Order on Motion to Enforce Islamic Prenuptial Agreement – March 24, 2021

9. Bench Trial Discover Control Plan and Scheduling Order – March 24, 2021

10. Entry of Appearance and Designation of Lead Counsel in Charge – May 5, 2021

11. First Amended Answer to Original Counterpetition for Divorce – May 12, 2021

12. Motion to Bifurcate and for Separate Trials – May 12, 2021

13. Motion to Vacate or Reconsider Motion to Enforce Islam Pre-Nuptial Agreement – May 12, 2021

14. First Amended Petition for Divorce – May 13, 2021

15. Motion for Continuance – May 13, 2021

16. Notice of Intent to Oppose Arbitration Award – May 13, 2021

17. Notice of Past-Due Findings of Fact and Conclusions of Law – May 13, 2021

18. Notice of Hearing – May 17, 2021

19. First Amended Motion to Bifurcate and for Separate Trials – May 25, 2021

20. First Amended Motion to Vacate or Reconsider Motion to Enforce Islam Pre-Nuptial Agreement – May 25, 2021

21. First Amended Notice of Intent to Oppose Arbitration Award – May 25, 2021

22. Second Amended Answer to Original Counterpetition for Divorce – May 25, 2021

23. Second Amended Petition for Divorce – May 25, 2021

24. Amended Notice of Hearing – May 26, 2021

25. Objections to Proposed Findings of Fact and Conclusions of Law – May 27, 2021

26. Order of Stay – May 27, 2021

27. Motion for Continuance – June 8, 2021

28. Brief in Support of Motion to Enforce – June 10, 2021

29. Order of Referral to Arbitration – June 14, 2021

30. Order Vacating Motion to Enforce – June 14, 2021

31. Petitioner's Formal Bill of Exceptions – June 22, 2021

32. Docket Sheet – June 22, 2021

Reporter's Record

33. Transcript – Motion to Enforce – March 22, 2021

34. Transcript – Motion to Vacate or Reconsider – June 11, 2021

35. Transcript – Conference – June 17, 2021

Secondary Authority

36. Allison Gerli, *Living Happily Ever After in a Land of Separate Church and State: Treatment of Islamic Marital Contracts*, 26 J. Am. Acad. Matrim. Law 113, 119 (2013)

37. Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 553 (2016)

38. Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 214-15 (2002)

39. Nathan B. Oman, *Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization*, 45 Wake Forest L. Rev. 579, 590 (2010)

40. Nathan B. Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 302 (2011)

41. Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 499 (2013)

42. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1926 (2014)

43. *Tex. Att'y Gen. Op. No. KP-0094* (2016)

Filed: 1/25/2021 3:13 PM
Lynne Finley
District Clerk
Collin County, Texas
By Suzanne Rogers Deputy
Envelope ID: 50005273

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
SALMA MARIAM AYAD AND AYAD HASHIM LATIF	§	**JUDICIAL DISTRICT**
AND IN THE INTEREST OF A[redacted] A[redacted] A[redacted], A CHILD	§	**COLLIN COUNTY, TEXAS**

ORIGINAL PETITION FOR DIVORCE

1. Discovery Level

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. Objection to Assignment of Case to Associate Judge

Petitioner objects to the assignment of this matter to an associate judge for a trial on the merits or presiding at a jury trial.

3. Parties

This suit is brought by Salma Mariam Ayad, Petitioner. The last three numbers of Salma Mariam Ayad's driver's license number are 825. The last three numbers of Salma Mariam Ayad's Social Security number are 994.

Ayad Hashim Latif is Respondent.

4. Domicile

Petitioner has been a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding ninety-day period.

5. Service

Process should be served on Respondent.

6. Protective Order Statement

No protective order under title 4 of the Texas Family Code, protective order under subchapter A of Chapter 7B of the Texas Code of Criminal Procedure, or order for emergency protection under Article 17.292 of the Texas Code of Criminal Procedure is in effect in regard to a party to this suit or a child of a party to this suit and no application for any such order is pending.

7. Dates of Marriage and Separation

The parties were married on or about December 26, 2008, and ceased to live together as spouses on or about January 25, 2021.

8. Grounds for Divorce

The marriage has become insupportable because of discord or conflict of personalities between Petitioner and Respondent that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

9. Children of the Marriage

Petitioner and Respondent are parents of the following child of this marriage who is not under the continuing jurisdiction of any other court:

Name: A[redacted] A[redacted] A[redacted]

Sex: Male

Birth date: [redacted]

There are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships affecting the child the subject of this suit.

Information required by section 154.181(b) and section 154.1815 of the Texas Family Code will be supplemented prior to final trial.

No property of consequence is owned or possessed by the child the subject of this suit.

Petitioner and Respondent, on final hearing, should be appointed joint managing conservators. Petitioner requests the Court to apportion the rights and duties of a parent set out in section 153.132 of the Texas Family Code.

Petitioner should be designated as the conservator who has the exclusive right to designate the primary residence of the child. The primary residence of the child should be restricted to Collin County, Texas and counties contiguous to Collin County, Texas. The Court should award Petitioner the exclusive right to enroll the child in school. Respondent should be ordered to provide support for the child, including the payment of child support and medical and dental support in the manner specified by the Court. Petitioner requests that the payments for the support of the child survive the death of Respondent and become the obligations of Respondent's estate.

Petitioner requests the Court to order reasonable periods of electronic communication between the child and Petitioner to supplement Petitioner's periods of possession of and access to the child.

10. Division of Community Property

Petitioner believes Petitioner and Respondent will enter into an agreement for the division of their estate. If such an agreement is made, Petitioner requests the Court to approve the agreement and divide their estate in a manner consistent with the agreement. If such an agreement is not made, Petitioner requests the Court to divide their estate in a manner that the Court deems just and right, as provided by law.

Petitioner should be awarded a disproportionate share of the parties' estate for the following reasons, including but not limited to:

a. disparity of earning power of the spouses and their ability to support themselves;

b. the spouse to whom conservatorship of the child is granted;

c. earning power, business opportunities, capacities, and abilities of the spouses; and

d. attorney's fees to be paid.

11. Separate Property

Petitioner owns certain separate property that is not part of the community estate of the parties, and Petitioner requests the Court to confirm that separate property as Petitioner's separate property and estate.

12. Postdivorce Maintenance

Petitioner requests the Court to order that Petitioner be paid postdivorce maintenance for a reasonable period in accordance with chapter 8 of the Texas Family Code. Petitioner requests the Court to issue an order for withholding from Respondent's wages for this maintenance.

13. Request for Temporary Orders and Injunction

Petitioner requests the Court, after notice and hearing, to dispense with the issuance of a bond, to make temporary orders and issue any appropriate temporary injunctions for the preservation of the property and protection of the parties and for the safety and welfare of the child of the marriage as deemed necessary and equitable. Petitioner requests that the Court enjoin Respondent from the following:

1. Communicating with Petitioner in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.

2. Threatening Petitioner in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person.

3. Placing one or more telephone calls, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

4. Causing bodily injury to Petitioner or to a child of either party.

5. Threatening Petitioner or a child of either party with imminent bodily injury.

6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.

7. Falsifying any writing or record, including an electronic record, relating to the property of either party.

8. Misrepresenting or refusing to disclose to Petitioner or to the Court, on proper request, the existence, amount, or location of any tangible or intellectual property of one or both of the parties, including electronically stored or recorded information.

9. Damaging or destroying the tangible or intellectual property of one or both of the parties, including electronically stored or recorded information.

10. Tampering with the tangible or intellectual property of one or both of the parties, including electronically stored or recorded information, and causing pecuniary loss to Petitioner.

11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of one or both of the parties, whether personal property, real property, or intellectual property, and whether separate or community property, except as specifically authorized by order of this Court.

12. Incurring any debt, other than legal expenses in connection with this suit, except

as specifically authorized by order of this Court.

13. Withdrawing money from any checking or savings account in any financial institution for any purpose, except as specifically authorized by order of this Court.

14. Spending any money in either party's possession or subject to either party's control for any purpose, except as specifically authorized by order of this Court.

15. Withdrawing or borrowing money in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party, except as specifically authorized by order of this Court.

16. Withdrawing, transferring, assigning, encumbering, selling, or in any other manner alienating any funds or assets held in any brokerage account, mutual fund account, or investment account by one or both parties, regardless of whether the funds or assets are community or separate property and whether the accounts are self-managed or managed by a third party, except as specifically authorized by order of this Court.

17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policy on the life of either party or the parties' child, except as specifically authorized by order of this Court.

18. Entering any safe-deposit box in the name of or subject to the control of one or both of the parties, whether individually or jointly with others.

19. Changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party or the parties' child.

20. Canceling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time this suit was filed of, any life, casualty,

automobile, or health insurance policy insuring the parties' property or persons including the parties' child.

21. Opening or diverting mail or e-mail or any other electronic communication addressed to Petitioner.

22. Signing or endorsing Petitioner's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to Petitioner without the personal signature of Petitioner.

23. Taking any action to terminate or limit credit or charge cards in the name of Petitioner.

24. Discontinuing or reducing the withholding for federal income taxes from either party's wages or salary.

25. Destroying, disposing of, or altering any financial records of the parties, including but not limited to a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement.

26. Destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of this case, whether stored on a hard drive, in a removable storage device, in cloud storage or in another electronic storage medium.

27. Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of this case, whether stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium.

28. Deleting any data or content from any social network profile used or created by

either party or the parties' child.

29. Using any password or personal identification number to gain access to Petitioner's e-mail account, bank account, social media account, or any other electronic account.

30. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance, at [redacted] or in any manner attempting to withdraw any deposits for service in connection with any of those services.

31. Excluding Petitioner from the use and enjoyment of the residence located at [redacted].

32. Entering, operating, or exercising control over the 2018 Toyota Camry or any motor vehicle in the possession of Petitioner.

33. Disturbing the peace of the child or of another party.

34. Withdrawing the child from enrollment in the school or day-care facility where the child is presently enrolled.

35. Hiding or secreting the child from Petitioner.

36. Making disparaging remarks regarding Petitioner in the presence or within the hearing of the child.

Petitioner requests that Respondent be authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

14. Request for Temporary Orders Concerning Use of Property

Petitioner requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders and issue any appropriate temporary

injunctions respecting the temporary use of the parties' property as deemed necessary and equitable, including but not limited to the following:

Awarding Petitioner the exclusive use and possession of the residence located at [redacted] as well as the furniture, furnishings, and other personal property at that residence, while this case is pending, and enjoining Respondent from entering or remaining on the premises of the residence and exercising possession or control of any of this personal property, except as authorized by order of this Court.

Awarding Petitioner exclusive use and control of the 2018 Toyota Camry and enjoining Respondent from entering, operating, or exercising control over it.

15. Request for Temporary Orders Regarding Child

Petitioner requests the Court, after notice and hearing, to dispense with the necessity of a bond and to make temporary orders and issue any appropriate temporary injunctions for the safety and welfare of the child of the marriage as deemed necessary and equitable, including but not limited to the following:

Appointing Petitioner and Respondent temporary joint managing conservators, and designating Petitioner as the conservator who has the exclusive right to designate the primary residence of the child. Petitioner requests the Court to apportion the rights and duties of a parent set out in section 153.132 of the Texas Family Code.

Ordering Respondent to provide support for the child, including the payment of child support and medical and dental support in the manner specified by the Court, while this case is pending.

Ordering reasonable periods of electronic communication between the child and Petitioner to supplement Petitioner's periods of possession of the child.

Restricting the primary residence of the child to Collin County, Texas and counties contiguous to Collin County, Texas.

Ordering Respondent to produce copies of income tax returns for tax years 2018 and 2019, a financial statement, and current pay stubs by a date certain.

16. Request for Interim Attorney's Fees and Temporary Support

Petitioner requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders and issue any appropriate temporary injunctions regarding attorney's fees and support as deemed necessary and equitable, including but not limited to the following:

Petitioner requests that Respondent be ordered to pay reasonable interim attorney's fees and expenses, including but not limited to fees for appraisals, accountants, actuaries, and so forth. Petitioner is not in control of sufficient community assets to pay attorney's fees and anticipated expenses.

Petitioner has insufficient income for support, and Petitioner requests the Court to order Respondent to make payments for the support of Petitioner until a final decree is signed.

Petitioner requests that Respondent be ordered to pay estimated income taxes on the due dates as required by the Internal Revenue Service and under the Social Security numbers of both Petitioner and Respondent.

Petitioner requests that Respondent be ordered to pay any ad valorem taxes and insurance premiums as due on the properties of the parties.

17. Request for Temporary Orders for Discovery and Ancillary Relief

Petitioner requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders for discovery and ancillary relief as

deemed necessary and equitable, including but not limited to the following:

Ordering Respondent to provide a sworn inventory and appraisement of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the form and detail prescribed by the current edition of *Texas Family Law Practice Manual*, form 7-1.

Ordering Respondent to produce copies of all the information necessary to prepare Petitioner's tax returns for tax years 2018 and 2019, including tax returns and all supporting schedules for tax years 2018 and 2019, by a date certain.

Ordering the parties to participate in an alternative dispute resolution process before trial of this matter.

Ordering Respondent to execute all necessary releases required by Petitioner to obtain any discovery allowed by the Texas Rules of Civil Procedure.

Ordering Respondent to execute all necessary releases pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and 45 C.F.R. section 164.508 to permit Petitioner to obtain health-care information regarding the child.

Ordering Respondent to execute for all health-care providers of the child an authorization for disclosure of protected health information to Petitioner pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and 45 C.F.R. section 164.508.

Ordering Respondent to designate Petitioner as a person to whom protected health information regarding the child may be disclosed whenever Respondent executes an authorization for disclosure of protected health information pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and 45 C.F.R. section 164.508.

Ordering a pretrial conference to simplify the issues in this case and determine the

stipulations of the parties and for any other matters the Court deems appropriate.

18. Collin County Standing Orders

The Collin County Standing Order on Children, Property & Conduct of Parties is attached and incorporated herein for all purposes as Exhibit A.

19. Attorney's Fees, Expenses, Costs, and Interest

It was necessary for Petitioner to secure the services of Elisse V. Woelfel, a licensed attorney, to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the child, judgment for attorney's fees, expenses, and costs through trial and appeal should be granted against Respondent and in favor of Petitioner for the use and benefit of Petitioner's attorney and be ordered paid directly to Petitioner's attorney, who may enforce the judgment in the attorney's own name. Petitioner requests postjudgment interest as allowed by law.

20. Prayer

Petitioner prays that citation and notice issue as required by law and that the Court grant a divorce and all other relief requested in this petition.

Petitioner prays that the Court, after notice and hearing, grant a temporary injunction enjoining Respondent, in conformity with the allegations of this petition, from the acts set forth above while this case is pending.

Petitioner prays that, on final hearing, the Court enter a permanent injunction enjoining Respondent, in conformity with the allegations of this petition, from the acts set forth above.

Petitioner prays for attorney's fees, expenses, and costs as requested above.

Petitioner prays for general relief.

Respectfully submitted,

Law Office of Elisse V. Woelfel
1400 Preston Road
Suite 400
Plano, TX 75093
Tel: (469) 443-6040
Fax: (888) 675-6799

By:/s/ Elisse V. Woelfel
Elisse V. Woelfel
State Bar No. 24058183
elisse@elisselaw.com
Attorney for Petitioner

EXHIBIT A

DISTRICT JUDGES
IN AND FOR
COLLIN COUNTY, TEXAS

STANDING ORDER ON CHILDREN, PROPERTY & CONDUCT OF PARTIES

On their own motion, the district judges issue this standing order, which shall apply to suits for dissolution of marriage and suits affecting the parent-child relationship, for the protection of the parties and their children, and for the preservation of their property.

1. SUITS FOR DISSOLUTION OF MARRIAGE

While a suit for dissolution of marriage is pending, it is ORDERED that each party is prohibited from:

1.1 Intentionally communicating in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, with the other party by use of vulgar, profane, obscene, or indecent language or in a coarse or offensive manner, with intent to annoy or alarm the other party;

1.2 Threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party;

1.3 Placing a telephone call, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm the other party;

1.4 Intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties or either party with intent to obstruct the authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;

1.5 Intentionally falsifying a writing or record, including an electronic record, relating to the property of either party;

1.6 Intentionally misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

1.7 Intentionally or knowingly damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

1.8 Intentionally or knowingly tampering with the tangible or intellectual property of the parties or either party, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party;

1.9 Unless specifically authorized by the Court:

1.9.1 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties or either party, regardless of whether the property is:

a) Personal property, real property, or intellectual property; or

b) Separate or community property;

1.9.2 Incurring any debt, other than legal expenses in connection with the suit for dissolution of marriage;

1.9.3 Withdrawing money from any checking or savings account in a financial institution for any purpose;

1.9.4 Spending any money in either party's possession or subject to either party's control for any purpose;

1.9.5 Withdrawing or borrowing money in any manner for any purpose from a retirement, profit sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party; or

1.9.6 Withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties;

1.10 Entering any safe deposit box in the name of or subject to the control of the parties or either party, whether indivldually or jointly with others;

1.11 Changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party or a child of the parties;

1.12 Cancelling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time the suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties;

1.13 Opening or diverting mail or e-mail or any other electronic communication addressed to the other party;

1.14 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party;

1.15 Taking any action to terminate or limit credit or charge credit cards in the name of the other party;

1.16 Discontinuing or reducing the withholding for federal income taxes from either party's wages or salary;

1.17 Destroying, disposing of, or altering any financial records of the parties, including a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement;

1.18 Destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

1.19 Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

1.20 Deleting any data or content from any social network profile used or created by either party or a child of the parties;

1.21 Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account;

1.22 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance at the residence of either party, or in any manner attempting to withdraw any deposit paid in connection with any of those services;

1.23 Excluding the other party from the use and enjoyment of a specifically identified residence of the other party; or

1.24 Entering, operating, or exercising control over a motor vehicle in the possession of the other party.

2. SPECIFIC AUTHORIZATIONS

This standing order does not:

2.1 Exclude a party from occupying the party's residence;

2.2 Prohibit a party from spending funds for reasonable and necessary living expenses;

2.3 Prohibit a party from engaging in acts reasonable and necessary to conduct that party's usual business and occupation;

3. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

While a suit affecting the parent-child relationship is pending, it is ORDERED that each party is prohibited from:

3.1 During the pendency of an original suit, removing a child from the State of Texas for the purpose of changing the child's residence, acting directly or in concert with others, without the written agreement of the parties or an order from the presiding judge;

3.2 During the pendency of an original suit, disrupting or withdrawing a child from the school or day-care facility where the child is presently enrolled, without the written agreement of the parties or an order from the presiding judge;

3.3 During the pendency of an original suit, changing a child's current place of abode,

without the written agreement of the parties or an order from the presiding judge;

3.4 Hiding or secreting a child from the other parent; or

3.5 Disturbing the peace of a child

4. MANDATORY EXCHANGE OF INFORMATION

Within 30 days of a parent's appearance in a suit affecting the parent-child relationship, and before any hearing on temporary orders, each parent shall produce the following:

4.1 Information sufficient to accurately identify that parent's net resources and ability to pay child support;

4.2 Copies of income tax returns for the past two years, a financial statement, and current pay stubs;

4.3 Regarding each child's health insurance: the name of the carrier, the policy number, a copy of the policy and schedule of benefits; a health insurance membership card, and proof of the cost of the child's portion of the premiums; and

4.4 Regarding each child's dental insurance: the name of the carrier, the policy number, a copy of the policy and schedule of benefits, a dental insurance membership card, and proof of the cost of the child's portion of the premiums.

5. SERVICE & APPLICATION OF THIS ORDER

Each party must attach a copy of this order to the party's live pleading. This order is effective upon the filing of an original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of this court. This entire order will terminate and will no longer be effective when the court signs a final order or the case is dismissed.

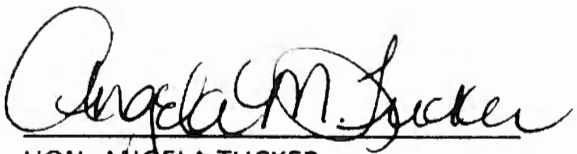
6. EFFECT OF OTHER COURT ORDERS

If any part of this order conflicts with any part of a protective order, the protective order shall prevail. Any portion of this order not changed by a subsequent order remains in full force and effect until the court signs a final order.

7. MEDIATION

The parties are encouraged to settle their disputes amicably without court intervention. The parties are encouraged to use alternative dispute resolution methods, such as mediation, to resolve the conflicts that may arise in this lawsuit.

SIGNED ON THE 3RD DAY OF OCTOBER, 2019.

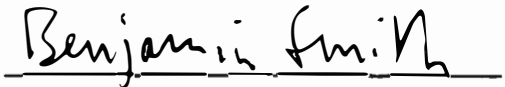


HON. ANGELA TUCKER
199TH JUDICIAL DISTRICT COURT

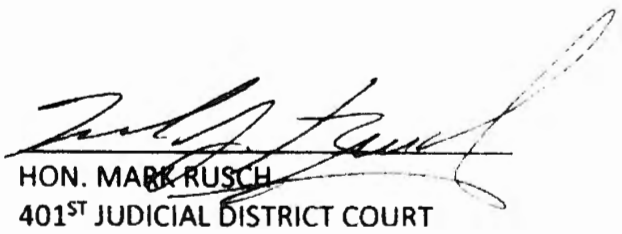
HON. JENNIFER EDGEWORTH
219TH JUDICIAL DISTRICT COURT

HON. JOHN ROACH, JR.
296TH JUDICIAL DISTRICT COURT

HON. TOM NOWAK
366TH JUDICIAL DISTRICT COURT



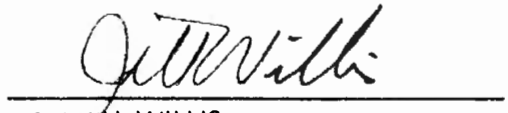
HON. BENJAMIN SMITH
380TH JUDICIAL DISTRICT COURT



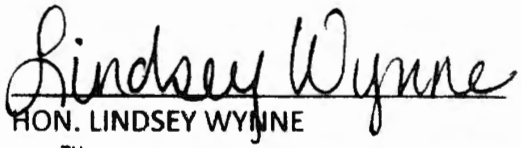
HON. MARK RUSCH
401ST JUDICIAL DISTRICT COURT

HON. ANDREA THOMPSON
416TH JUDICIAL DISTRICT COURT

HON. CYNTHIA WHELESS
417TH JUDICIAL DISTRICT COURT



HON. JILL WILLIS
429TH JUDICIAL DISTRICT COURT



HON. LINDSEY WYNNE
468TH JUDICIAL DISTRICT COURT

HON. PIPER MCCRAW
469TH JUDICIAL DISTRICT COURT

HON. EMILY A. MISKEL
470TH JUDICIAL DISTRICT COURT

HON. ANDREA BOURESSA
471ST JUDICIAL DISTRICT COURT

Filed: 2/5/2021 3:47 PM
Lynne Finley
District Clerk
Collin County, Texas
By Keri Crow Deputy
Envelope ID: 50413555

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
SALMA MARIAM AYAD AND AYAD HASHIM LATIF	§	**416TH JUDICIAL DISTRICT**
AND IN THE INTEREST OF A[redacted] A[redacted] A[redacted], A CHILD	§	**COLLIN COUNTY, TEXAS**

RESPONDENT'S ORIGINAL ANSWER

NOW COMES Respondent AYAD HASHIM LATIF, who files this his Respondent's Original Answer to SALMA MARIAM AYAD's Original Petition for Divorce. The last three numbers of AYAD HASHIM LATIF's driver's license number are XXX. The last three numbers of AYAD HASHIM LATIF's Social Security number are XXX.

1. MARRIAGE RELATIONSHIP

AYAD HASHIM LATIF believes that there is a reasonable expectation that the parties can reconcile their marriage relationship. AYAD HASHIM LATIF requests that the Court direct the parties to counsel with a person appointed by the Court in accordance with Texas Family Code Section 6.505. AYAD HASHIM LATIF requests that the Court abate the proceedings in this case and Order that the parties attend counseling for the maximum time allowed by law. AYAD HASHIM LATIF requests that the appointed counselor be excluded from testifying at a hearing or trial and that the appointed counselor's reports, files, records, and other work product be kept privileged and confidential in accordance with Texas Family Code Section 6.705.

2. GENERAL DENIAL

AYAD HASHIM LATIF enters a general denial and denies each and every, all and singular, the allegations made by SALMA MARIAM AYAD in her Original Petition for Divorce, including any amendment or supplement thereto, and demands strict proof thereof.

3. OBJECTION TO ASSIGNMENT OF CASE TO ASSOCIATE JUDGE

AYAD HASHIM LATIF objects to the assignment of this matter to an associate judge for a trial on the merits or presiding at a jury trial.

4. PRAYER

AYAD HASHIM LATIF prays that SALMA MARIAM AYAD take nothing and that AYAD HASHIM LATIF be granted all relief requested in this Respondent's Original Answer.

AYAD HASHIM LATIF prays for general relief.

Respectfully submitted,

ORSINGER, NELSON, DOWNING & ANDERSON, L.L.P.
2600 Network Blvd.
Suite 200
Frisco, Texas 75034
Tel: (214) 273-2400
Fax: (214) 273-2470

By: _____
Jeffrey O. Anderson
State Bar No. 00790232
jeff@ondafamilylaw.com
Melissa R. Cowle
State Bar No. 24101652
melissa@ondafamilylaw.com
Attorney for AYAD HASHIM LATIF

CERTIFICATE OF SERVICE

I certify that a true copy of the above and foregoing was served on SALMA MARIAM AYAD by and through her attorney of record, Elisse V. Woelfel, LAW OFFICE OF ELISSE V. WOELFEL, P.L.L.C., 1400 Preston Road, Suite 400, Plano, Texas 75093 in accordance with the Texas Rules of Civil Procedure on February 5, 2021.

Jeffrey O. Anderson

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jeffrey Anderson on behalf of Jeffrey Anderson
Bar No. 790232
jeff@ondafamilylaw.com
Envelope ID: 50413555
Status as of 2/8/2021 8:24 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	2/5/2021 3:47:10 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	2/5/2021 3:47:10 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	2/5/2021 3:47:10 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	2/5/2021 3:47:10 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	2/5/2021 3:47:10 PM	SENT
Melissa Cowle	24101652	Melissa@ondafamilylaw.com	2/5/2021 3:47:10 PM	SENT

Filed: 2/5/2021 3:47 PM
Lynne Finley
District Clerk
Collin County, Texas
By Keri Crow Deputy
Envelope ID: 50413555

NO. 416-50435-2021

IN THE MATTER OF	§	**IN THE DISTRICT COURT**
THE MARRIAGE OF	§	
	§	
SALMA MARIAM AYAD	§	
AND	§	**416TH JUDICIAL DISTRICT**
AYAD HASHIM LATIF	§	
	§	
AND IN THE INTEREST OF	§	
A[redacted] A[redacted] A[redacted], A CHILD	§	**COLLIN COUNTY, TEXAS**

ORIGINAL COUNTERPETITION FOR DIVORCE

1. DISCOVERY LEVEL

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. PARTIES

This suit is brought by AYAD HASHIM LATIF, Counterpetitioner. The last three numbers of AYAD HASHIM LATIF's driver's license number are XXX. The last three numbers of AYAD HASHIM LATIF's Social Security number are XXX.

SALMA MARIAM AYAD is Counterrespondent.

3. DOMICILE

AYAD HASHIM LATIF has been a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding ninety-day period.

4. SERVICE

Service of this document may be had in accordance with Rule 21a, Texas Rules of Civil Procedure, by serving SALMA MARIAM AYAD's attorney of record, Elisse V. Woelfel, LAW OFFICE OF ELISSE V. WOELFEL, P.L.L.C., 1400 Preston Road, Suite 400, Plano, Texas 75093.

5. PROTECTIVE ORDER STATEMENT

No protective order under title 4 of the Texas Family Code is in effect, and no application for a protective order is pending with regard to the parties to this suit.

6. DATES OF MARRIAGE AND SEPARATION

The parties were married on or about December 26, 2008 and ceased to live together as a married couple on or about January 25, 2021.

7. GROUNDS FOR DIVORCE

The marriage has become insupportable because of discord or conflict of personalities between AYAD HASHIM LATIF and SALMA MARIAM AYAD that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

8. CHILD OF THE MARRIAGE

AYAD HASHIM LATIF and SALMA MARIAM AYAD are parents of the following child of this marriage who is not under the continuing jurisdiction of any other court:

Name: A[redacted] A[redacted] A[redacted]
Sex: Male
Birth date: [redacted]

There are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships affecting the child the subject of this suit.

Information required by section 154.181(b) of the Texas Family Code will be provided.

No property of consequence is owned or possessed by the child the subject of this suit.

9. CONSERVATORSHIP AND SUPPORT

AYAD HASHIM LATIF hopes that the parties will enter into a written agreement containing provisions for the conservatorship, possession and access, and support of the child. If such an agreement is made, AYAD HASHIM LATIF requests the Court to confirm and adopt the agreement of the parties, to find the agreement as being in the best interest of the child, and to render the agreement as the Order of the Court.

If no such agreement is made, AYAD HASHIM LATIF requests the Court to make appropriate orders for the conservatorship, possession and access, and support of the child. The Court should appoint the parties as Joint Managing Conservators of the child, with all rights and duties of Joint Managing Conservators. AYAD HASHIM LATIF should be designated as the Joint Managing Conservator who has the exclusive right to designate the primary residence of the child. The residence of the child should be restricted to Collin County, Texas. The Court should provide for not less than an equal time, fifty-fifty possession schedule between AYAD HASHIM LATIF and the child. Specifically, AYAD HASHIM LATIF requests that the Court order each party have possession of and access to the child pursuant to a week-on/week-off possession schedule with the child.

10. DIVISION OF COMMUNITY PROPERTY

AYAD HASHIM LATIF believes AYAD HASHIM LATIF and SALMA MARIAM AYAD will enter into an agreement for the division of their estate. If such an agreement is made, AYAD HASHIM LATIF requests the Court to approve the agreement and divide their estate in a manner consistent with the agreement. If such an agreement is not made, AYAD HASHIM

LATIF requests the Court to divide their estate in a manner that the Court deems just and right, as provided by law.

11. SEPARATE PROPERTY

AYAD HASHIM LATIF owns certain separate property that is not part of the community estate of the parties, and AYAD HASHIM LATIF requests the Court to confirm that separate property as AYAD HASHIM LATIF's separate property and estate.

12. REQUEST FOR TEMPORARY ORDERS AND INJUNCTION

AYAD HASHIM LATIF requests the Court, after notice and hearing, to dispense with the issuance of a bond, to make temporary orders and issue any appropriate temporary injunctions for the preservation of the property and protection of the parties and for the safety and welfare of the child of the marriage as deemed necessary and equitable. AYAD HASHIM LATIF requests that the Court enjoin SALMA MARIAM AYAD from the following:

1. Communicating with AYAD HASHIM LATIF in person, by telephone, or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner.

2. Threatening AYAD HASHIM LATIF in person, by telephone, video chat, or in writing to take unlawful action against any person.

3. Placing one or more telephone calls to AYAD HASHIM LATIF, anonymously, at any unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication.

4. Causing bodily injury to AYAD HASHIM LATIF or to a child of either party.

5. Threatening AYAD HASHIM LATIF or a child of either party with imminent bodily injury.

6. Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.

7. Falsifying any writing or record relating to the property of either party.

8. Misrepresenting or refusing to disclose to AYAD HASHIM LATIF or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.

9. Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.

10. Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to AYAD HASHIM LATIF.

11. Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of AYAD HASHIM LATIF or SALMA MARIAM AYAD, whether personalty or realty, and whether separate or community, except as specifically authorized by the Court.

12. Incurring any indebtedness, other than legal expenses in connection with this suit, except as specifically authorized by the Court.

13. Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by the Court.

14. Spending any sum of cash in the either party's possession or subject to the either party's control for any purpose, except as specifically authorized by the Court.

15. Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by the Court.

16. Entering any safe-deposit box in the name of or subject to the control of AYAD HASHIM LATIF or SALMA MARIAM AYAD, whether individually or jointly with others.

17. Withdrawing or borrowing in any manner all or any part of the cash surrender value of life insurance policies on the life of AYAD HASHIM LATIF or SALMA MARIAM AYAD, except as specifically authorized by the Court.

18. Changing or in any manner altering the beneficiary designation on any life insurance on the life of AYAD HASHIM LATIF or SALMA MARIAM AYAD or the parties' child.

19. Canceling, altering, failing to renew or pay premiums, or in any manner affecting the present level of coverage of any life, casualty, automobile, or health insurance policies insuring the parties' property or persons, including the parties' child.

20. Opening or diverting mail addressed to AYAD HASHIM LATIF.

21. Signing or endorsing AYAD HASHIM LATIF's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to AYAD HASHIM LATIF without the personal signature of AYAD HASHIM LATIF.

22. Taking any action to terminate or limit credit or charge cards in the name of AYAD HASHIM LATIF.

23. Discontinuing or reducing the withholding for federal income taxes on either party's wages or salary while this case is pending.

24. Destroying, disposing of, or altering any financial records of the parties, including but not limited to records from financial institutions (including canceled checks and deposit slips), all records of credit purchases or cash advances, tax returns, and financial statements.

25. Destroying, disposing of, or altering any e-mail or other electronic data relevant to the subject matters of this case, whether stored on a hard drive or on a diskette or other electronic storage device.

26. Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping, or yard maintenance, at 1317 Gibraltar Street, Plano, Texas 75074, and at any residence where a party is temporarily residing or in any manner attempting to withdraw any deposits for service in connection with those services.

27. Excluding the other party from the use and enjoyment of the residence to be determined at the time of the Temporary Orders Hearing in this matter except as previously ordered by the Court.

28. Entering, operating, or exercising control over the automobile in the possession of AYAD HASHIM LATIF.

29. Disturbing the peace of the child or of AYAD HASHIM LATIF.

30. Withdrawing the child from enrollment in the school or day-care facility where the child is presently enrolled.

31. Hiding or secreting the child from AYAD HASHIM LATIF.

32. Making disparaging remarks regarding AYAD HASHIM LATIF or AYAD HASHIM LATIF's family in the presence or within the hearing of the child.

33. Destroying, disposing of, or altering any email, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matters of this case, whether stored on a hard drive, in a removable storage device, in cloud storage or in another electronic storage medium.

34. Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of this case, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium.

35. Deleting any data or content from any social network profile used or created by either party including the parties' child.

36. Using any password to personal identification number to gain access to AYAD HASHIM LATIF's email account, bank account, social media account, or any other electronic account.

AYAD HASHIM LATIF requests that SALMA MARIAM AYAD be authorized only as follows:

1. To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

2. To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

3. To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

4. To engage in acts reasonable and necessary to conduct Petitioner's and Respondent's usual business and occupation.

13. REQUEST FOR TEMPORARY ORDERS REGARDING CHILD

AYAD HASHIM LATIF requests the Court, after notice and hearing, to dispense with the necessity of a bond and to make temporary orders and issue any appropriate temporary injunctions for the safety and welfare of the child of the marriage as deemed necessary and equitable, including but not limited to the following:

1. Appointing AYAD HASHIM LATIF and SALMA MARIAM AYAD as the Temporary Joint Managing Conservators of the child, with all rights and duties of Joint Managing Conservators.

2. The Court should designate AYAD HASHIM LATIF as the conservator who has the exclusive right to designate the primary residence of the child.

3. The Court should order nothing less than an equal time, fifty-fifty possession schedule between and for AYAD HASHIM LATIF and the child. Specifically, the Court should award AYAD HASHIM LATIF and SALMA MARIAM AYAD a week-on/week-off possession schedule with the child.

14. REQUEST FOR TEMPORARY ORDERS CONCERNING USE OF PROPERTY

AYAD HASHIM LATIF requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders and issue any appropriate temporary injunctions respecting the temporary use of the parties' property as deemed necessary and equitable, including but not limited to the following:

1. Awarding AYAD HASHIM LATIF the exclusive use and possession of the residence located at 1317 Gibraltar Street, Plano, Texas 75074, as well as the furniture, furnishings, and other personal property at that residence, while this case is pending, and enjoining SALMA MARIAM AYAD from entering or remaining on the premises of the residence and exercising possession or control of any of this personal property, except as authorized by order of this Court.

2. Awarding AYAD HASHIM LATIF exclusive use and control of the motor vehicle in his possession and enjoining SALMA MARIAM AYAD from entering, operating, or exercising control over it.

15. REQUEST FOR TEMPORARY ORDERS FOR DISCOVERY AND ANCILLARY RELIEF

AYAD HASHIM LATIF moves the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders for discovery and ancillary relief as deemed necessary and equitable, including but not limited to the following:

1. Ordering SALMA MARIAM AYAD to provide a sworn inventory and appraisement of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the form and detail prescribed by the *Texas Family Law Practice Manual* (3d ed.), form 7-1 by a date certain.

2. AYAD HASHIM LATIF believes that there is a reasonable expectation that the disputes in this case may be resolved by the use of the alternative dispute resolution procedure of mediation, and AYAD HASHIM LATIF therefore requests the Court to refer this dispute for resolution by mediation.

3. The Court should ORDER a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.

16. COLLIN COUNTY STANDING ORDERS

A copy of the Collin County Standing Order Regarding Children, Pets, Property and Conduct of the Parties, is attached hereto and marked as ***Exhibit "A"*** and incorporated herein as if recited verbatim.

17. ATTORNEY'S FEES, EXPENSES, COSTS, AND INTEREST

It was necessary for AYAD HASHIM LATIF to secure the services of Jeffrey O. Anderson, Melissa R. Cowle, and the law firm of ORSINGER, NELSON, DOWNING & ANDERSON, L.L.P., licensed attorneys, to prepare and defend this suit. To effect an equitable division of the estate of the parties and as a part of that division, and for services rendered in connection with the conservatorship and support of the child the subject of this suit, judgment for attorney's fees,

expenses, and costs through final judgment after appeal should be granted against SALMA MARIAM AYAD and in favor of AYAD HASHIM LATIF for the use and benefit of AYAD HASHIM LATIF's attorney; or, in the alternative, AYAD HASHIM LATIF requests that reasonable attorney's fees, expenses, and costs through final judgment after appeal be taxed as costs and be ordered paid directly to AYAD HASHIM LATIF's attorney, who may enforce the order in the attorney's own name. AYAD HASHIM LATIF JR. requests postjudgment interest as allowed by law.

18. PRAYER

AYAD HASHIM LATIF prays that citation and notice issue as required by law and that the Court grant a divorce and all other relief requested in this counterpetition.

AYAD HASHIM LATIF prays for attorney's fees, expenses, costs, and interest as requested above.

AYAD HASHIM LATIF prays for general relief.

Respectfully submitted,

ORSINGER, NELSON,
DOWNING & ANDERSON, L.L.P.
2600 Network Blvd.
Suite 200
Frisco, Texas 75034
Tel: (214) 273-2400
Fax: (214) 273-2470

By:_____

Jeffrey O. Anderson
State Bar No. 00790232
jeff@ondafamilylaw.com
Melissa R. Cowle
State Bar No. 24101652
melissa@ondafamilylaw.com
Attorney for AYAD HASHIM LATIF

CERTIFICATE OF SERVICE

I certify that a true copy of the above and foregoing was served on SALMA MARIAM AYAD by and through her attorney of record, Elisse V. Woelfel, LAW OFFICE OF ELISSE V. WOELFEL, P.L.L.C., 1400 Preston Road, Suite 400, Plano, Texas 75093 in accordance with the Texas Rules of Civil Procedure on February 5, 2021.

_____

Jeffrey O. Anderson

199th Judicial District, Hon. Angela Tucker
219th Judicial District, Hon. Jennifer Edgeworth
296th Judicial District, Hon. John Roach, Jr.
366th Judicial District, Hon. Tom Nowak
380th Judicial District, Hon. Benjamin Smith
401st Judicial District, Hon. Mark Rusch

416th Judicial District, Hon. Andrea Thompson
417th Judicial District, Hon. Cynthia Wheless
429th Judicial District, Hon. Jill Willis
468th Judicial District, Hon. Lindsey Wynne
469th Judicial District, Hon. Piper McCraw
470th Judicial District, Hon. Emily A. Miskel
471st Judicial District, Hon. Andrea Bouressa

DISTRICT JUDGES
IN AND FOR
COLLIN COUNTY, TEXAS

STANDING ORDER ON CHILDREN, PROPERTY & CONDUCT OF PARTIES

On their own motion, the district judges issue this standing order, which shall apply to suits for dissolution of marriage and suits affecting the parent-child relationship, for the protection of the parties and their children, and for the preservation of their property.

1. SUITS FOR DISSOLUTION OF MARRIAGE

While a suit for dissolution of marriage is pending, it is ORDERED that each party is prohibited from:

1.1 Intentionally communicating in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, with the other party by use of vulgar, profane, obscene, or indecent language or in a coarse or offensive manner, with intent to annoy or alarm the other party;

1.2 Threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party;

1.3 Placing a telephone call, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm the other party;

1.4 Intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties or either party with intent to obstruct the authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;

1.5 Intentionally falsifying a writing or record, including an electronic record, relating to the property of either party;

1.6 Intentionally misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

1.7 Intentionally or knowingly damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

1.8 Intentionally or knowingly tampering with the tangible or intellectual property of the parties or either party, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party;

EXHIBIT
A

1.9 Unless specifically authorized by the Court:

1.9.1 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties or either party, regardless of whether the property is:

a) Personal property, real property, or intellectual property; or

b) Separate or community property;

1.9.2 Incurring any debt, other than legal expenses in connection with the suit for dissolution of marriage;

1.9.3 Withdrawing money from any checking or savings account in a financial institution for any purpose;

1.9.4 Spending any money in either party's possession or subject to either party's control for any purpose;

1.9.5 Withdrawing or borrowing money in any manner for any purpose from a retirement, profit sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party; or

1.9.6 Withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties;

1.10 Entering any safe deposit box in the name of or subject to the control of the parties or either party, whether individually or jointly with others;

1.11 Changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party or a child of the parties;

1.12 Cancelling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time the suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties;

1.13 Opening or diverting mail or e-mail or any other electronic communication addressed to the other party;

1.14 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party;

1.15 Taking any action to terminate or limit credit or charge credit cards in the name of the other party;

1.16 Discontinuing or reducing the withholding for federal income taxes from either party's wages or salary;

1.17 Destroying, disposing of, or altering any financial records of the parties, including a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement;

1.18 Destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

1.19 Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

1.20 Deleting any data or content from any social network profile used or created by either party or a child of the parties;

1.21 Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account;

1.22 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance at the residence of either party, or in any manner attempting to withdraw any deposit paid in connection with any of those services;

1.23 Excluding the other party from the use and enjoyment of a specifically identified residence of the other party; or

1.24 Entering, operating, or exercising control over a motor vehicle in the possession of the other party.

2. SPECIFIC AUTHORIZATIONS

This standing order does not:

2.1 Exclude a party from occupying the party's residence;

2.2 Prohibit a party from spending funds for reasonable and necessary living expenses;

2.3 Prohibit a party from engaging in acts reasonable and necessary to conduct that party's usual business and occupation;

3. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

While a suit affecting the parent-child relationship is pending, it is ORDERED that each party is prohibited from:

3.1 During the pendency of an original suit, removing a child from the State of Texas for the purpose of changing the child's residence, acting directly or in concert with others, without the written agreement of the parties or an order from the presiding judge;

3.2 During the pendency of an original suit, disrupting or withdrawing a child from the school or day-care facility where the child is presently enrolled, without the written agreement of the parties or an order from the presiding judge;

3.3 During the pendency of an original suit, changing a child's current place of abode,

without the written agreement of the parties or an order from the presiding judge;

3.4 Hiding or secreting a child from the other parent; or

3.5 Disturbing the peace of a child

4. MANDATORY EXCHANGE OF INFORMATION

Within 30 days of a parent's appearance in a suit affecting the parent-child relationship, and before any hearing on temporary orders, each parent shall produce the following:

4.1 Information sufficient to accurately identify that parent's net resources and ability to pay child support;

4.2 Copies of income tax returns for the past two years, a financial statement, and current pay stubs;

4.3 Regarding each child's health insurance: the name of the carrier, the policy number, a copy of the policy and schedule of benefits; a health insurance membership card, and proof of the cost of the child's portion of the premiums; and

4.4 Regarding each child's dental insurance: the name of the carrier, the policy number, a copy of the policy and schedule of benefits, a dental insurance membership card, and proof of the cost of the child's portion of the premiums.

5. SERVICE & APPLICATION OF THIS ORDER

Each party must attach a copy of this order to the party's live pleading. This order is effective upon the filing of an original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of this court. This entire order will terminate and will no longer be effective when the court signs a final order or the case is dismissed.

6. EFFECT OF OTHER COURT ORDERS

If any part of this order conflicts with any part of a protective order, the protective order shall prevail. Any portion of this order not changed by a subsequent order remains in full force and effect until the court signs a final order.

7. MEDIATION

The parties are encouraged to settle their disputes amicably without court intervention. The parties are encouraged to use alternative dispute resolution methods, such as mediation, to resolve the conflicts that may arise in this lawsuit.

SIGNED ON THE 3RD DAY OF OCTOBER, 2019.

HON. ANGELA TUCKER
199TH JUDICIAL DISTRICT COURT

HON. JENNIFER EDGEWORTH
219TH JUDICIAL DISTRICT COURT

HON. JOHN ROACH, JR.
296TH JUDICIAL DISTRICT COURT

HON. TOM NOWAK
366TH JUDICIAL DISTRICT COURT

HON. BENJAMIN SMITH
380TH JUDICIAL DISTRICT COURT

HON. MARK RUSCH
401ST JUDICIAL DISTRICT COURT

HON. ANDREA THOMPSON
416TH JUDICIAL DISTRICT COURT

HON. CYNTHIA WHELESS
417TH JUDICIAL DISTRICT COURT

HON. JILL WILLIS
429TH JUDICIAL DISTRICT COURT

HON. LINDSEY WYNNE
468TH JUDICIAL DISTRICT COURT

HON. PIPER MCCRAW
469TH JUDICIAL DISTRICT COURT

HON. EMILY A. MISKEL
470TH JUDICIAL DISTRICT COURT

HON. ANDREA BOURESSA
471ST JUDICIAL DISTRICT COURT

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Jeffrey Anderson on behalf of Jeffrey Anderson
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Filed: 3/4/2021 12:01 PM
Lynne Finley
District Clerk
Collin County, Texas
By Keri Crow Deputy
Envelope ID: 51154367

NO. 416-50435-2021

IN THE MATTER OF	§	**IN THE DISTRICT COURT**
THE MARRIAGE OF	§	
	§	
SALMA MARIAM AYAD	§	
AND	§	**416TH JUDICIAL DISTRICT**
AYAD HASHIM LATIF	§	
	§	
AND IN THE INTEREST OF	§	
A[redacted] A[redacted] A[redacted], A CHILD	§	**COLLIN COUNTY, TEXAS**

MOTION TO ENFORCE ISLAMIC PRENUPTIAL AGREEMENT
AND REFER CASE TO MUSLIM COURT OR FIQH PANEL

NOW COMES AYAD HASHIM LATIF, Respondent, and files this his Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel. In support thereof, AYAD HASHIM LATIF respectfully shows the Court as follows:

I.
Preliminary Statement

On or about December 26, 2008, SALMA MARIAM AYAD and AYAD HASHIM LATIF entered into an Islamic Pre-Nuptial Agreement. The Islamic Pre-Nuptial Agreement satisfies the requirements of a premarital agreement under Texas law in that the agreement is in writing and is signed by both parties. TEX. FAM. CODE ANN. § 4.002. A true and correct copy of the parties' Premarital Agreement is attached hereto as "Exhibit A," and is incorporated as if set forth fully herein. The Islamic Pre-Nuptial Agreement was an agreement made between prospective spouses made in contemplation of marriage and to be effective on marriage. TEX. FAM. CODE ANN. § 4.001; *Ahmed v. Ahmed*, 261 S.W.3d 190, 194 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

In pertinent part, the parties' Premarital Agreement provides that –

> *"Any conflict which may arise between the husband and the wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or*

in it's absence by a Fiqh Panel, which will consist of three Faqaihs (Muslim jurists and scholars), two of whom are to be appointed by the spouses (one for each spouse). The third Fiqh is to be appointed by the other two Faqihs and is to head the Panel. The appointees will not represent the parties in conflict, but rather, serve as impartial arbitrators and judges, guided by Islamic Law and it's principles. It is understood by both parties that the majority decision of the Fiqh Panel will be binding and final.

In the case where a conflict is to be solved by a court of law in the United States or abroad, the court will solely apply Qur'anic injunctions, the Sunnah of the Prophet (peace and blessings be upon him) and Islamic Law (Fiqh). The law of the land will not be applied in these conflicts, except in cases where public order, safety, and/or health justly demand so. If, however, a Muslim court or a substituting institution is available, the case will be addressed to this court or institution."

See Exhibit A, pp. 1-2.

On March 4, 2021, AYAD HASHIM LATIF, through his counsel or record, requested that SALMA MARIAM AYAD submit all issues in connection with the dissolution of the parties' marriage to the Muslim Court or a Fiqh Panel pursuant to the terms of the parties' Islamic Pre-Nuptial Agreement. To date. SALMA MARIAM AYAD has refused to submit the dispute to the Muslim Court or a Fiqh Panel, and she has instead sought court intervention in this case.

II.
Arguments and Authorities

A. Arbitration Clauses in Premarital Agreements are Enforceable

Arbitration is a contractual proceeding by which the parties to a controversy voluntarily select arbitrators or judges of their own choice, and by consent submit the controversy to such tribunal for determination in substitution for the tribunals provided by the ordinary processes of the law. *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.3d 266, 268 (Tex. 1992). A written agreement to arbitrate is valid and enforceable if the agreement is to arbitrate a controversy that exists at the time of the agreement or arises between the parties after the date of the agreement. TEX. CIV. PRAC.

& REM. CODE ANN. § 171.001(a). Arbitration agreements are enforceable as contracts. *Hawdi v. Mutammara,* No 01-18-00024-CV at *3 (Tex. App. –Houston [1st Dist.] 2009)(mem. op.) citing *Steer Wealth Mgmt., LLC. V. Denson,* 537 S.W.3d 558, 566 (Tex. App. –Houston [1st Dist] 2017, no pet.). A court shall order the parties to arbitrate on the application of a party showing an agreement to arbitrate and the opposing party's refusal to arbitrate. TEX. CIV. PRAC. & REM. CODE ANN. § 171.021(a). If a party opposing the application to arbitrate denies the existence of the agreement, the Court shall summarily determine that issue. TEX. CIV. PRAC. & REM. CODE ANN. § 171.021(b). The Court shall order the arbitration if it finds for the party that made the application. *Id.*

Once a valid arbitration agreement is established, a strong presumption favoring arbitration arises and doubts as to the scope of the agreement is resolved in favor of arbitration. *Rachal v. Reitz*, 403 S.W.3d 840, 850 (Tex. 2013). Once the party establishes a claim within the arbitration agreement, the court must compel arbitration and stay its own proceedings. *Jabri v. Qaddura*, 108 S.W.2d 404, 410 (Tex. App. –Fort Worth 2003, no pet.).

On the written agreement of the parties, the court may refer both a suit for dissolution of marriage and a suit affecting the parent-child relationship to arbitration. TEX. FAM. CODE ANN. §§ 6.601(a); 153.0071(a). The arbitration provisions of the Family Code are augmented by and operate alongside the provisions of the Texas General Arbitration Act. *In re M.W.M.,* 523 S.W.3d 203, 207 (Tex. App. –Dallas 2017, orig. proceeding).

The method of appointment of arbitrators is as specified in the arbitration agreement. TEX. CIV. PRAC. & REM. CODE ANN. § 171.041(a). If the parties agree on the qualifications for the arbitrators in the arbitration agreement, then it is not the function of the court to change them or

prescribe other qualifications. *Mewbourne Oil Co. v. Blackburn*, 793 S.W.2d 735, 737 (Tex. App.—Amarillo 1990, orig, proceeding). Courts presume that the parties to an arbitration agreement intend that arbitrators, not courts, decide disputes about the meaning and application of particular procedural preconditions for the use of arbitration. *G.T. Leach Builders, LLC v. Sapphire V.P., LP,* 458 S.W.3d 502, 521 (Tex. 2015).

B. Prospective Spouses May Enter into Premarital Agreements

In Texas, a man and a woman have wide latitude and freedom to enter into a premarital agreement effecting and altering rights to property and support, which are otherwise set out in the Family Code. *See* TEX. FAM. CODE ANN. Ch. 4; TEX. CONST. art. XVI, § 15. A premarital agreement is an agreement between prospective spouses made in contemplation of marriage and is effective on marriage. TEX. FAM. CODE ANN. § 4.001(1). Premarital Agreements must be in writing and signed by both parties. TEX. FAM. CODE ANN. § 4.002. Premarital agreements are enforceable without consideration. *Id.* A premarital agreement is effective on marriage (TEX. FAM. CODE ANN. § 4.004), after which, it may be amended or revoked only by a written agreement signed by the parties (TEX. FAM. CODE ANN. § 4.005).

The parties to a premarital agreement may contract with respect to the choice of law governing the construction of the agreement; and any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty. TEX. FAM. CODE ANN. § 4.003(a)(7)-(8); *see also* TEX. CONST. art. XVI, § 15. The only statutory restriction on the use of premarital agreements is that the agreement may not adversely affect the right of a child to support. TEX. FAM. CODE ANN. § 4.003(b). This restriction was intended to discourage obligors from fraudulently characterizing assets so as to diminish or extinguish the

amount of the child support obligation, consistent with the constitutional mandate that premarital agreements cannot be made for the purpose of committing fraud. *In re Knott*, 118 S.W.3d 899, 903 (Tex. App.—Texarkana 2003, no pet.).

III.
Argument

The Islamic Pre-Nuptial Agreement is in writing and was signed by both parties before the parties were married. Therefore, the Islamic Pre-Nuptial Agreement is a valid and enforceable premarital agreement under Texas Law. Parties to premarital agreements may include in those agreements, the requirement to arbitrate or use some other form of alternative dispute resolution to resolve disputes that arise under the terms of the agreement. TEX. FAM. CODE ANN. § 4.003(a)(7), (8). Arbitration agreements are enforceable as contracts, and the Court is required to order the parties to arbitration upon the showing of an agreement to arbitrate and the refusal of the opposing party to arbitrate. The Islamic Pre-Nuptial Agreement details the qualifications for the Muslim Court and Fiqh Panel as well as how the neutral third parties are appointed. *See* Exhibit A, pp. 1-2. Texas law does not permit the Court to modify qualifications or method of appointing the arbitrators if those terms are in the arbitration agreement. *Mewbourne Oil Co. v. Blackburn*, 793 S.W.2d 735, 737 (Tex. App.—Amarillo 1990, orig, proceeding).

Based on the foregoing, the Court should enforce the terms of the parties' Islamic Pre-Nuptial Agreement and refer the case to a Muslim Court or Fiqh Panel and stay all further actions in this case pending resolution by the Muslim Court or Fiqh Panel.

IV.
Prayer

AYAD HASHIM LATIF prays that this Court GRANT this Motion in all things and

enforce the terms of the parties' Premarital Agreement. AYAD HASHIM LATIF further prays that this Court refer the case to a Muslim Court or Fiqh Panel for resolution. AYAD HASHIM LATIF further prays that this Court stay all further actions in this case pending resolution by the Muslim Court or Fiqh Panel.

AYAD HASHIM LATIF prays for general relief.

Respectfully submitted,

ORSINGER, NELSON, DOWNING & ANDERSON, L.L.P.
2600 Network Blvd., Suite 200
Frisco, Texas 75034
Tel: (214) 273-2400
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Melissa R. Cowle
State Bar No. 24101652
melissa@ondafamilylaw.com
Attorney for AYAD HASHIM LATIF

CERTIFICATE OF SERVICE

I certify that a true copy of the above and foregoing was served on SALMA MARIAM AYAD by and through her attorney of record, Elisse V. Woelfel, LAW OFFICE OF ELISSE V. WOELFEL, P.L.L.C., 1400 Preston Road, Suite 400, Plano, Texas 75093 in accordance with the Texas Rules of Civil Procedure on March 4, 2021.

_____
Jeffrey O. Anderson

In the name of Allah, the Beneficent, the Merciful

Islamic Association of North Texas, Inc.

P.O. Box 833010
Richardson, TX 75083

840 Abrams Road
Richardson, Texas 75081

Tel: (972) 231-5698
Fax: (972) 231-6707

www.iant.com
www.iqa.iant.com

Islamic Pre-Nuptial Agreement

Date 12-26-08 No. 677

To Whom It May Concern

We the undersigned, agree of our own free will, in the presence of witnesses, to follow Islam in its totality and we make vows of commitment to apply Islam in its entirety in all aspects of our personal and family lives by agreeing to the following:

With our belief that Islam is the only acceptable way of living, which is binding on us in all spheres of life, we hereby agree upon and affirm that Islam will be the only basis of our relationship, which includes:

a) Validity, voidability, and dissolution of our marriage contract and all procedural and jurisdictional issues.
b) The rights, duties, liabilities and responsibilities of both husband and wife.
c) The husband will never unilaterally divorce his wife either verbally or in written form.
d) The husband will not have the right to marry a second wife without getting the written consent of the first living wife.
e) Neither of us will engage in extra-marital relationships.
f) Parent – child relations in all aspects including custody, conservatorship possession, support and adoption.
g) Raising the children as Muslims and nurturing them in a healthy Islamic atmosphere.
h) Property rights and liabilities.
i) Inheritance of the estates and assets.
j) The dowry (Mahr/Sadaq) to be given from the husband to the wife will be in the amount of $ 32/- , with $ 32/- to be paid in advance and NONE to be paid at a later date as agreed upon. The other conditions and stipulations being: NIL .

In all cases and matters, whether mentioned explicitly in this document or otherwise, the Qur'an, Sunnah of the Prophet Muhammad (peace and blessings be upon him), and Islamic Law (Fiqh) will be applied.

Any conflict which may arise between the husband and the wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in it's absence by a Fiqh Panel, which will consist of three Faqaihs (Muslim jurists and scholars), two of whom are to be appointed by the spouses (one for each spouse). The third Fiqh is to be appointed by the other two Faqihs and is to head the Panel. The

EXHIBIT
A

appointees will not represent the parties in conflict, but rather, serve as impartial arbitrators and judges, guided by Islamic Law and it's principles.
It is understood by both parties that the majority decision of the Fiqh Panel will be binding and final.

In the case where a conflict is to be solved by a court of law in the United States or abroad, the court will solely apply Qur'anic injunctions, the Sunnah of the Prophet (peace and blessings be upon him) and Islamic Law (Fiqh). The law of the land will not be applied in these conflicts, except in cases where public order, safety, and/or health justly demand so. If, however, a Muslim court or a substituting institution is available, the case will be addressed to this court or institution.

Bride's full name SALMA MARIAN AHMED

Social Security # [redacted]

Address [redacted]

Signature Salma Ahmed

Groom's full name AYAD HASHIM LATIF

Social Security # [redacted]

Address [redacted] 15082

Signature Ayadlatif

Witness's full name NAUSHTAQ AHMED

Social Security # [redacted]

Address [redacted]

Signature Naushtaq Ahmed

Witness's full name RAAD HASHIM LATIF

Social Security # [redacted]

Address [redacted]

Signature Raad Hashim Latif

Wali's full name HABIB AHMED

Social Security # [redacted]

Address [redacted]

Signature Habib Ahmed

Imam's Signature Dr. Yusuf Z. Kavakci

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Jeffrey Anderson on behalf of Jeffrey Anderson
Bar No. 790232
jeff@ondafamilylaw.com
Envelope ID: 51154367
Status as of 3/4/2021 12:36 PM CST

Associated Case Party: AyadHashimLatif

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NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
SALMA MARIAM AYAD AND AYAD HASHIM LATIF	§	**416TH JUDICIAL DISTRICT**
AND IN THE INTEREST OF A[redacted] A[redacted] A[redacted] A CHILD	§	**COLLIN COUNTY, TEXAS**

RESPONSE TO MOTION TO ENFORCE ISLAMIC PRENUPTIAL AGREEMENT AND TO REFER CASE TO MUSLIM COURT OR FIQH PANEL

COMES NOW PETITIONER AND COUNTER-RESPONDENT SALMA MARIAM AYAD, who files this response to Respondent/Counter-Petitioner Ayad Hashim Latif's Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel. In support thereof, Salma Mariam Ayad (Petitioner/Counter-Respondent) would respectfully show unto the Court as follows:

I. Issues Presented

This response presents four-responsive issues:

> **First Issue**: Whether the contract is sufficiently definite to be enforced. There are nearly two billion people who follow some version of the Islamic faith. These followers range from secular Muslims to ISIS or the Taliban. Each of these Islamic faiths has its own "Islamic law." By referring only to "Islamic law" is the "Islamic Pre-Nuptial Agreement" too indefinite to be enforced?
>
> **Second Issue**: Whether Husband breached the "Islamic Pre-Nuptial Agreement." Husband and Wife signed the "Islamic Pre-Nuptial Agreement" more than twelve years ago. Since that time Husband has had countless conflicts with Wife. The "Islamic Pre-Nuptial Agreement" calls for "[a]ny conflict which may arise between the husband and wife" to be resolved in a Muslim court. Yet Husband has never before taken any of the hundreds of conflicts he has had with Wife to a Muslim court and Husband has sought affirmative relief in this Court. Did Husband breach the contract and excuse Wife from performing?

Third Issue: Whether the "Islamic Pre-Nuptial Agreement" is void under section 4.003(a)(8) of the Family Code, which prohibits a premarital agreement from contracting to an illegal act or an act that violates public policy. The "Islamic Pre-Nuptial Agreement" expressly permits Bigamy (a felony), fails to honor Texas' strong public policy in favor of freedom of religion, and does not honor the even stronger public policy that in Suits Affecting the Parent-Child Relationship (SAPCR) "the best interest of the child shall always be the primary consideration of the Court in determining the issues of conservatorship and possession of and access to the child." Texas Family Code § 153.002. Is the contract void?

Fourth Issue: Whether a contract is unconscionable. Many Islamic faiths favor the testimony of men over women. Husband has expressed his intent to return to Pakistan. If this case is heard in an Islamic court, then Husband will likely be able to take the son to Pakistan where Wife would have little or no contact with her child. Is this unconscionable?

II. Definitions

The "Islamic Pre-Nuptial Agreement" contains a number of unfamiliar words. Counsel for Wife understands these words as follows:

- *Mahr/Sadaq*: dowry

- *Sunnah* or *Sunna*: "the body of Islamic law and practice based on Muhammad's words and deeds." *Sunna*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, (11th ed. 2020).

- *Fiqh*: "In the centuries since the founding of Islam, Islamic religious-legal scholars qualified to interpret the scriptural sources have produced opinions known as 'fiqh.' A complete understanding of the Shari'a in Saudi Arabia today also requires reference to any relevant fiqh for guidance. There are four schools of Shari'a law, each of which interprets Islamic doctrine somewhat differently. The predominant school followed in the courts of Saudi Arabia is known as the 'Hanbali' school." *Nat'l Group for Communications & Computers, Ltd. v. Lucent Techs. Intern., Inc*., 331 F. Supp. 2d 290, 295 (D.N.J. 2004) (internal citations removed). And,

- *Fiqh Panel*: a panel of Islamic jurists.

III. Request for Judicial Notice

Wife asks this Court to take judicial notice of its file in this case and of the contents of that file. Tex. R. Evid. 201.

IV. Section 4.006 of the Family Code

Section 4.006 of the Family Code provides:

> (a) A premarital agreement is not enforceable if the party against whom enforcement is requested proves that:
>
> > (1) the party did not sign the agreement voluntarily; or
> >
> > (2) the agreement was unconscionable when it was signed and, before signing the agreement, that party:
> >
> > > (A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
> > >
> > > (B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
> > >
> > > (C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.
>
> (b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.
>
> (c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Tex. Fam. Code § 4.006.

The arguments presented in this response concern the validity of the underlying contract not the enforceability under section 4.006. While section 4.006 governs the enforceability of a premarital agreement, section 4.006 does not resolve whether the premarital agreement is a valid contract. For example, section 4.003 governs the content of a premarital agreement. Tex. Fam. Code § 4.003. And any agreement that violates section 4.003—such as an agreement that contains an illegal act or an act against public policy—would be unenforceable or void without

consideration for section 4.006. Further, Texas courts recognize that section 4.006 does not apply to the determination of whether a contract existed and rather the validity of a premarital agreement is determined by ordinary contract law. *See, e.g., Dockery v. Dockery*, 12-11-00160-CV, 2012 WL 3132159, at *2 (Tex. App.—Tyler July 31, 2012, no pet.) ("[g]enerally, in Texas, courts interpret premarital agreements like other written contracts. *Williams v. Williams*, 246 S.W.3d 207, 210 (Tex.App.—Houston [14th Dist.] 2007, no pet.) (citing *Beck v. Beck*, 814 S.W.2d 745, 748–49 (Tex.1991)). "Breach of agreement," or contract, means the failure, without legal excuse, to perform any promise that forms the whole or part of an agreement. *Bernal v. Garrison*, 818 S.W.2d 79, 83 (Tex.App.-Corpus Christi 1991, pet. denied). It is a fundamental principle of contract law that when one party to a contract commits a material breach, the other party's performance is excused. *Prodigy Commc'ns v. Agric. Excess*, 288 S.W.3d 374, 378 (Tex.2009).").

V. Background

Nearly a quarter of the world's population identifies—in some manner—as a follower of an Islamic faith. Many of these followers are noble and honorable men and women of the world. But the nearly two billion Muslims have a wide spectrum of views on what constitutes "Islamic law" and how Islam should be practiced. Some of these nearly two billion followers are part of what is sometimes called "secular Islam" (much of modern Turkey) and others are part of highly conservative or even extremist Islam (Saudi Arabia and even groups like ISIS or the Taliban). These widely differing (and often antagonistic) groups—predictably—have strong disagreements on what constitutes "Islamic law."

Wife filed for divorce on January 25, 2021. On February 5, 2021, Husband filed an original answer and counter petition and sought affirmative relief from this Court. And on March 4, 2021, Husband filed the motion to refer this case to an Islamic court.

VI. Law

It is the public policy of the state of Texas to enforce premarital agreements when they are properly constructed. *Beck v. Beck*, 814 S.W.2d 745, 749 (Tex. 1991); *Fraccionadora y Urbanizadora de Juarez, S.A. de C.V. v. Delgado*, 08-16-00046-CV, 2020 WL 6196059, at *6 (Tex. App.—El Paso Oct. 22, 2020, no pet.). Such agreements are presumptively enforceable. *Grossman v. Grossman*, 799 S.W.2d 511, 513 (Tex.App.–Corpus Christi 1990, no writ). A party opposing enforcement of the agreement bears the burden to rebut the presumption of validity and establish the premarital agreement is not enforceable. *Marsh v. Marsh*, 949 S.W.2d 734, 739 (Tex.App.–Houston [14th Dist.] 1997, no pet.).

Generally, in Texas, courts interpret premarital agreements like other written contracts. *See*, Tex. Fam. Code § 4.0003(a) ("the parties to a premarital agreement may contract with respect to…") (emphasis added); *Beck*, 814 S.W.2d at 748–49; *Osorno v. Osorno*, 76 S.W.3d 509, 510–11 (Tex.App.—Houston [14th Dist.] 2002, no pet.); *Williams v. Williams*, 246 S.W.3d 207, 210–11 (Tex.App.—Houston [14th Dist.] 2007, no pet.). In interpreting a written contract, the primary concern of the Court is to ascertain the true intentions of the parties, as expressed in the instrument. *Lenape Res. Corp. v. Tenn. Gas Pipeline Co*., 925 S.W.2d 565, 574 (Tex.1996). The Texas Supreme Court has admonished courts to examine and consider the entire writing in order to accomplish this objective. *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex.1983). This is so that the Court can "harmonize and give effect to all the provisions of the contract, so that none will be rendered meaningless." *Id*. No single provision, considered alone, is to be given controlling effect; instead, all contractual provisions must be considered with reference to the whole instrument. *Id*. All language should be given its plain grammatical meaning unless doing so would defeat the parties' intent. *DeWitt County Elec. Coop., Inc. v. Parks*, 1 S.W.3d 96, 101 (Tex.1999).

One important distinction exists between the construction of premarital agreements and normal contracts. Premarital property agreements are construed narrowly in favor of the community estate. *Fischer–Stoker v. Stoker*, 174 S.W.3d 272, 278–79 (Tex.App.–Houston [1st Dist.] 2005, pet. denied); *McClary v. Thompson*, 65 S.W.3d 829, 837 (Tex.App.-Fort Worth 2002, pet. denied).

"The interpretation of an unambiguous contract is a question of law for the court." *In re Marriage of I.C. & Q.C.*, 551 S.W.3d 119, 122 (Tex. 2018).

Unlike a trial court's obligation to resolve any ambiguity necessary to enforce a contract, indefiniteness in a contract makes the contract unenforceable. *See Gen. Metal Fabricating Corp. v. Stergiou*, 438 S.W.3d 737, 744 (Tex.App.–Houston [1st. Dist.] 2014, no pet.); *see also Wilson v. Wagner*, 211 S.W.2d 241, 243 (Tex. Civ. App.–San Antonio 1948, writ ref'd n.r.e.) ("[P]rovisions [that] are too indefinite and uncertain to reflect a meeting of the minds of the parties, [cannot] constitute an enforceable contract."). An indefinite contract results when a material or essential term, a term a party "would reasonably regard as [a] vitally important element[ ] of their bargain," is missing at the time the contract was formed. *Padilla v. LaFrance*, 907 S.W.2d 454, 460 (Tex.1995); *accord Potcinske v. McDonald Prop. Invs., Ltd*., 245 S.W.3d 526, 531 (Tex.App.–Houston [1st Dist.] 2007, no pet.); *see also Stergiou*, 438 S.W.3d at 744; *America's Favorite Chicken Co. v. Samaras*, 929 S.W.2d 617, 622 (Tex.App.–San Antonio 1996, pet. denied) (holding contract unenforceable because it failed to contain all material and essential terms). The material or essential terms "must be sufficiently certain to define the rights of the parties." *See New York Life Ins. Co. v. Miller*, 114 S.W.3d 114, 123 (Tex.App.–Austin 2003, no pet.). A contract's material or essential terms are determined on a case-by-case basis. *McCalla v. Baker's Campground, Inc*.,

416 S.W.3d 416, 418 (Tex.2013) (citing *T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221 (Tex.1992)).

When construing a contract, a court "should be reluctant to hold a contract unenforceable for uncertainty." *Guzman v. Acuna*, 653 S.W.2d 315, 319 (Tex.App.–San Antonio 1983, pet. dism'd); *accord Estate of Eberling v. Fair*, 546 S.W.2d 329, 334 (Tex. Civ. App.–Dallas 1976, writ ref'd n.r.e.). Instead, it should construe the contract "in such a manner as to render performance possible rather than impossible." *Guzman*, 653 S.W.2d at 319. The Court does not, however, possess "authority to interpolate essential elements in order to uphold the contract." *Id*. (citing *Dahlberg v. Holden*, 150 Tex. 179, 238 S.W.2d 699, 701 (1951)).

VII. Facts

When Wife was 22-years old and not yet graduated from college, she and Husband signed the "Islamic Pre-Nuptial Agreement." The "agreement" states that:

> [i]n all cases and matters, whether mentioned explicitly in this document or otherwise, the Qur'an, Sunnah of the Prophet Muhammad (peace and blessings be upon him), and Islamic Law (Fiqh) will be applied.
>
> Any conflict which may arise between the husband and wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in it's [sic.] absence by a Fiqh Panel, which will consist of three Faqaihs (Muslim jurists and scholars), two of whom are to be appointed by the spouses (one for each spouse). The third Fiqh is to be appointed by the other two Fiqhs and is to head the Panel. The appointees will not represent the parties in conflict, but rather, serve as impartial arbitrators and judges guided by Islamic Law and it's [sic.] principles.
>
> It is understood by both parties that the majority decision of the Fiqh Panel will be binding and final.
>
> In the case where a conflict is to be solved by a court of law in the United States or abroad, the court will solely apply Qur'anic injunctions, the Sunnah of the Prophet (peace and blessings be upon him) and Islamic Law (Fiqh). The law of the land will not be applied in these conflicts, except in cases where public order, safety, and/or

health demand so. If, however, a Muslim court or a substituting institution is available, the case will be addressed to this court or institution.

VIII. Application of Law to Fact

A. The Premarital Agreement is Indefinite and thus Unenforceable

Islam, like its fellow Abrahamic religions Christianity and Judaism, is not a unified monolithic religion. *See Blair-Bey v. Nix*, 963 F.2d 162, 164 (8th Cir. 1992) ("Although the prisoners characterize the MST sect as an orthodox Islamic sect,. . . the prisoners contend the MST sect is sufficiently different from other Islamic faiths to warrant their own MST advisor.. . . Although the district court found the MST's tenets differ from other Islamic faiths—and noted the current Islamic advisor does not believe or follow all the MST's practices—the district court did not find the advisor deficient in his understanding of the MST's tenets, incapable of ministering to the MST inmates, or unwilling to do so because of his personal skepticism about the MST sect. It is apparent to us the district court's sparse findings about the advisor do not support the court's conclusion that the advisor's efforts may "undermine [the prisoner's] efforts to practice their religion with the same freedoms that other derivative faiths of other major religious groups at [the penitentiary] enjoy." Indeed, the record shows the current advisor is an authority on the Islamic religion; he is qualified by education and experience to serve all the Islamic inmates at the penitentiary; and he understands the nuances of the MST sect. Moreover, the advisor testified he has ministered to MST inmates in the past and has never encountered a problem or received a complaint."); *Marshall v. Corbett*, 3:13-CV-02961, 2019 WL 4741761, at *14 (M.D. Pa. Aug. 8, 2019), report and recommendation adopted, 3:13CV2961, 2019 WL 4736224 (M.D. Pa. Sept. 27, 2019) (describing tension between "the Nation of Islam theology differs from that of other Islamic faiths. Adherents of other Islamic faiths are 'very antagonistic and hostile' toward members of the Nation of Islam sect."); *Maye v. Klee*, 915 F.3d 1076, 1085 (6th Cir. 2019) (discussing different

faiths of Islam); *Pugh v. Goord*, 345 F.3d 121, 122 (2d Cir. 2003) (Sunni adherents objecting to being forced to pray with Shias); *Salahuddin v. Goord*, 467 F.3d 263, 269 (2d Cir. 2006) (Sunni adherents objecting to being forced to pray with Shias); *Abdullah v. Wis. Dep't of Corr*., No. 04-C-1181, 2005 WL 2885802, at *3-4 (E.D. Wis. Nov. 2, 2005) (Sunni adherents objecting to being forced to pray with members of the Nation of Islam); *Orafan v. Goord*, 411 F. Supp. 2d 153, 156 (N.D.N.Y. 2006), vacated and remanded, 249 Fed. Appx. 217 (2d Cir. 2007) (Shia adherents suing to obtain separate worship services at prison facilities, vacated and remanded due to unresolved issues of material fact).

Islam has two main faiths (or *firqas*), the Sunni and the Shia, whose differences go back nearly seven centuries. *See* Joshua E. Thomas*, Improving Education Through Devotion: A Religious Solution to Eastern Turkey's Gender Gap*, 24 WM. & MARY J. WOMEN & L. 665, 678–79 (2018) ("Unlike Sunni Muslims, the Shia believe that the Prophet's nephew, Ali, was his chosen successor and the first legitimate Caliph."). Further these principal faiths are internally disparate.

Unsurprisingly, the different Islamic faiths have distinct legal traditions. *See* Arif A. Jamal, *Authority and Plurality in Muslim Legal Traditions: The Case of Ismaili Law*, 67 AM. J. COMP. L. 491, 491–92 (2019) ("Thoughtful commentators on Islamic law often point out that, historically as well as in the contemporary period, Islamic law exhibits great interpretational diversity. Indeed, Wael Hallaq, a leading Islamic law scholar, particularly of the history of the tradition, has characterized Islamic law as expressing "ubiquitous plurality." Typically, this plurality is evidenced by a wide range of opinions, or articulations of a rule, in the face of a question or an issue, whether pertaining to ritual law or 'secular' matters (commercial law, for example). At the level of sources, accounts of Islamic law have often emphasized reliance on a set of major sources or roots of law alongside other, lesser sources. Scholarly works, however, have acknowledged that

matters are more complex, and that different Muslim traditions may employ a different range of sources. Nonetheless, source plurality, and in particular the way this source plurality is expressed in minority traditions, is underexplored in the literature.").

The law that governs these various groups disputes even fundamental issues such as whether slavery is permissible. Bernard K. Freamon*, ISIS, Boko Haram, and the Human Right to Freedom from Slavery Under Islamic Law*, 39 FORDHAM INT'L L.J. 245, 246–47 (2015) ("The firm existence of a human right to freedom from slavery is now acknowledged by the worldwide community of jurists, by all major international nongovernmental organizations dealing with the recognition and enforcement of human rights, by the United Nations and regional intergovernmental organizations, and by all the world's national and municipal jurisdictions. These facts give rise to what was thought to be an irrefutable argument that the right to be free from slavery, like the right to be free from genocide, torture, racial discrimination and piracy, is a jurisprudential universal, with no competent legal system or government able to deny its existence or permit derogation from its tenets. To the great surprise and grim consternation of many contemporary scholars, observers and commentators, particularly those who seek a place for the Sharī'ah among the world's legal systems, this argument is being tested by the ideologies, policies, and actions of Muslim insurgencies in Iraq and Syria and in Nigeria, each claiming that the enslavement of nonbelieving combatants and war captives and slave trading in such persons is permitted under Islamic law.. . . The most coherent of the claims asserting a contemporary Muslim right to enslave are those put forward by an organization emerging from the dismantling of Al Qaeda in Iraq and known as ad-Dawlah al-Islāmiya fi'l-'Irāq wa -sh-Shām ('the Islamic State of Iraq and Syria (or the Levant)'—'ISIS' or ISIL' in English or 'DAESH' in Arabic). In 2014, DAESH declared itself to simply be the 'Islamic State' and, in a startling and rapid series of

military advances, took large swaths of territory in Iraq and Syria. On June 29, 2014, the group proclaimed a worldwide caliphate and its leader, Abu Bakr al-Baghdadi, declared himself to be the Caliph, an official who, by some interpretations of classical Islamic political theory and law, must be obeyed by all Muslims"). (Emphasis added).

Perhaps the most familiar disagreement among the Islamic faiths concerns the rights of women. Anna Friedhoff, Bras and Ballots: *Comparing Women's Political Participation in Pakistan and Saudi Arabia*, 15 OR. REV. INT'L L. 271, 284 (2013). ("Some Islamic faiths prohibit women from driving. Religious scholars suggest that the dangers associated with women drivers are 'incompatible with Islamic values about protecting women.'"). And the spectrum of Islamic faiths has a wide range of laws that govern whether a woman may show her face or hair in public. In many Islamic faiths, "Islamic law" requires women to wear a Hijabi (a head scarf that covers her hair but not her face) while in other Islamic faiths "Islamic law" requires women to wear a Burqa which shields a woman's entire head and face from public view. *E.E.O.C. v. Abercrombie & Fitch Stores, Inc*., 731 F.3d 1106, 1112 (10th Cir. 2013), *rev'd and remanded*, 575 U.S. 768, 135 S. Ct. 2028, 192 L. Ed. 2d 35 (2015) ("The Quran. . . counsels women to protect their modesty, and some religious scholars 'believe that the Quran does require an hijab' to be worn by Muslim women, 'but there are many who disagree with that interpretation,'").

The divisions in what constitutes "Islamic law" should not be surprising because such divisions are present in the other Abrahamic religions. In Catholicism the Eucharist is believed, through the miracle of Transubstantiation, to convert the bread and wine into the actual blood and flesh of Jesus Christ. In most Protestant faiths communion is symbolic. Similar distinctions can be seen in Judaic faiths. But these divisions within Christianity (especially when we recall the Great Schism of 1054 that created the Eastern Orthodox churches) extend to the secular and concern

issues such as divorce, marriage (rule govern marriage within the same faith, choice of marriage partner, etc.), raising of children (especially education), primogeniture, etc.

Thus it is unsurprising that there is no unified "Islamic law" and instead what constitutes "Islamic law," depends almost entirely on which faith tradition within Islam is defining "Islamic law."

The "Islamic Pre-Nuptial Agreement" is deficient because it does not explain which version of "Islamic law" will govern the resolution of conflict between Husband and Wife. The version might be one that would appeal to Boko Haram, ISIS, the Taliban or to conservatives in Saudi Arabia or Iran, or it might be a version that would appeal to secular Muslims in Istanbul. While even references to Boko Haram, ISIS, the Taliban are incendiary, they serve as a familiar tool to establish one end of a very wide spectrum of what can be considered "Islamic law." And because the spectrum is so broad, it was necessary for the "Islamic Pre-Nuptial Agreement" to specify which version of "Islamic law" would govern a hearing under the agreement.

The failure to define which version of "Islamic law" will govern under the "Islamic Pre-Nuptial Agreement" renders the document too indefinite to be enforceable or valid *See Stergiou*, 438 S.W.3d at 744; *Wilson*, 211 S.W.2d at 243. The failure to define which version of the many, many versions of "Islamic law" is a material or essential term because any party to this agreement should regard this component to be a vitally important element of their bargain and it was missing at the time the document was created. *Padilla*, 907 S.W.2d at 460; *Potcinske*, 245 S.W.3d at 531; *Stergiou*, 438 S.W.3d at 744; *Samaras*, 929 S.W.2d at 622. Here the material or essential term of which version of "Islamic law" will govern is not sufficiently certain to define the rights of the parties. *See Miller*, 114 S.W.3d at 123.

Because the specific version of "Islamic law" that will govern resolutions between the parties is an "essential or material element" of the contract but is missing the contract is too indefinite and is unenforceable.

B. Husband Breached the Contract and Wife is Excused from Further Performance

When one party to a contract commits a material breach of that contract, the other party is discharged or excused from further performance. *See Mustang Pipeline Co. v. Driver Pipeline Co*., 134 S.W.3d 195, 196 (Tex. 2004); *GDL Masonry Supply, Inc. v. Lopez*, No. 05-15-01200-CV, 2016 WL 6835719, at *2 (Tex. App.—Dallas Nov. 2, 2016, no pet.) (mem. op.); *Dresser–Rand Co. v. Bolick*, No. 14-12-00192-CV, 2013 WL 3770950, at *11 (Tex. App.—Houston [14th Dist.] July 18, 2013, pet. abated) (mem. op.).

Husband and Wife signed the "Islamic Pre-Nuptial Agreement" on December 26, 2008. The "Islamic Pre-Nuptial Agreement" includes a provision that reads:

> Any conflict which may arise between the husband and wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in it's [sic.] absence by a Fiqh Panel, which will consist of three Faqaihs (Muslim jurists and scholars), two of whom are to be appointed by the spouses (one for each spouse). The third Fiqh is to be appointed by the other two Fiqhs and is to head the Panel. The appointees will not represent the parties in conflict, but rather, serve as impartial arbitrators and judges guided by Islamic Law and it's [sic.] principles. (Emphasis added).

Over the more than twelve years since the divorcing Husband and Wife signed the "Islamic Pre-Nuptial Agreement," they have had countless conflicts. The "Islamic Pre-Nuptial Agreement" calls for each of these to have been resolved "according to the Qur'an, Sunnah, and Islamic Law in a Muslim court." Yet Husband has never before tried to resolve any conflict with Wife "according to the Qur'an, Sunnah, and Islamic Law in a Muslim court." (Ex. 1). The failure to

bring any conflict between Husband and Wife to "a Muslim court" in more than twelve years is a material breach of the contract.

As only the most recent example of this breach, Husband has made a general appearance in this Court (without a special appearance) and sought affirmative relief in the form of the counterpetition that he filed on February 5, 2021. Further, this Court acquired personal jurisdiction over Husband (a resident respondent) when he was served with process (*see* service return on file in the Court's records) and made a general appearance. The Court acquired personal jurisdiction over Husband when he voluntarily made his general appearance in this Texas Court. *See* Tex. R. Civ. P. 120; *Cotton v. Cotton,* 57 W.W.3d 506, 511 (Tex. App.—Waco 2001, no pet.).

For these reasons, Wife is excused from performing under the contract and Wife was fully entitled to bring this case to this Court. *Mustang Pipeline Co*., 134 S.W.3d at 196*; GDL Masonry Supply, Inc*., 2016 WL 6835719, at *2; *Dresser–Rand Co*., 2013 WL 3770950, at *11.

C. The Contract is Void as Against Public Policy

Section 4.003(a)(8) allows for the parties to enter into a premarital agreement for "any other matter, including their personal rights and obligations, not in violation of public policy of a statute imposing a criminal penalty. Tex. Fam. Code § 4.003(a)(8).

Further, a court can declare a contract void as against public policy and refuse to enforce it. *See Peeler v. Hughes & Luce*, 868 S.W.2d 823, 829 (Tex.App.-Dallas 1993), *aff'd,* 909 S.W.2d 494 (Tex.1995); *see also James v. Fulcrod*, 5 Tex. 512, 520 (1851) ("That contracts against public policy are void and will not be carried into effect by courts of justice are principles of law too well established to require the support of authorities...."). In determining whether an agreement is against public policy, the Court looks for a tendency in the agreement to be injurious to the public good. *Lawrence v. CDB Servs., Inc*., 44 S.W.3d 544, 557 (Tex.2001); *Sacks v. Dallas Gold &*

Silver Exch., 720 S.W.2d 177, 180 (Tex.App.—Dallas 1986, no writ); *In re C.H.C*., 396 S.W.3d 33, 51 (Tex. App.—Dallas 2013, no pet.).

Here the "Islamic Pre-Nuptial Agreement" expressly allows for the Husband (but not the Wife) to have a bigamous marriage. In Texas Bigamy is a criminal act. Tex. Penal Code § 25.01 ("(a) An individual commits an offense if: (1) he is legally married and he: (A) purports to marry or does marry a person other than his spouse in this state, or any other state or foreign country, under circumstances that would, but for the actor's prior marriage, constitute a marriage;. . ."). Further, in Texas Bigamy is a felony and there are no religious exceptions. *Id*. The "Islamic Pre-Nuptial Agreement" violates section 4.003(a)(8) of the Family Code. Tex. Fam. Code § 4.003(a)(8).

There can be no greater statement that a contract is against public policy than the expressed contemplation that the execution of the contract will or may result in the commission of a felony.

Further, the "Islamic Pre-Nuptial Agreement" violates the public policy—included in Article I of the Texas Constitution—of religious freedom. Article I, section 6 of the Texas Constitution reads:

> All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

TEX. CONST. art. I, § 6.

The "Islamic Pre-Nuptial Agreement" makes no provision for the possibility that a person might change their faith beliefs. Thus the "Islamic Pre-Nuptial Agreement" intrudes on the strong

public policy in favor of religious freedom. This violates section 4.003(a)(8) of the Family Code. Tex. Fam. Code § 4.003(a)(8).

Finally, the "Islamic Pre-Nuptial Agreement" violates public policy because it does not consider the "best interest of the child" which shall always be the primary consideration of the Court in determining the issues of conservatorship and possession of an access to the child. Texas Family Code § 153.002.

Since at least 1935, Texas statutes have reflected the policy of this state to ensure that trial courts protect minor children's best interests. *See* Act of May 15, 1935, 44th Leg., R.S., ch. 39, § 1, 1935 Tex. Gen. Laws 111, 112 (providing that the trial court "shall make such orders regarding the custody and support of each such [minor] child or children, as is for the best interest of same"); Act of May 25, 1973, 63d Leg., R.S., ch. 543, § 1, sec. 14.07(a), 1973 Tex. Gen. Laws 1411, 1425 ("The best interest of the child shall always be the primary consideration of the court...."). Section 153.002 of the Texas Family Code describes this overarching policy: "The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child." Tex. Fam. Code § 153.002 (emphasis added). In suits affecting the parent-child relationship, it is the public policy of the State of Texas to:

> (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;
>
> (2) provide a safe, stable, and nonviolent environment for the child; and
>
> (3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

Id. § 153.001(a) (emphasis added).

And this concern for the "best interests of the children" matters because Husband and Wife have a child and in some Islamic faiths, "the testimony of one man is equal to the testimony of two

women according to the Qur'an." Russell Powell, *Catharine Mackinnon May Not Be Enough: Legal Change and Religion in Catholic and Sunni Jurisprudence*, 8 GEO. J. GENDER & L. 1, 37 (2007). Thus in an Islamic court, Wife can be expected to be treated unfairly. This unfair treatment to Wife is also unfair to the child. By automatically preferring the testimony of Husband to that of Wife, the child is cheated out of a consideration of what is in that child's best interests. Thus the "Islamic Pre-Nuptial Agreement's" failure to expressly include a consideration of the "best interests of the children" violates a fundamental public policy interest and thus is void as against public policy. This violates section 4.003(a)(8) of the Family Code. Tex. Fam. Code § 4.003(a)(8).

Further, Husband has indicated a desire to return to Pakistan. According to the CIA Word Factbook, Pakistan has a literacy rate of 59.1%, an underdeveloped economy due to "decades of internal political disputes," an inflation rate of 9.3%, a per capita GDP of $4,690, more than forty percent of the workforce is in agriculture, nearly thirty percent of the country lives below the poverty line, Pakistan has a significant problem with human trafficking including "bonded labor in agriculture," and serves as a "significant transit area for Afghan drugs, including heroin, opium, morphine, and hashish." Central Intelligence Agency, *Pakistan*, THE WORLD FACTBOOK (2021), https://www.cia.gov/the-world-factbook/countries/pakistan/ (last visited on March 9, 2021). The reality of life in Pakistan—and the very real possibility that once there the child will have limited or no contact with his mother (Wife)—should raise a legitimate question about whether moving the son to Pakistan would be in the "best interests of the child."

Further, Pakistan is made of four provinces (Balochistan, Khyber Pakhtunkhwa, Sindh, and Punjab). The Department of State has issued DO NOT TRAVEL warnings for Balochistanc Province and Khyber Pakhtunkhwa province. The State Department warns:

> Do not travel to Balochistan province. Active terrorist groups, an active separatist movement, sectarian conflicts, and deadly terrorist attacks against civilians,

> government offices, and security forces destabilize the province, including all major cities. In 2019, several bombings occurred in Balochistan province that resulted in injuries and deaths.
>
> Do not travel to Balochistan province. Active terrorist groups, an active separatist movement, sectarian conflicts, and deadly terrorist attacks against civilians, government offices, and security forces destabilize the province, including all major cities. In 2019, several bombings occurred in Balochistan province that resulted in injuries and deaths.

U.S. DEP'T. OF STATE, Pakistan Travel Advisory, United States Department of State (March 12, 2021), https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/pakistan-travel-advisory.html.

Counsel for Wife does not know which province that Husband would return to, but Karachi is in Sindh Province but near the border with Balochistan, Islamabad is near Khyber Pakhtunkhwa province, and Peshawar is in Khyber Pakhtunkhwa province. Thus other than Lahore, the major Pakistani cities are within provinces that are subject to "DO NOT TRAVEL" warnings. It is certainly questionable whether it is in the son's best interests to be removed to Pakistan by Husband.

D. The "Islamic Pre-Nuptial Agreement" is Unconscionable Under Section 4.006 of the Family Code

Section 4.006 of the Family Code provides:

> (a) A premarital agreement is not enforceable if the party against whom enforcement is requested proves that:
>
> (1) the party did not sign the agreement voluntarily; or
>
> (2) the agreement was unconscionable when it was signed and, before signing the agreement, that party:
>
> (A) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

> (B) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
>
> (C) did not have, or reasonably could not have had, adequate knowledge of the property or financial obligations of the other party.
>
> (b) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.
>
> (c) The remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Tex. Fam. Code § 4.006.

Section 4.006 generally concerns property divisions, but the claim of unconscionability should apply to the "Islamic Pre-Nuptial Agreement." When Wife signed the agreement, she did not know that Husband had a desire to return to Pakistan. Under the "Islamic Pre-Nuptial Agreement," Wife can expect that Husband will receive custody of the child because of the preference for men's testimony over that of women and that Husband will return to Pakistan with the son and that Wife will have limited to no ability to see or even communicate with her child. There can be nothing that is more unconscionable that the forced separation of a mother from her child. Therefore, not only is the contract void and unenforceable, it is also unconscionable.

IX. Conclusion

Nearly twenty-five percent of the world's population identifies—in some way—as a follower of Islam. The nearly two billion Muslims have a wide spectrum of view on what constitutes "Islamic law" and how Islam should be practiced. The diversity of views means that the "Islamic Pre-Nuptial Agreement" necessarily had to define which of these views of "Islamic law" would govern conflicts between Husband and Wife. Just as a contract could not say that "American law" or "Christian law" or "Judaic law" will govern, a statement that "Islamic law"

will govern is indefinite and it renders the "Islamic Pre-Nuptial Agreement" unenforceable. But this Court could also resolve this case on traditional-contract grounds. Husband has had many conflicts with Wife in the twelve years since this "Islamic Pre-Nuptial Agreement" was signed. During that time, these conflicts have never been resolved by a Muslim court—as required by the contract. Husband's failure to resolve his prior conflicts with his Wife before a Muslim court was a material breach that excuses Wife from performing under this "Islamic Pre-Nuptial Agreement." Finally, for a variety of reasons—but critically that the "Islamic Pre-Nuptial Agreement" does not expressly consider the "best interests of the child"—the contract is void as a violation of public policy.

Accordingly, Wife asks this Court to DENY Husband's Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel.

Respectfully submitted,

Law Office of Elisse V. Woelfel
1400 Preston Road, Ste. 400
Plano, TX 75093
Tel: 469.443.6040
Fax: 888.675.6799

By: /s/ Elisse V. Woelfel
Elisse V. Woelfel
State Bar No. 24058183
elisse@elisselaw.com
Attorney for Petitioner

Certificate of Service

I certify that a true copy of this pleading was served in accordance with rule 21a of the Texas Rules of Civil Procedure on all counsel of record via the electronic filing manager on March 17, 2021.

/s/ Elisse V. Woelfel
Elisse V. Woelfel
Attorney for Petitioner

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Elisse Woelfel
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Envelope ID: 51581280
Status as of 3/18/2021 12:57 PM CST

Associated Case Party: AyadHashimLatif

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	3/17/2021 6:48:47 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	3/17/2021 6:48:47 PM	SENT
Melissa Cowle	24101652	Melissa@ondafamilylaw.com	3/17/2021 6:48:47 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	3/17/2021 6:48:47 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	3/17/2021 6:48:47 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	3/17/2021 6:48:47 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	3/17/2021 6:48:47 PM	SENT

Filed: 3/22/2021 12:00 AM
Lynne Finley
District Clerk
Collin County, Texas
By Keri Crow Deputy
Envelope ID: 51667081

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

NO. 416-50435-2021

IN THE MATTER OF	§	**IN THE DISTRICT COURT**
THE MARRIAGE OF	§	
	§	
SALMA MARIAM AYAD	§	
AND	§	**416TH JUDICIAL DISTRICT**
AYAD HASHIM LATIF	§	
	§	
AND IN THE INTEREST OF	§	
A[redacted] A[redacted] A[redacted], A CHILD	§	**COLLIN COUNTY, TEXAS**

COUNTERRESPONDENT'S ORIGINAL ANSWER

Salma Mariam Ayad, Counterespondent, files this Original Answer to Original Counterpetition for Divorce and Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel.

1. General Denial

Respondent enters a general denial.

2. Information about Child

Information required by section 154.181(b) and section 154.1815 of the Texas Family Code Will be supplemented prior to final trial.

3. Affirmative Defenses to Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel

Counterrespondent further alleges the following affirmative defenses as they relate to Counterpetitioner's Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel:

a. illegality;

b. waiver; and

c. material breach.

4. Attorney's Fees, Expenses, Costs, and Interest

It was necessary for Counterrespondent to secure the services of Elisse V. Woelfel, a licensed attorney, to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the child, judgment for attorney's fees, expenses, and costs through trial and appeal should be granted against Petitioner and in favor of Counterrespondent for the use and benefit of Counterrespondent's attorney and be ordered paid directly to Counterrespondent's attorney, who may enforce the judgment in the attorney's own name. Counterrespondent requests postjudgment interest as allowed by law.

5. Prayer

Counterrespondent prays that Petitioner take nothing and that Counterrespondent be granted all relief requested in this Original Answer.

Counterrespondent also prays for attorney's fees, expenses, costs, and interest as requested above.

Counterrespondent prays for general relief.

Respectfully submitted,

Law Office of Elisse V. Woelfel
1400 Preston Road
Suite 400
Plano, TX 75093
Tel: (469) 443-6040
Fax: (888) 675-6799

By:/s/ Elisse V. Woelfel
Elisse V. Woelfel
State Bar No. 24058183
elisse@elisselaw.com
Attorney for Counterrespondent

Certificate of Service

I certify that a true copy of this Counterrespondent's Original Answer was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on March 21, 2021:

Jeffrey O. Anderson by electronic filing manager.

/s/ Elisse V .Woelfel
Elisse V. Woelfel
Attorney for Counterrespondent

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Elisse Woelfel
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elisse@elisselaw.com
Envelope ID: 51667081
Status as of 3/22/2021 12:29 PM CST

Associated Case Party: AyadHashimLatif

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	3/21/2021 10:12:03 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	3/21/2021 10:12:03 PM	SENT
Melissa Cowle	24101652	Melissa@ondafamilylaw.com	3/21/2021 10:12:03 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	3/21/2021 10:12:03 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	3/21/2021 10:12:03 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	3/21/2021 10:12:03 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	3/21/2021 10:12:03 PM	ERROR

Filed: 3/22/2021 3:55 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 51701651

CAUSE NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
SALMA MARIAM AYAD AND AYAD HASHIM LATIF	§	**416TH JUDICIAL DISTRICT**
AND IF THE INTERESTS OF A[redacted] A[redacted] A[redacted], A CHILD	§	**OF COLLIN COUNTY, TEXAS**

NOTICE OF APPEARANCE OF COUNSEL AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE JUDGE OF SAID COURT:

1. Niles Illich appears on behalf of Salma Mariam Ayad, Counter-Respondent, presents this Notice of Appearance.

Salma Mariam Ayad asks this Court to enter Niles Illich as her counsel of Record. Niles Illich's complete contact information is:

Niles Illich
Scott H. Palmer, P.C.
15455 Dallas Parkway, Suite 540
Addison, Texas 75001
Direct: (972) 204-5452
Facsimile: (214) 922-9900
Email: Niles@scottpalmerlaw.com

2. Salma Mariam Ayad, Petitioner, in the above-referenced cause, in which judgment was rendered on March 22, 2021, requests that you state, in writing, the facts found by you, and that you separately state, in writing, your conclusions of law, and further, that you file such findings

of fact and conclusion of law with the clerk of the Court so that they shall be part of the record of the cause, all in accordance with Rule 297 of the Texas Rules of Civil Procedure.

Respectfully Submitted,

/s/ Niles Illich

Niles Illich
Texas State Bar No. 24069969
Scott H. Palmer, P.C.
15455 Dallas Parkway, Suite 540
Addison, Texas 75001
Direct: (972) 204-5452
Facsimile: (214) 922-9900
Email: Niles@scottpalmerlaw.com

COUNSEL FOR COUNTER-RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been delivered to all counsel of record via E-serve on March 22, 2021.

/s/ *Niles Illich*
Niles Illich

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Lauren Lewison on behalf of Niles Illichs
Bar No. 24069969
lauren@scottpalmerlaw.com
Envelope ID: 51701651
Status as of 3/23/2021 10:06 AM CST

Associated Case Party: AyadHashimLatif

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	3/22/2021 3:55:14 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	3/22/2021 3:55:14 PM	SENT
Melissa Cowle	24101652	Melissa@ondafamilylaw.com	3/22/2021 3:55:14 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	3/22/2021 3:55:14 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	3/22/2021 3:55:14 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	3/22/2021 3:55:14 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	3/22/2021 3:55:14 PM	SENT
Niles Illich		niles@scottpalmerlaw.com	3/22/2021 3:55:14 PM	SENT

Filed: 3/23/2021 4:45 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 51756248

NO. 416-50435-2021

IN THE MATTER OF	§	**IN THE DISTRICT COURT**
THE MARRIAGE OF	§	
	§	
SALMA MARIAM AYAD	§	
AND	§	**416TH JUDICIAL DISTRICT**
AYAD HASHIM LATIF	§	
	§	
AND IN THE INTEREST OF	§	
A[redacted] A[redacted] A[redacted], A CHILD	§	**COLLIN COUNTY, TEXAS**

ORDER ON MOTION TO ENFORCE ISLAMIC PRENUPTIAL AGREEMENT AND REFER CASE TO MUSLIM COURT OR FIQH PANEL

On March 22, 2021, the Court considered Respondent AYAD HASHIM LATIF's *Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel.*

After hearing the arguments of counsel, the Court finds that Respondent's *Motion* should be GRANTED.

IT IS THEREFORE ORDERED that Respondent's *Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel* is GRANTED and the Court refers the case to a Muslim Court or Fiqh Panel for ~~resolution.~~ ADR

SIGNED 3/24/2021.

Andrea S. Thompson
JUDGE PRESIDING

APPROVED AS TO FORM ONLY:

ORSINGER, NELSON, DOWNING & ANDERSON, L.L.P.
2600 Network Blvd., Suite 200
Frisco, Texas 75034
Tel: (972) 963-5459
Fax: (214) 273-2470

By: _____
Jeffrey O. Anderson
State Bar No. 00790232
jeff@ondafamilylaw.com
Attorney for AYAD HASHIM LATIF, Respondent

LAW OFFICE OF ELISSE V. WOELFEL
1400 Preston Road, Suite 400
Plano, Texas 75093
Tel: (469) 443-6040
Fax: (888) 675-6799

By: _____
Elisse V. Woelfel
State Bar No. 24058183
elisse@elisselaw.com
Attorney for SALMA MARIAM AYAD, Petitioner

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Jeffrey Anderson on behalf of Jeffrey Anderson
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jeff@ondafamilylaw.com
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Status as of 3/25/2021 12:32 PM CST

Associated Case Party: AyadHashimLatif

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	3/23/2021 4:45:51 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	3/23/2021 4:45:51 PM	SENT
Melissa Cowle	24101652	Melissa@ondafamilylaw.com	3/23/2021 4:45:51 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	3/23/2021 4:45:51 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	3/23/2021 4:45:51 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	3/23/2021 4:45:51 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	3/23/2021 4:45:51 PM	SENT
Niles Illich		niles@scottpalmerlaw.com	3/23/2021 4:45:51 PM	SENT

Filed: 3/23/2021 3:44 PM
Lynne Finley
District Clerk
Collin County, Texas
By Keri Crow Deputy
Envelope ID: 51750848

CAUSE NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF
S[redacted] M[redacted] A[redacted] AND
A[redacted] H[redacted]

AND IN THE INTEREST OF
A[redacted] A[redacted] A[redacted], A CHILD

§
§
§
§
§

DISTRICT COURT

416TH JUDICIAL DISTRICT

COLLIN COUNTY, TEXAS

DISCOVERY CONTROL PLAN AND SCHEDULING ORDER

The following was agreed by the parties and/or ORDERED by the Court:

☐ Check this box for a **LEVEL 1 Discovery** Control Plan pursuant to the Texas Rules of Civil Procedure

☒ Check this box for a **LEVEL 2 Discovery** Control Plan pursuant to the Texas Rules of Civil Procedure

☐ Check this box for a **LEVEL 3 Discovery** Control Plan **AND** complete items 1-7 below:

1. The deadline for filing **amended pleadings** is _____
2. The deadline for filing **special exceptions** to pleadings is _____
3. All **discovery** shall be completed by _____
4. Limits for **depositions**: _____
5. Limits on **interrogatories** and **requests for production**: _____
6. **Designations of Experts:** the party seeking affirmative relief on an issue shall provide a designation of testifying experts by _____; the party not seeking affirmative relief on an issue shall provide a designation of its testifying experts by _____

- All **dispositive motions** (summary judgment, plea to jurisdiction, plea in abatement, etc.) must be filed and heard at least 30 days before trial.
- **Discovery requests** must be propounded in adequate time to allow a timely response by the deadline.
- Unless good cause is shown, all **"Daubert/Dupont" expert challenges** must be on file at least 10 days before hearing/trial.
- **Mediation** is required in **ALL** cases. Mediation is/was on _____ with _____
  (Parties who fail to mediate are limited to 1 hour per side at trial)
  Tex. Gov't Code Ch. 36: If court-appointed, the mediator is approved for up to 8 hours of mediation at a compensation of up to $3,000. Any time and fees beyond that are by agreement of the parties and not subject to the reporting requirements of Ch. 36.
- **Bench Trial.** This matter is set for a **Trial Before the Court** on June 25, 2021, at 9:00 a.m.
- **Time Requested for Trial.** Each side requests 2.5 hours per side.
  (no more than 2.5 hours per side without leave of court)

Signed and approved on 3/24/2021

Andrea S. Thompson
JUDGE ANDREA THOMPSON

/s/ *Elisse V. Woelfel*
Elisse V. Woelfel, Attorney for Petitioner

Jeffrey O. Anderson, Attorney for Respondent

Other

If you cannot get an opposing counsel or party to sign this order or agree to a trial date, please explain your efforts in writing and submit to the Court along with your proposed scheduling order.

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Jeffrey Anderson on behalf of Jeffrey Anderson
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jeff@ondafamilylaw.com
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Status as of 3/25/2021 2:13 PM CST

Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	3/23/2021 3:44:31 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	3/23/2021 3:44:31 PM	SENT
Melissa Cowle	24101652	Melissa@ondafamilylaw.com	3/23/2021 3:44:31 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	3/23/2021 3:44:31 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	3/23/2021 3:44:31 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	3/23/2021 3:44:31 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	3/23/2021 3:44:31 PM	SENT

Filed: 5/5/2021 7:57 PM
Lynne Finley
District Clerk
Collin County, Texas
By Keri Crow Deputy
Envelope ID: 53161334

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
S[redacted] M[redacted] A[redacted]	§	
AND	§	**416th JUDICIAL DISTRICT**
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

ENTRY OF APPEARANCE AND
DESIGNATION OF LEAD COUNSEL IN CHARGE

Michelle May O'Neil files this *Entry of Appearance and Designation of Lead Counsel in Charge*. S[redacted] M[redacted] A[redacted], Petitioner, designates Michelle May O'Neil as the attorney in charge in accordance with rule 8 of the Texas Rules of Civil Procedure. All communications from the Court or other counsel with respect to this suit shall be sent to the undersigned.

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By: */s/ Michelle May O'Neil*
MICHELLE MAY O'NEIL
State Bar No. 13260900
michelle@owlawyers.com
MARK RUSH WILLIAMSON
State Bar No. 21624650
mark@owlawyers.com
Attorney for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of this *Entry of Appearance and Designation of Lead Counsel in Charge* was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on May 5, 2021:

Jeffery O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

/s/Michelle May O'Neil
MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

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Stefanie Henderson on behalf of Michelle O'Neil
Bar No. 13260900
stefanie@owlawyers.com
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Status as of 5/6/2021 9:59 AM CST

Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	5/5/2021 7:57:37 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/5/2021 7:57:37 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/5/2021 7:57:37 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	5/5/2021 7:57:37 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	5/5/2021 7:57:37 PM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Claire Brown		claire@owlawyers.com	5/5/2021 7:57:37 PM	SENT
Michelle O'Neil		michelle@owlawyers.com	5/5/2021 7:57:37 PM	SENT
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Filed: 5/12/2021 3:45 PM
Lynne Finley
District Clerk
Collin County, Texas
By Keri Crow Deputy
Envelope ID: 53379129

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	IN THE DISTRICT COURT
S[redacted] M[redacted] A[redacted]	§	
AND	§	416th JUDICIAL DISTRICT
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	COLLIN COUNTY, TEXAS

S[redacted] M[redacted] A[redacted]'S FIRST AMENDED ANSWER TO ORIGINAL COUNTERPETITION FOR DIVORCE

S[redacted] M[redacted] A[redacted], Counterrespondent, files this *First Amended Answer to Original Counterpetition for Divorce* and *Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel.*

1. General Denial

S[redacted] M[redacted] A[redacted] denies the allegation for the *First Amended Answer to Original Counterpetition for Divorce.*

2. Verified Denials

Subject to and without waiving the foregoing General Denial, S[redacted] M[redacted] A[redacted] enters the following verified denials:

a. The written agreement is without consideration.

b. S[redacted] M[redacted] A[redacted] denies that the *Islamic Pre-Nuptial Agreement* is a valid contract.

c. S[redacted] M[redacted] A[redacted] denies that the Islamic Pre-Nuptial Agreement is enforceable as a premarital agreement.

d. S[redacted] M[redacted] A[redacted] denies the enforceability of the Islamic Pre-Nuptial Agreement as a premarital agreement pursuant to Tex. Fam. Code 4.003.

3. Affirmative Defenses

Subject to and without waiving the foregoing general denial and verified denial, S[redacted] M[redacted] A[redacted] asserts the following affirmative defenses under Rule 94 of the Texas Rules of Civil Procedure:

a. ambiguity;

b. duress;

c. estoppel;

d. failure of consideration;

e. fraud;

f. illegality;

g. waiver;

h. material breach; and

i. Statute of Frauds.

4. Special Defenses

Subject to and without waiving the foregoing general denial, verified denials, and affirmative defenses, S[redacted] M[redacted] A[redacted] asserts the following special defenses:

a. The order which A[redacted] H[redacted] L[redacted] seeks to enforce conflicts with the laws of this State and are, therefore, against public policy.

b. The remedies for enforcement sought by A[redacted] H[redacted] L[redacted] are not available under the laws of this state, are in violation of the United States and Texas Constitutions, and are prohibited. Tex. Fam. Code §159.606(a)(3).

c. The relief request by A[redacted] H[redacted] L[redacted] violates both public policy and Texas law, and is therefore prohibited.

d. The agreement violates S[redacted] M[redacted] A[redacted]D's right to Due Process of Law under the United States Constitution and Due Course of Law under the Texas Constitution.

e. The *Islamic Pre-Nuptial Agreement* is invalid and unenforceable because the agreement violates S[redacted] M[redacted] A[redacted]D's right to Due Process of Law under the United States Constitution and Due Course of Law under the Texas Constitution. The *Islamic Pre-Nuptial Agreement* violates the Establishment Clause. The *Islamic Pre-Nuptial Agreement* was never intended to be a premarital agreement as defined by the laws of the State of Texas, but instead is merely a cultural and religious device. No party negotiated nor addressed a disclosure of assets or a waiver of the laws of this state or any other state in the event of divorce. Enforcement of this *Islamic Pre-Nuptial Agreement* against S[redacted] M[redacted] A[redacted] would have an unconscionable result in that the application of Sharia law eliminates any right that S[redacted] M[redacted] A[redacted] would have to a just and right division of the marital estate. The *Islamic Pre-Nuptial Agreement* also violates public

policy in that premarital agreements or contracts regarding conservatorship are disfavored in Texas jurisprudence. Further, enforcement of the *Islamic Pre-Nuptial Agreement* as to the children the subject of this suit would violate the public policy and laws of the State of Texas and the Establishment Clause of the United States Constitution by applying religious laws to conservatorship questions as opposed to a best interest examination under Texas law.

f. The *Islamic Pre-Nuptial Agreement* and its apparent requirement to implement to Sharia Law violates Wife's right to Equal Protection under the United States Constitution.

4. Attorney's Fees

It was necessary to secure the services of Michelle May O'Neil and O'Neil Wysocki, P.C., licensed attorneys, to defend this suit. A[redacted] H[redacted] L[redacted] should be ordered to pay a reasonable attorney's fee, and judgment should be rendered against A[redacted] H[redacted] L[redacted] in favor of this attorney.

5. Prayer

S[redacted] M[redacted] A[redacted] prays that the Court deny A[redacted] H[redacted] L[redacted]F's *Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel*, and that S[redacted] M[redacted] A[redacted] recover all attorney's fees and costs incurred.

[INTENTIONALLY LEFT BLANK]

Respectfully submitted,

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By:_____
MICHELLE MAY O'NEIL
State Bar No. 13260900
michelle@owlawyers.com
MARK RUSH WILLIAMSON
State Bar No. 21624650
mark@owlawyers.com
Attorney for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of this *S[redacted] M[redacted] A[redacted]'s First Amended Answer to Original Counterpetition for Divorce* was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on May 12, 2021:

Jeffery O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

_____
MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Verification

The undersigned states under oath: "I am the Counterrespondent in this case. I have read the above S[redacted] M[redacted] A[redacted]'s *First Amended Answer to Original Counterpetition for Divorce*. The statements contained in paragraphs 3 through 6 in the *First Amended Answer to Original Counterpetition for Divorce* are within my personal knowledge and are true and correct."

S[redacted] M[redacted] A[redacted]

State of Texas §
County of Dallas §

SIGNED under oath before me on the 18th day of May, 2021.

STEFANIE JEAN ANN HENDERSON NOTARY PUBLIC STATE OF TEXAS ID 13141294-2 EXP. 01-17-2022

Stefanie Henderson
Notary Public, State of Texas

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stefanie Henderson on behalf of Michelle O'Neil
Bar No. 13260900
stefanie@owlawyers.com
Envelope ID: 53379129
Status as of 5/13/2021 8:42 AM CST

Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/12/2021 3:45:52 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	5/12/2021 3:45:52 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	5/12/2021 3:45:52 PM	SENT
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NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	IN THE DISTRICT COURT
S[redacted] M[redacted] A[redacted]	§	
AND	§	416th JUDICIAL DISTRICT
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	COLLIN COUNTY, TEXAS

MOTION TO BIFURCATE AND FOR SEPARATE TRIALS

NOW COMES S[redacted] M[redacted] A[redacted], Petitioner, and files this her *Motion to Bifurcate and for Separate Trials*, and in support thereof shows as follows:

S[redacted] M[redacted] A[redacted] request this Court to bifurcate trial on issues regarding the enforcement and validity of the *Islamic Pre-Nuptial Agreement* form the primary suit for divorce on issues of grounds, children, and division of the marital estate, as these suits involve separate issues and separation will effectuate judicial economy and help to preserve the resources of the parties.

Texas Rule of Civil Procedure 174(b) allows the Court to order a separate trial on any claim(s) or issue(s) in the furtherance of convenience or to avoid prejudice. Tex. R. Civ. P. 174(b).

In this case, the parties disagree about the enforceability and legal effect of the *Islamic Pre-Nuptial Agreement*.

Prayer

WHEREFORE, PREMISES CONSIDERED, S[redacted] M[redacted] A[redacted] prays this Court grant this *Motion* and bifurcate the suit regarding the divorce from the

suit regarding the enforcement and validity of the *Islamic Pre-Nuptial Agreement.*

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By: _____
MICHELLE MAY O'NEIL
State Bar No. 13260900
michelle@owlawyers.com
MARK RUSH WILLIAMSON
State Bar No. 21624650
mark@owlawyers.com
Attorneys for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of the *Motion to Bifurcate and for Separate Trials* was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 12, 2021 as follows:

Jeffrey O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

_____
MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

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IN THE MATTER OF THE MARRIAGE OF	§	IN THE DISTRICT COURT
S[redacted] M[redacted] A[redacted]	§	
AND	§	416th JUDICIAL DISTRICT
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	COLLIN COUNTY, TEXAS

MOTION TO VACATE OR RECONSIDER MOTION TO ENFORCE ISLAMIC PRENUPTIAL AGREEMENT AND REFER CASE TO MUSLIM COURT FOR FIQH PANEL

Respondent, S[redacted] M[redacted] A[redacted], files this her *Motion to Vacate of Reconsider Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court for Fiqh Panel*, and in support thereof shows as follows:

S[redacted] M[redacted] A[redacted] (hereinafter referred to as "Wife") hereby requests that this Court to vacate or reconsider its *Order on Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel* entered on March 22, 2021. At the hearing on March 22, 2021, and by virtue of this *Order*, this Court has validated a religious marriage affirmation as if it is a premarital agreement under Texas Family Code section 4.003. This Court denied Wife Due Process of Law under the United States Constitution and Due Course of Law under the Texas Constitution by:

- Holding a cursory trial on the validity of the agreement in advance of and without the protections of a final trial on the merits of the case after proper discovery has been had.
- Refusing to allow the presentation of evidence on Wife's defenses to the validity and enforceability of the religious marriage affirmation as a premarital agreement.
- Refusing to consider Wife's affirmative defenses to the religious marriage affirmation as a premarital agreement.
- Enforcing a religious marriage affirmation as an agreement that violates the Statute of Frauds.
- Treating the disputed issue of the validity and enforceability of the religious marriage affirmation as a premarital agreement as a question of law without factual dispute.
- Treating the disputed issue of the validity and enforceability of the religious marriage affirmation as a premarital agreement as a pretrial issue.
- Violating the Establishment Clause which requires separation of government determination from religious activities.
- Granting the *Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court for Fiqh Panel* was premature since the Court had yet to determine the validity and enforceability of the

religious marriage affirmation as a premarital agreement by way of interim judgment at trial or other summary judgment proceeding.

- Determining the merits of the validity and enforceability of the religious marriage affirmation as a premarital agreement with no evidence.
- Denied Wife her right to trial under the United States Constitution.
- Denied Wife her right to confrontation under the United States Constitution.
- Denied Wife her right to discovery under the United States Constitution.
- Denied Wife her right to fair notice of the allegations made the basis of the suit under the United States Constitution.

The *Islamic Pre-Nuptial Agreement* and its apparent requirement to implement to Sharia Law violates Wife's right to Equal Protection under the United States Constitution.

S[redacted] M[redacted] A[redacted] requests that this Court set aside the *Order on Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel* and set this matter for trial after an appropriate time is allowed for discovery.

The *Islamic Pre-Nuptial Agreement* is invalid and unenforceable because the agreement violates S[redacted] M[redacted] A[redacted]D's right to Due Process of Law under the

United States Constitution and Due Course of Law under the Texas Constitution. The *Islamic Pre-Nuptial Agreement* violates the Establishment Clause. The *Islamic Pre-Nuptial Agreement* was never intended to be a premarital agreement as defined by the laws of the State of Texas, but instead is merely a cultural and religious device. No party negotiated nor addressed a disclosure of assets or a waiver of the laws of this state or any other state in the event of divorce. Enforcement of this *Islamic Pre-Nuptial Agreement* against S[redacted] M[redacted] A[redacted] would have an unconscionable result in that the application of Sharia law eliminates any right that S[redacted] M[redacted] A[redacted] would have to a just and right division of the marital estate. The *Islamic Pre-Nuptial Agreement* also violates public policy in that premarital agreements or contracts regarding conservatorship are disfavored in Texas jurisprudence. Further, enforcement of the *Islamic Pre-Nuptial Agreement* as to the children the subject of this suit would violate the public policy and laws of the State of Texas and the Establishment Clause of the United States Constitution by applying religious laws to conservatorship questions as opposed to a best interest examination under Texas law.

In the alternative, S[redacted] M[redacted] A[redacted] requests the Court clarify the meaning of the term "ADR" in the *Order on Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel.*

Prayer

WHEREFORE, PREMISES CONSIDERED, S[redacted] M[redacted] A[redacted] prays this Court grant this *Motion* and all other relief to which she may be generally entitled.

Respectfully submitted,

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

MICHELLE MAY O'NEIL
State Bar No. 13260900
michelle@owlawyers.com
MARK RUSH WILLIAMS
State Bar No. 21624650
mark@owlawyers.com
Attorneys for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of the *Motion to Vacate or Reconsider Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court for Fiqh Panel* was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 12, 2021 as follows:

Jeffrey O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

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Filed: 5/13/2021 9:32 AM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53397566

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	IN THE DISTRICT COURT
S[redacted] M[redacted] A[redacted]	§	
AND	§	416th JUDICIAL DISTRICT
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	COLLIN COUNTY, TEXAS

FIRST AMENDED PETITION FOR DIVORCE

1. *Discovery Level*

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. *Parties*

This suit is brought by S[redacted] M[redacted] A[redacted], Petitioner. The last three numbers of S[redacted] M[redacted] A[redacted]'s driver's license number are 825. The last three numbers of S[redacted] M[redacted] A[redacted]'s Social Security number are 994.

A[redacted] H[redacted] L[redacted] is Respondent.

3. *Domicile*

S[redacted] M[redacted] A[redacted] has been a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding ninety-day period.

4. *Service*

Service of this document may be had in accordance with Rule 21a, Texas Rules of Civil Procedure, by serving A[redacted] H[redacted] L[redacted]'s attorney of record,

Jeffery O. Anderson, Orsinger, Nelson, Downing, & Anderson, 2600 Network Blvd., Suite 200, Frisco, Texas 75034.

5. Protective Order Statement

No protective order under title 4 of the Texas Family Code, protective order under subchapter A of Chapter 7B of the Texas Code of Criminal Procedure, or order for emergency protection under Article 17.292 of the Texas Code of Criminal Procedure is in effect in regard to a party to this suit or a child of a party to this suit and no application for any such order is pending.

6. Dates of Marriage and Separation

The parties were married on or about December 26, 2008 and ceased to live together as spouses on or about January 25, 2021.

7. Grounds for Divorce

The marriage has become insupportable because of discord or conflict of personalities between S[redacted] M[redacted] A[redacted] and A[redacted] H[redacted] L[redacted] that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

8. Children of the Marriage

S[redacted] M[redacted] A[redacted] and A[redacted] H[redacted] L[redacted] are parents of the following child of this marriage who is not under the continuing jurisdiction of any other court:

Name: A[redacted] A[redacted] A[redacted] (hereinafter "A.A.A.")
Sex: Male
Birth date: [redacted]

There are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships affecting the child the subject of this suit.

Information required by section 154.181(b) and section 154.1815 of the Texas Family Code will be supplemented upon request.

No property of consequence is owned or possessed by the child the subject of this suit.

S[redacted] M[redacted] A[redacted] and A[redacted] H[redacted] L[redacted], on final hearing, should be appointed joint managing conservators. S[redacted] M[redacted] A[redacted] requests the Court to apportion the rights and duties of a parent set out in section 153.132 of the Texas Family Code.

S[redacted] M[redacted] A[redacted] should be designated as the conservator who has the exclusive right to designate the primary residence of the child. The primary residence of the child should be restricted to Collin County, Texas. The Court should award S[redacted] M[redacted] A[redacted] the exclusive right to enroll the child in school. A[redacted] H[redacted] L[redacted] should be ordered to provide support for the child, including the payment of child support and medical and dental support in the manner specified by the Court. S[redacted] M[redacted] A[redacted] requests that the payments for the support of the child survive the death of A[redacted] H[redacted] L[redacted] and become the obligations of A[redacted] H[redacted] L[redacted]F's estate.

9. Denial of Premarital Agreement

The *Islamic Pre-Nuptial Agreement* is invalid and unenforceable because the agreement violates S[redacted] M[redacted] A[redacted]D's right to Due Process of Law under

the United States Constitution and Due Course of Law under the Texas Constitution. The *Islamic Pre-Nuptial Agreement* violates the Establishment Clause. The *Islamic Pre-Nuptial Agreement* was never intended to be a premarital agreement as defined by the laws of the State of Texas, but instead is merely a cultural and religious device. No party negotiated nor addressed a disclosure of assets or a waiver of the laws of this state or any other state in the event of divorce. Enforcement of this *Islamic Pre-Nuptial Agreement* against S[redacted] M[redacted] A[redacted] would have an unconscionable result in that the application of Sharia law eliminates any right that S[redacted] M[redacted] A[redacted] would have to a just and right division of the marital estate. The *Islamic Pre-Nuptial Agreement* also violates public policy in that premarital agreements or contracts regarding conservatorship are disfavored in Texas jurisprudence. Further, enforcement of the *Islamic Pre-Nuptial Agreement* as to the children the subject of this suit would violate the public policy and laws of the State of Texas and the Establishment Clause of the United States Constitution by applying religious laws to conservatorship questions as opposed to a best interest examination under Texas law. The *Islamic Pre-Nuptial Agreement* and its apparent requirement to implement to Sharia Law violates Wife's right to Equal Protection under the United States Constitution.

10. Division of Community Property

S[redacted] M[redacted] A[redacted] believes the parties will enter into an agreement for the division of their estate. If such an agreement is made, S[redacted] M[redacted] A[redacted] requests the Court to approve the agreement and divide their estate in a manner

consistent with the agreement. If such an agreement is not made, S[redacted] M[redacted] A[redacted] requests the Court to divide their estate in a manner that the Court deems just and right, as provided by law.

S[redacted] M[redacted] A[redacted] should be awarded a disproportionate share of the parties' estate for the following reasons, including but not limited to:

a. disparity of earning power of the spouses and their ability to support themselves;

b. the spouse to whom conservatorship of the child is granted;

c. earning power, business opportunities, capacities, and abilities of the spouses; and

d. attorney's fees to be paid.

11. Separate Property

S[redacted] M[redacted] A[redacted] owns certain separate property that is not part of the community estate of the parties, and S[redacted] M[redacted] A[redacted] requests the Court to confirm that separate property as S[redacted] M[redacted] A[redacted]D's separate property and estate.

12. Postdivorce Maintenance

S[redacted] M[redacted] A[redacted] requests the Court to order that S[redacted] M[redacted] A[redacted] be paid postdivorce maintenance for a reasonable period in accordance with chapter 8 of the Texas Family Code.

13. Request for Temporary Orders and Injunction

S[redacted] M[redacted] A[redacted] requests that A[redacted] H[redacted] L[redacted] be authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

To make withdrawals from accounts in financial institutions only for the purposes authorized by the Court's order.

To engage in acts reasonable and necessary to conduct A[redacted] H[redacted] L[redacted]F's usual business and occupation.

14. Request for Temporary Orders Regarding Child

S[redacted] M[redacted] A[redacted] requests the Court, after notice and hearing, to dispense with the necessity of a bond and to make temporary orders and issue any appropriate temporary injunctions for the safety and welfare of the child of the marriage as deemed necessary and equitable, including but not limited to the following:

Appointing S[redacted] M[redacted] A[redacted] and A[redacted] H[redacted] L[redacted] temporary joint managing conservators, and designating S[redacted] M[redacted] A[redacted] as the conservator who has the exclusive right to designate the primary residence of the child. S[redacted] M[redacted] A[redacted] requests the Court to apportion the rights and duties of a parent set out in section 153.132 of the Texas Family Code.

Ordering A[redacted] H[redacted] L[redacted] to provide support for the child, including the payment of child support and medical and dental support in the manner specified by the Court, while this case is pending.

Ordering reasonable periods of electronic communication between the child and S[redacted] M[redacted] A[redacted] to supplement S[redacted] M[redacted] A[redacted]D's periods of possession of the child.

Restricting the primary residence of the child to Collin County, Texas.

Awarding S[redacted] M[redacted] A[redacted] the exclusive right to enroll the child in school.

Ordering A[redacted] H[redacted] L[redacted] to produce copies of income tax returns for tax year 2019 and 2020, a financial statement, and current pay stubs by a date certain.

15. Collin County Standing Orders

S[redacted] M[redacted] A[redacted] has attached to this petition the *Collin County Standing Order Regarding Children, Property, and Conduct of the Parties* dated January 8, 2021. *See* Exhibit "A". S[redacted] M[redacted] A[redacted] requests the Court to make the *Collin County Standing Order Regarding Children, Property, and Conduct of Parties* temporary injunctions upon the parties effective immediately.

16. Attorney's Fees, Expenses, Costs, and Interest

It was necessary for S[redacted] M[redacted] A[redacted] to secure the services of Michelle May O'Neil and O'Neil Wysocki, P.C., licensed attorneys, to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the child, judgment for attorney's fees, expenses, and costs through trial and appeal should be granted against A[redacted] H[redacted] L[redacted] and in favor of

S[redacted] MARIAM A[redacted] for the use and benefit of S[redacted] MARIAM A[redacted]D's attorney and be ordered paid directly to S[redacted] M[redacted] A[redacted]D's attorney, who may enforce the judgment in the attorney's own name. S[redacted] M[redacted] A[redacted] requests postjudgment interest as allowed by law.

17. Prayer

S[redacted] M[redacted] A[redacted] prays that citation and notice issue as required by law and that the Court grant a divorce and all other relief requested in this petition.

S[redacted] M[redacted] A[redacted] prays that the Court, after notice and hearing, grant a temporary injunction enjoining A[redacted] H[redacted] L[redacted], in conformity with the allegations of this petition, from the acts set forth above while this case is pending.

S[redacted] M[redacted] A[redacted] prays for attorney's fees, expenses, and costs as requested above.

S[redacted] M[redacted] A[redacted] prays for general relief.

Respectfully submitted,

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By: _____
MICHELLE MAY O'NEIL
State Bar No. 13260900
michelle@owlawyers.com
Attorney for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of the *First Amended Petition for Divorce* was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 12, 2021 as follows:

Jeffrey O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Verification

The undersigned states under oath: "I am the Petitioner in this case. I have read the above *First Amended Petition for Divorce*. The statements contained in paragraph 15 in the *First Amended Petition for Divorce* are within my personal knowledge and are true and correct."

[redacted] M[redacted] A[redacted]

State of Texas §
County of Dallas §

SIGNED under oath before me on the 13th day of May, 2021.

Stefanie Henderson
Notary Public, State of Texas

DISTRICT JUDGES
IN AND FOR
COLLIN COUNTY, TEXAS

STANDING ORDER ON CHILDREN, PROPERTY & CONDUCT OF PARTIES

On their own motion, the district judges issue this standing order, which shall apply to suits for dissolution of marriage and suits affecting the parent-child relationship, for the protection of the parties and their children, and for the preservation of their property.

1. SUITS FOR DISSOLUTION OF MARRIAGE

While a suit for dissolution of marriage is pending, it is ORDERED that each party is prohibited from:

1.1 Intentionally communicating in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, with the other party by use of vulgar, profane, obscene, or indecent language or in a coarse or offensive manner, with intent to annoy or alarm the other party;

1.2 Threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party;

1.3 Placing a telephone call, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm the other party;

1.4 Intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties or either party with intent to obstruct the authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;

1.5 Intentionally falsifying a writing or record, including an electronic record, relating to the property of either party;

1.6 Intentionally misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

1.7 Intentionally or knowingly damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

1.8 Intentionally or knowingly tampering with the tangible or intellectual property of the parties or either party, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party;

EXHIBIT
A

1.9 Unless specifically authorized by the Court:

1.9.1 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties or either party, regardless of whether the property is:

a) Personal property, real property, or intellectual property; or

b) Separate or community property;

1.9.2 Incurring any debt, other than legal expenses in connection with the suit for dissolution of marriage;

1.9.3 Withdrawing money from any checking or savings account in a financial institution for any purpose;

1.9.4 Spending any money in either party's possession or subject to either party's control for any purpose;

1.9.5 Withdrawing or borrowing money in any manner for any purpose from a retirement, profit sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party; or

1.9.6 Withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties;

1.10 Entering any safe deposit box in the name of or subject to the control of the parties or either party, whether individually or jointly with others;

1.11 Changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party or a child of the parties;

1.12 Cancelling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time the suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties;

1.13 Opening or diverting mail or e-mail or any other electronic communication addressed to the other party;

1.14 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party;

1.15 Taking any action to terminate or limit credit or charge credit cards in the name of the other party;

1.16 Discontinuing or reducing the withholding for federal income taxes from either party's wages or salary;

1.17 Destroying, disposing of, or altering any financial records of the parties, including a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement;

1.18 Destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

1.19 Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

1.20 Deleting any data or content from any social network profile used or created by either party or a child of the parties;

1.21 Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account;

1.22 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance at the residence of either party, or in any manner attempting to withdraw any deposit paid in connection with any of those services;

1.23 Excluding the other party from the use and enjoyment of a specifically identified residence of the other party; or

1.24 Entering, operating, or exercising control over a motor vehicle in the possession of the other party.

2. SPECIFIC AUTHORIZATIONS

This standing order does not:

2.1 Exclude a party from occupying the party's residence;

2.2 Prohibit a party from spending funds for reasonable and necessary living expenses;

2.3 Prohibit a party from engaging in acts reasonable and necessary to conduct that party's usual business and occupation;

3. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

While a suit affecting the parent-child relationship is pending, it is ORDERED that each party is prohibited from:

3.1 During the pendency of an original suit, removing a child from the State of Texas for the purpose of changing the child's residence, acting directly or in concert with others, without the written agreement of the parties or an order from the presiding judge;

3.2 During the pendency of an original suit, disrupting or withdrawing a child from the school or day-care facility where the child is presently enrolled, without the written agreement of the parties or an order from the presiding judge;

3.3 During the pendency of an original suit, changing a child's current place of abode,

without the written agreement of the parties or an order from the presiding judge;

3.4 Hiding or secreting a child from the other parent; or

3.5 Disturbing the peace of a child

4. MANDATORY EXCHANGE OF INFORMATION

Within 30 days of a parent's appearance in a suit affecting the parent-child relationship, and before any hearing on temporary orders, each parent shall produce the following:

4.1 Information sufficient to accurately identify that parent's net resources and ability to pay child support;

4.2 Copies of income tax returns for the past two years, a financial statement, and current pay stubs;

4.3 Regarding each child's health insurance: the name of the carrier, the policy number, a copy of the policy and schedule of benefits, a health insurance membership card, and proof of the cost of the child's portion of the premiums; and

4.4 Regarding each child's dental insurance: the name of the carrier, the policy number, a copy of the policy and schedule of benefits, a dental insurance membership card, and proof of the cost of the child's portion of the premiums.

5. SERVICE & APPLICATION OF THIS ORDER

Each party must attach a copy of this order to the party's live pleading. This order is effective upon the filing of an original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of this court. This entire order will terminate and will no longer be effective when the court signs a final order or the case is dismissed.

6. EFFECT OF OTHER COURT ORDERS

If any part of this order conflicts with any part of a protective order, the protective order shall prevail. Any portion of this order not changed by a subsequent order remains in full force and effect until the court signs a final order.

7. MEDIATION

The parties are encouraged to settle their disputes amicably without court intervention. The parties are encouraged to use alternative dispute resolution methods, such as mediation, to resolve the conflicts that may arise in this lawsuit.

SIGNED ON THE 8TH DAY OF JANUARY, 2021.

HON. ANGELA TUCKER
199TH JUDICIAL DISTRICT COURT

HON. JENNIFER EDGEWORTH
219TH JUDICIAL DISTRICT COURT

HON. JOHN ROACH, JR.
296TH JUDICIAL DISTRICT COURT

HON. TOM NOWAK
366TH JUDICIAL DISTRICT COURT

HON. BENJAMIN N. SMITH
380TH JUDICIAL DISTRICT COURT

HON. GEORGE B. FLINT
401ST JUDICIAL DISTRICT COURT

HON. ANDREA THOMPSON
416TH JUDICIAL DISTRICT COURT

HON. CYNTHIA WHELESS
417TH JUDICIAL DISTRICT COURT

HON. JILL RENFRO WILLIS
429TH JUDICIAL DISTRICT COURT

HON. LINDSEY WYNNE
468TH JUDICIAL DISTRICT COURT

HON. PIPER MCCRAW
469TH JUDICIAL DISTRICT COURT

HON. EMILY A. MISKEL
470TH JUDICIAL DISTRICT COURT

HON. ANDREA K. BOURESSA
471ST JUDICIAL DISTRICT COURT

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stefanie Henderson on behalf of Michelle O'Neil
Bar No. 13260900
stefanie@owlawyers.com
Envelope ID: 53397566
Status as of 5/13/2021 10:21 AM CST

Associated Case Party: A[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	5/13/2021 9:32:40 AM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/13/2021 9:32:40 AM	SENT
Linda CLowe		linda@ondafamilylaw.com	5/13/2021 9:32:40 AM	SENT
Lacee Greer		lacee@ondafamilylaw.com	5/13/2021 9:32:40 AM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/13/2021 9:32:40 AM	SENT

Associated Case Party: S[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Claire Brown		claire@owlawyers.com	5/13/2021 9:32:40 AM	SENT
Michelle O'Neil		michelle@owlawyers.com	5/13/2021 9:32:40 AM	SENT
Lisa Gray		lisa@owlawyers.com	5/13/2021 9:32:40 AM	SENT
Stefanie Henderson		stefanie@owlawyers.com	5/13/2021 9:32:40 AM	SENT
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Chelsea Sadafsaz		chelsea@owlawyers.com	5/13/2021 9:32:40 AM	SENT
Mark RushWilliamson		mark@owlawyers.com	5/13/2021 9:32:40 AM	SENT
Marisa Laney		marisa@owlawyers.com	5/13/2021 9:32:40 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	5/13/2021 9:32:40 AM	SENT

Filed: 5/13/2021 1:16 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53412751

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	IN THE DISTRICT COURT
S[redacted] M[redacted] A[redacted]	§	
AND	§	416th JUDICIAL DISTRICT
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	COLLIN COUNTY, TEXAS

MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

This *Motion for Continuance* is brought by S[redacted] M[redacted] A[redacted], Petitioner, who shows in support:

1. This case is presently set for trial on June 25, 2021 at 9:00 a.m.
2. This is the first trial setting in this matter.
3. Petitioner, S[redacted] M[redacted] A[redacted] hired Michelle May O'Neil and O'Neil Wysocki, PC to represent her in this divorce suit on May 5, 2021, which is approximately 51 days to final trial.
4. Petitioner, S[redacted] M[redacted] A[redacted], requests additional time as full discovery has not been completed by either party.
5. S[redacted] M[redacted] A[redacted] asks the Court to grant a continuance to allow her counsel adequate time to prepare for the final trial.
6. This continuance is not sought solely for delay, but so that justice may be done.

Prayer

S[redacted] M[redacted] A[redacted] prays that the Court grant this *Motion for Continuance* and reset this matter for trial.

S[redacted] M[redacted] A[redacted] prays for general relief.

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By: _____
MICHELLE MAY O'NEIL
State Bar No. 13260900
michelle@owlawyers.com
MARK RUSH WILLIAMSON
State Bar No. 21624650
mark@owlawyers.com
Attorney for S[redacted] M[redacted] A[redacted]

Verification

The undersigned states under oath: "I am the attorney for the movant in the foregoing *Motion for Continuance*. I have read the *Motion*. The statements contained in paragraph 2 through 7 in the *Motion* are within my personal knowledge and are true and correct."

Michelle May O'Neil

SIGNED under oath before me on May 13, 2021.

Stefanie Henderson
Notary Public, State of Texas

Certificate of Conference

I, the undersigned attorney, hereby certify to the Court that I have attempted to confer with opposing counsel regarding this matter. I have not received a response as of the filing of this *Motion*.

MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of this *Motion for Continuance* was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on May 13, 2021:

Jeffery O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stefanie Henderson on behalf of Michelle O'Neil
Bar No. 13260900
stefanie@owlawyers.com
Envelope ID: 53412751
Status as of 5/13/2021 2:19 PM CST

Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Claire Brown		claire@owlawyers.com	5/13/2021 1:16:36 PM	SENT
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Stefanie Henderson		stefanie@owlawyers.com	5/13/2021 1:16:36 PM	SENT
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Marisa Laney		marisa@owlawyers.com	5/13/2021 1:16:36 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	5/13/2021 1:16:36 PM	SENT
Niles Illich		niles@scottpalmerlaw.com	5/13/2021 1:16:36 PM	SENT

Filed: 5/13/2021 1:16 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53412751

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
	§	
	§	
S[redacted] M[redacted] A[redacted]	§	
AND	§	**416th JUDICIAL DISTRICT**
A[redacted] H[redacted] L[redacted]	§	
	§	
	§	
AND IN THE INTEREST OF	§	
A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

NOTICE OF INTENT TO OPPOSE ARBITRATION AWARD

Pursuant to Tex. Gov. Code § 22.0041, S[redacted] M[redacted] A[redacted], Petitioner, herby notifies A[redacted] H[redacted] L[redacted], Respondent, of her intent to oppose any arbitration award based on Sharia Law that involves the marriage relationship or parent-child relationship.

S[redacted] M[redacted] A[redacted]'s right to Due Process of Law under the United States Constitution and Due Course of Law under the Texas Constitution has been denied by:

- Holding a cursory trial on the validity of the agreement in advance of and without the protections of a final trial on the merits of the case after proper discovery has been had.
- Refusing to allow the presentation of evidence on Wife's defenses to the validity and enforceability of the religious marriage affirmation as a premarital agreement.
- Refusing to consider Wife's affirmative defenses to the religious marriage affirmation as a premarital agreement.

- Enforcing a religious marriage affirmation as an agreement that violates the Statute of Frauds.
- Treating the disputed issue of the validity and enforceability of the religious marriage affirmation as a premarital agreement as a question of law without factual dispute.
- Treating the disputed issue of the validity and enforceability of the religious marriage affirmation as a premarital agreement as a pretrial issue.
- Violating the Establishment Clause which requires separation of government determination from religious activities.
- Granting the *Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court for Fiqh Panel* was premature since the Court had yet to determine the validity and enforceability of the religious marriage affirmation as a premarital agreement by way of interim judgment at trial or other summary judgment proceeding.
- Determining the merits of the validity and enforceability of the religious marriage affirmation as a premarital agreement with no evidence.
- Denied Wife her right to trial under the United States Constitution.
- Denied Wife her right to confrontation under the United States Constitution.

- Denied Wife her right to discovery under the United States Constitution.
- Denied Wife her right to fair notice of the allegations made the basis of the suit under the United States Constitution.

The *Islamic Pre-Nuptial Agreement* and its apparent requirement to implement to Sharia Law violates Wife's right to Equal Protection under the United States Constitution.

The *Islamic Pre-Nuptial Agreement* is invalid and unenforceable because the agreement violates S[redacted] M[redacted] A[redacted]'s right to Due Process of Law under the United States Constitution and Due Course of Law under the Texas Constitution. The *Islamic Pre-Nuptial Agreement* violates the Establishment Clause. The *Islamic Pre-Nuptial Agreement* was never intended to be a premarital agreement as defined by the laws of the State of Texas, but instead is merely a cultural and religious device. No party negotiated nor addressed a disclosure of assets or a waiver of the laws of this state or any other state in the event of divorce. Enforcement of this *Islamic Pre-Nuptial Agreement* against S[redacted] M[redacted] A[redacted] would have an unconscionable result in that the application of Sharia law eliminates any right that S[redacted] M[redacted] A[redacted] would have to a just and right division of the marital estate. The *Islamic Pre-Nuptial Agreement* also violates public policy in that premarital agreements or contracts regarding conservatorship are disfavored in Texas jurisprudence. Further, enforcement of the *Islamic Pre-Nuptial Agreement* as to the children the subject of this suit would violate the public policy and laws of the State

of Texas and the Establishment Clause of the United States Constitution by applying religious laws to conservatorship questions as opposed to a best interest examination under Texas law.

Respectfully submitted,

O'NEIL WYSOCKI, P.C.
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Dallas, Texas 75254
Tel: (972) 852-8000
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By: _____
MICHELLE MAY O'NEIL
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mark@owlawyers.com
Attorneys for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of the *Notice Of Intent To Oppose Arbitration Award* was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 13, 2021 as follows:

Jeffrey O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

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Stefanie Henderson on behalf of Michelle O'Neil
Bar No. 13260900
stefanie@owlawyers.com
Envelope ID: 53412751
Status as of 5/13/2021 2:19 PM CST

Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Linda CLowe		linda@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
David H. Findley	24040901	david@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Michelle O'Neil		michelle@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Lisa Gray		lisa@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Stefanie Henderson		stefanie@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Amanda Mangrum		amanda@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Mark RushWilliamson		mark@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Marisa Laney		marisa@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Claire Brown		claire@owlawyers.com	5/13/2021 1:16:36 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	5/13/2021 1:16:36 PM	SENT
Niles Illich		niles@scottpalmerlaw.com	5/13/2021 1:16:36 PM	SENT

Filed: 5/13/2021 1:16 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53412751

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
S[redacted] M[redacted] A[redacted]	§	
AND	§	**416th JUDICIAL DISTRICT**
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

NOTICE OF PAST-DUE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner, S[redacted] M[redacted] A[redacted], in accordance with Rule 297 of the Texas Rules of Civil Procedure, gives notice to the Court that a timely *Request for Findings of Fact and Conclusions of Law* was filed on March 22, 2021. Findings and conclusions were due to be filed by the Court on or before April 12, 2021, which was the twentieth day following S[redacted] M[redacted] A[redacted]'s timely Request for Findings of Fact and Conclusions of Law but have not been filed.

S[redacted] M[redacted] A[redacted] requests findings of fact and conclusions of law in accordance with Tex. Gov. Code § 22.0041.

S[redacted] M[redacted] A[redacted] further requests that the clerk of the Court immediately call this *Notice of Past-Due Findings of Fact and Conclusions of Law* to the attention of the Court pursuant to Rule 297 of the Texas Rules of Civil Procedure.

S[redacted] M[redacted] A[redacted] further requests that the Court cause copies of its findings and conclusions to be transmitted to each party in the suit as required by Rule 297 of the Texas Rules of Civil Procedure.

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By: _____
MICHELLE MAY O'NEIL
State Bar No. 13260900
michelle@owlawyers.com
MARK RUSH WILLIAMSON
State Bar No. 21624650
mark@owlawyers.com
Attorneys for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of the *Notice of Past-Due Findings of Fact and Conclusions of Law* was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 13, 2021 as follows:

Jeffrey O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

_____
MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

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Stefanie Henderson on behalf of Michelle O'Neil
Bar No. 13260900
stefanie@owlawyers.com
Envelope ID: 53412751
Status as of 5/13/2021 2:19 PM CST

Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
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Jamie Laird		jamie@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT
David H. Findley	24040901	david@ondafamilylaw.com	5/13/2021 1:16:36 PM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Claire Brown		claire@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Michelle O'Neil		michelle@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Lisa Gray		lisa@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Stefanie Henderson		stefanie@owlawyers.com	5/13/2021 1:16:36 PM	SENT
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Mark RushWilliamson		mark@owlawyers.com	5/13/2021 1:16:36 PM	SENT
Marisa Laney		marisa@owlawyers.com	5/13/2021 1:16:36 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	5/13/2021 1:16:36 PM	SENT
Niles Illich		niles@scottpalmerlaw.com	5/13/2021 1:16:36 PM	SENT

Filed: 5/17/2021 11:26 AM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53499211

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
S[redacted] M[redacted] A[redacted]	§	
AND	§	**416th JUDICIAL DISTRICT**
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

NOTICE OF HEARING

NOTICE is hereby given to A[redacted] H[redacted] L[redacted] that a hearing has been set for **Friday, June 11, 2021 at 8:30 A.M.** at which time the 416th Judicial District Court of Collin County, Texas will consider:

- S[redacted] M[redacted] A[redacted]'s *Motion to Bifurcate and for Separate Trials* filed on May 12, 2021.
- S[redacted] M[redacted] A[redacted]'s *Motion to Vacate or Reconsider Motion to Enforce Islam Pre-Nuptial Agreement* filed on May 13, 2021.
- S[redacted] M[redacted] A[redacted]'s *Motion for Continuance* filed on May 13, 2021.

SIGNED on 5/17/2021.

Andrea S. Thompson SJ
JUDGE/COURT COORDINATOR

Certificate of Service

I certify that a true copy of this *Notice of Hearing* was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on May 17, 2021:

Jeffery O. Anderson by electronic filing manager.

Elisse Woelfel by electronic filing manager.

/s/Michelle May O'Neil
MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Automated Certificate of eService

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Stefanie Henderson on behalf of Michelle O'Neil
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Status as of 5/17/2021 5:02 PM CST

Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	5/17/2021 11:26:20 AM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/17/2021 11:26:20 AM	SENT
Linda CLowe		linda@ondafamilylaw.com	5/17/2021 11:26:20 AM	SENT
Lacee Greer		lacee@ondafamilylaw.com	5/17/2021 11:26:20 AM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/17/2021 11:26:20 AM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Claire Brown		claire@owlawyers.com	5/17/2021 11:26:20 AM	SENT
Michelle O'Neil		michelle@owlawyers.com	5/17/2021 11:26:20 AM	SENT
Lisa Gray		lisa@owlawyers.com	5/17/2021 11:26:20 AM	SENT
Stefanie Henderson		stefanie@owlawyers.com	5/17/2021 11:26:20 AM	SENT
Amanda Mangrum		amanda@owlawyers.com	5/17/2021 11:26:20 AM	SENT
Mark RushWilliamson		mark@owlawyers.com	5/17/2021 11:26:20 AM	SENT
Marisa Laney		marisa@owlawyers.com	5/17/2021 11:26:20 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elisse Woelfel		elisse@elisselaw.com	5/17/2021 11:26:20 AM	SENT

Filed: 5/25/2021 3:48 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53799951

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
	§	
	§	
S[redacted] M[redacted] A[redacted]	§	
AND	§	**416th JUDICIAL DISTRICT**
A[redacted] H[redacted] L[redacted]	§	
	§	
	§	
AND IN THE INTEREST OF	§	
A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

FIRST AMENDED MOTION TO
BIFURCATE AND FOR SEPARATE TRIALS

NOW COMES S[redacted] M[redacted] A[redacted], Petitioner, and files this her *First Amended Motion to Bifurcate and for Separate Trials*, and in support thereof shows as follows:

S[redacted] M[redacted] A[redacted] requests this Court to bifurcate trial on the following issues:

1. the enforceability and validity of the alleged arbitration provision of the alleged prenuptial agreement;
2. the enforceability and validity of the alleged *Islamic Pre-Nuptial Agreement;* and
3. the primary suit for divorce on issues of grounds, the child, and division of the marital estate.

These suits involve separate issues and separation will effectuate judicial economy and help to preserve the resources of the parties.

Texas Rule of Civil Procedure 174(b) allows the Court to order a separate trial on any claim(s) or issue(s) in the furtherance of convenience or to avoid prejudice.

Tex. R. Civ. P. 174(b).

In this case, the parties disagree about the enforceability and legal effect of the alleged *Islamic Pre-Nuptial Agreement*.

Prayer

WHEREFORE, PREMISES CONSIDERED, S[redacted] M[redacted] A[redacted] prays this Court grant this *First Amended Motion* and bifurcate the suit regarding the divorce from the suit regarding the enforcement and validity of the alleged *Islamic Pre-Nuptial Agreement*.

O'NEIL WYSOCKI, P.C.
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Dallas, Texas 75254
Tel: (972) 852-8000
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By: _____
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MARK RUSH WILLIAMSON
State Bar No. 21624650
mark@owlawyers.com
Attorneys for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of the *First Amended Motion to Bifurcate and for Separate Trials* was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 25, 2021 as follows:

Jeffrey O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

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Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Claire Brown		claire@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Michelle O'Neil		michelle@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Lisa Gray		lisa@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Stefanie Henderson		stefanie@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Mark RushWilliamson		mark@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Marisa Laney		marisa@owlawyers.com	5/25/2021 3:48:48 PM	SENT

Filed: 5/25/2021 3:48 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53799951

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
S[redacted] M[redacted] A[redacted]	§	
AND	§	**416th JUDICIAL DISTRICT**
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

FIRST AMENDED MOTION TO VACATE OR RECONSIDER MOTION TO ENFORCE ISLAMIC PRENUPTIAL AGREEMENT AND REFER CASE TO MUSLIM COURT OR FIQH PANEL

TO THE HONORABLE JUDGE OF SAID COURT:

Respondent, S[redacted] M[redacted] A[redacted], files this her *First Amended Motion to Vacate or Reconsider Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel*, and in support thereof shows as follows:

S[redacted] M[redacted] A[redacted] requests this Court to vacate and/or reconsider its *Order on Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel* which was signed on March 22, 2021.

I. Objections to alleged arbitration provisions in the agreement.

1. No valid arbitration agreement exists.

a. Legal Authority

A party attempting to compel arbitration must first establish the existence of a valid arbitration agreement. *Ellis v. Schlimmer*, 337 S.W.3d 860, 861 (Tex. 2011); *Dallas Cardiology Associates P.A. v. Mallick*, 978 S.W.2d 209, 212 (Tex. App. –

Texarkana 1998, pet. denied). A challenge to the validity of an arbitration provision in a contract is to be determined by the court. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444, 126 S.Ct. 1204, 163 L.Ed.2d 1038 (2006); see *In re Morgan Stanley & Co., Inc.,* 293 S.W.3d 182 (Tex. 2009). The court must determine the validity of an arbitration agreement in an evidentiary hearing to determine disputed material facts. *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 269 (Tex. 1992). A court should stay an arbitration upon a showing that there is no valid, enforceable agreement to arbitrate. Tex. Civ. Prac. & Rem. Code §171.023.

General contract defenses are available to invalidate an arbitration agreement provided that they related to the arbitration agreement itself. *Doctors Assoc., Inc. v. Casarotto*, 517 U.S. 681, 687, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996); *In re FirstMerit Bank*, 52 S.W.3d 749,756 (Tex. 2001) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-04, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967)); see also *In re RLS Legal Solutions, LLC*, 221 S.W.3d 629, 631-32 (Tex. 2007). No valid arbitration agreement exists because the provisions of the agreement that allegedly relate to arbitration fail due to duress, estoppel, failure of consideration, fraud, illegality, and other contract defenses.

See generally Sofia Ramon, *Arbitration: "Cliff's Notes" for the General Practitioner*, Soaking Up Some CLE A South Texas Litigation Seminar 14 (2013).

b. Factual Argument

The terms of the agreement do not specifically contain an agreement to arbitrate. The agreement is vague and ambiguous as to the terms. The agreement

references application of Islamic religious law, religious court, and religious judges to disputes between husband and wife. It does not specifically state that the parties will be subject to "binding arbitration". In fact, the word "arbitration" is not used anywhere in the document. Rhetorically, should not an agreement to arbitrate clearly state that it is an agreement to arbitrate in order to be enforced as an arbitration agreement?

2. If the agreement constitutes an agreement to arbitrate, the agreement to arbitrate is unconscionable and against public policy.

a. Legal Authority

Even assuming that the provisions of the agreement constitute an agreement to arbitrate, the agreement to arbitrate is invalid because it is unconscionable. Arbitration agreements which are unconscionable are unenforceable. *Doctor's Assoc., Inc. v. Casarotto*, 517 U.S. 681, 687-88, 116 S. Ct. 1652, 134 L. Ed. 2d 902 (1996); see also *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 89, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000). Texas law renders unconscionable agreements unenforceable. *In re Olshan Foundation Repair Co.*, 328 S.W.3d 883, 892 (Tex. 2010); *In re Poly-America, L.P.*, 262 S.W.3d 337, 338 (Tex. 2008). Unconscionability may be substantive or procedural. Substantive unconscionability refers to the fairness of the arbitration provision itself, whereas procedural unconscionability refers to the circumstances surrounding adoption of the arbitration provision. *In re Palm Harbor Homes, Inc.*, 195 S.W.3d 672, 677 (Tex. 2006); *In re Halliburton Co.*, 80 S.W.3d 566, 571 (Tex. 2002). The Dallas Court of Appeals held where an agreement between

marrying parties attempts to change the application of the laws of the State of Texas to Islamic law, the agreement was unconscionable and therefore not valid and enforceable. *Sheriff v. Moosa*, 2015 WL 4736564 (Tex. App. – Dallas 2015, no pet.).

Further, a court may refuse to enforce a contract or a provision in a contract on the ground that it is against public policy. As *Attorney General Opinion KP-0094* states: "Section 4.003 of the Family Code authorizes the parties to a premarital agreement to contract with respect to all matters 'not in violation of public policy or a statute imposing a criminal penalty.' Tex. Fam. Code §4.003(a)(8) . . . . [H]owever, courts may refuse to enforce a contract, or a provision in a contract, on the ground that it is against public policy." *Tex. Att'y Gen. Op. No. KP-0094* (2016).

"[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (citing *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App.—Fort Worth 1982, no writ). Texas courts should decline to apply Islamic law when "[t]he harshness of such a result . . . runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App.—Fort Worth 1982, no writ).

b. Factual Argument

The alleged arbitration provision is substantively unconscionable, illegal, and against the public policy of the State of Texas for the following reasons:

1. Changes the application of the laws of the State of Texas to Islamic Law. *Tex. Att'y Gen. Op. No. KP-0094* (2016); Tex. Civ. Prac. & Rem. Code

§22.0041. Texas courts should decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). "[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App. – Houston [1st Dist.] 2019, no pet.), citing *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App. – Fort Worth 1982, no writ).

2. Violates the Establishment Clause which requires separation of government determination from religious activities under the United States Constitution and the Texas Constitution in that the arbitration agreement requires the application of Islamic Law in a court of the United States and the State of Texas with complete disregard of the laws of the State of Texas. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1926 (2014): Allison Gerli, *Living Happily Ever After in a Land of Separate Church and State: Treatment of Islamic Marital Contracts*, 26 J. Am. Acad. Matrim. Law 113, 119 (2013); Lindsey E. Blenkhorn, *Islamic Marriage contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 214-15 (2002) ("The question of whether the couple meant to waive community

property and equitable distribution rules implicates the Establishment Clause because interpreting mahr agreements necessarily entails an analysis of Islamic religious doctrine.").

3. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law limits the rights of a woman to obtain a divorce absent consent of the husband and applies the laws differently to women versus men. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1918, 1933 (2014). "The Quran gives married men a right to divorce their wives. Nothing in the Quran gives married women the same right. In the Islamic law on divorce, in keeping with the Quran's provision, the husband has a unilateral right to obtain a divorce." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 553 (2016).

4. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law means that the weight and credibility of the evidence provided by S[redacted] M[redacted] A[redacted] will be half of that of any male who testifies of provides evidence, including A[redacted] H[redacted] L[redacted].

Thus, S[redacted] M[redacted] A[redacted] will not be meaningfully heard nor afforded a meaningful opportunity to present evidence material to the controversy and cross-examine any witnesses. "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness, whereas a woman is not." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 554 (2016). "Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 499 (2013). "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal Protection Clause." Saad U.

Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 512 (2013).

5. Violates S[redacted] M[redacted] A[redacted]'s right to Due Process under the United States Constitution and Due Course of Law under the Texas Constitution and Texas Civil Practice and Remedies Code §171.047 in that she will not have a meaningful right to be heard and present evidence material to the controversy and cross-examine any witnesses. "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness, whereas a woman is not." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 554 (2016). "Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts*

Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention, 98 Cornell L. Rev. 493, 499 (2013). "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal Protection Clause." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 512 (2013).

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7. Violates the rights of the child of the parties to a determination on the

best interest of the child standard according to Texas Family Code §153.002 because Islamic Law does not consider the best interest of the child in making determinations regarding conservatorship. Instead, Islamic Law determines conservatorship based on a formulaic determination of the age of the child and the gender of the parent.

8. Violates the public policy of the State of Texas. Texas courts should decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). "[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App. – Houston [1st Dist.] 2019, no pet.), citing *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App. – Fort Worth 1982, no writ).

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10. Violates S[redacted] M[redacted] A[redacted]'s right to remarry and maintain custody of her child.

11. Violates S[redacted] M[redacted] A[redacted]'s right under the Unites States Constitution to freedom of travel under the Privileges and Immunities Clause without the permission of her former spouse. U.S. Const. Art IV, sec. 2, cl. 1.

12. S[redacted] M[redacted] A[redacted] did not enter into the alleged arbitration provision voluntarily because Muslim women do not have the right or freedom to contract for themselves. Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 231 (2002).

Further, S[redacted] M[redacted] A[redacted] did not sign the alleged arbitration agreement voluntarily. Instead, it was presented to her during the wedding ceremony for the first time where she was forced to sign it without reading it or having a

meaningful opportunity to negotiate its contents.

II. Objections to conduct of the prior hearing to enforce agreement.

At the prior hearing, this Court validated the agreement's alleged arbitration provisions without allowing S[redacted] M[redacted] A[redacted] a meaningful opportunity to be heard on her defenses to the validity of the arbitration agreement. (Transcript at 35.) The Court allowed A[redacted] H[redacted] L[redacted] to present evidence and testimony of his expert witness regarding the validity of the agreement in general, but denied S[redacted] M[redacted] A[redacted] the opportunity to present evidence and testimony. (Transcript at 35.) S[redacted] M[redacted] A[redacted] had evidence to present as to disputed fact issues regarding the validity of the alleged arbitration agreement. As such, this Court denied S[redacted] M[redacted] A[redacted] her right to Due Process under the United States Constitution and Due Course of Law under the Texas Constitution.

III. Objections to validity and enforceability of the agreement as a whole.

a. Legal Authority

The alleged agreement is invalid and unenforceable. The alleged agreement was never intended to be a premarital agreement as defined by the laws of the State of Texas, but instead is merely a cultural and religious device. No party negotiated nor addressed a disclosure of assets or a waiver of the laws of this state or any other state in the event of divorce.

Further, a court may refuse to enforce a contract or a provision in a contract on the ground that it is against public policy. As *Attorney General Opinion KP-0094*

states, "Section 4.003 of the Family Code authorizes the parties to a premarital agreement to contract with respect to all matters 'not in violation of public policy or a statute imposing a criminal penalty.' Tex. Fam. Code §4.003(a)(8)…. [H]owever, courts may refuse to enforce a contract, or a provision in a contract, on the ground that it is against public policy." *Tex. Att'y Gen. Op. No. KP-0094* (2016).

b. Factual Argument

The agreement as a whole is substantively unconscionable, illegal, and against the public policy of the State of Texas for the following reasons:

1. Changes the application of the laws of the State of Texas to Islamic Law. *Tex. Att'y Gen. Op. No. KP-0094* (2016); Tex. Civ. Prac. & Rem. Code §22.0041. Texas courts should decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). "[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App. – Houston [1st Dist.] 2019, no pet.), citing *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App. – Fort Worth 1982, no writ).
2. Violates the Establishment Clause which requires separation of government determination from religious activities under the United States Constitution and the Texas Constitution in that the arbitration

agreement requires the application of Islamic Law in a court of the United States and the State of Texas with complete disregard of the laws of the State of Texas. Shiva Falsafi*, Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1926 (2014): Allison Gerli, *Living Happily Ever After in a Land of Separate Church and State: Treatment of Islamic Marital Contracts*, 26 J. Am. Acad. Matrim. Law 113, 119 (2013); Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 214-15 (2002) ("The question of whether the couple meant to waive community property and equitable distribution rules implicates the Establishment Clause because interpreting mahr agreements necessarily entails an analysis of Islamic religious doctrine.").

3. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law limits the rights of a woman to obtain a divorce absent consent of the husband and applies the laws differently to women versus men. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1918, 1933 (2014). "The Quran gives married men a right to divorce their wives. Nothing in the Quran gives married women the same right. In the Islamic law on divorce, in keeping

with the Quran's provision, the husband has a unilateral right to obtain a divorce." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 553 (2016).

4. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law means that the weight and credibility of the evidence provided by S[redacted] M[redacted] A[redacted] will be half of that of any male who testifies of provides evidence, including A[redacted] H[redacted] L[redacted]. Thus, S[redacted] M[redacted] A[redacted] will not be meaningfully heard nor afforded a meaningful opportunity to present evidence material to the controversy and cross-examine any witnesses. "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness, whereas a woman is not." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 554 (2016). "Another issue emerges if the parties

chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 499 (2013). "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal Protection Clause." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 512 (2013).

5. Violates S[redacted] M[redacted] A[redacted]'s right to Due Process under the United States Constitution and Due Course of Law under the Texas Constitution and Texas Civil Practice and Remedies Code §171.047 in that she will not have a meaningful right to be heard and present evidence material to the controversy and cross-examine any witnesses. "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the

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7. Violates the rights of the child of the parties to a determination on the best interest of the child standard according to Texas Family Code §153.002 because Islamic Law does not consider the best interest of the child in making determinations regarding conservatorship. Instead, Islamic Law determines conservatorship based on a formulaic determination of the age of the child and the gender of the parent.

8. Violates the public policy of the State of Texas. Texas courts should decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). "[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App.

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10. Violates S[redacted] M[redacted] A[redacted]'s right to remarry and maintain custody of her child.

11. Violates S[redacted] M[redacted] A[redacted]'s right under the Unites States Constitution to freedom of travel under the Privileges and Immunities Clause without the permission of her former spouse. U.S. Const. Art IV,

sec. 2, cl. 1.

12. Misinterprets the alleged agreement as a premarital agreement negotiated in contemplation of marriage; instead, the alleged agreement IS the marriage itself. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1917 (2014) ("…[T]he Qur'an defines the mahr as a gift to the bride for entering into the marriage contract, and not as a vehicle for apportioning property and resources at the time of divorce.); Nathan B. Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 321-22 (2011).

13. No disclosure of assets and liabilities was made between the parties and none was waived; thus, it is invalid as a premarital agreement under the laws of the State of Texas. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1917 (2014) (…[T]here is neither a requirement for the 'fair and reasonable disclosure of the property' nor much sanction against what might be considered unconscionable behavior under statutory prenuptial regimes.")

14. S[redacted] M[redacted] A[redacted] did not enter into the alleged prenuptial agreement voluntarily because Muslim women do not have the right or freedom to contract for themselves. Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements*

as Prenuptials and Their Effect on Muslim Women, 76 S. Cal. L. Rev. 189, 231 (2002).

Upon a finding that the agreement is unconscionable, the question of a fair disclosure or waiver thereof is considered. The agreement did not provide that SA knowingly waive her rights under the Texas Constitution to a determination of the community property and separate property of the marital estate of the parties.

Further, S[redacted] M[redacted] A[redacted] did not sign the alleged arbitration agreement voluntarily. Instead, it was presented to her during the wedding ceremony for the first time where she was forced to sign it without reading it or having a meaningful opportunity to negotiate its contents.

IV. Notice under Government Code §22.0041.

S[redacted] M[redacted] A[redacted] gives notice that, for all of the reasons stated herein, she intends to oppose the enforcement of a judgment or an arbitration award based on Islamic law that involves the marriage relationship or a parent-child relationship.

Prayer

WHEREFORE, PREMISES CONSIDERED, S[redacted] M[redacted] A[redacted] prays this Court vacate her *Order on Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel*, find that the alleged arbitration agreement is invalid for the reasons stated and therefore unenforceable. As such, S[redacted] M[redacted] A[redacted] prays this Court to deny A[redacted] H[redacted] L[redacted]'s request to compel arbitration and set the matter for trial on the defenses to the enforceability of the agreement as a whole. S[redacted] M[redacted] A[redacted] prays for such other and further

relief to which she may be justly entitled under the laws of the United States and the State of Texas.

Respectfully submitted,

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Certificate of Service

I certify that a true copy of the *First Amended Motion to Vacate or Reconsider Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court for Fiqh Panel* was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 25, 2021 as follows:

Jeffrey O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stefanie Henderson on behalf of Michelle O'Neil
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Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Linda CLowe		linda@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
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Lisa Gray		lisa@owlawyers.com	5/25/2021 3:48:48 PM	SENT
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Filed: 5/25/2021 3:48 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53799951

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
	§	
	§	
S[redacted] M[redacted] A[redacted]	§	
AND	§	**416th JUDICIAL DISTRICT**
A[redacted] H[redacted] L[redacted]	§	
	§	
	§	
AND IN THE INTEREST OF	§	
A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

FIRST AMENDED NOTICE OF
INTENT TO OPPOSE ARBITRATION AWARD

Pursuant to Tex. Gov. Code § 22.0041, S[redacted] M[redacted] A[redacted], Petitioner, herby notifies A[redacted] H[redacted] L[redacted], Respondent, of her intent to oppose any arbitration award based on Islamic Sharia Law that involves the marriage relationship or parent-child relationship.

I. Objections to the alleged arbitration provisions in the agreement.

The alleged arbitration provision is substantively unconscionable, illegal, and against the public policy of the State of Texas for the following reasons:

1. Changes the application of the laws of the State of Texas to Islamic Law. *Tex. Att'y Gen. Op. No. KP-0094* (2016); Tex. Civ. Prac. & Rem. Code §22.0041. Texas courts should decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). "[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v.*

Arnel, 596 S.W.3d 911, 917 (Tex. App. – Houston [1st Dist.] 2019, no pet.), citing *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App. – Fort Worth 1982, no writ).

2. Violates the Establishment Clause which requires separation of government determination from religious activities under the United States Constitution and the Texas Constitution in that the arbitration agreement requires the application of Islamic Law in a court of the United States and the State of Texas with complete disregard of the laws of the State of Texas. Shiva Falsafi*, Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1926 (2014): Allison Gerli, *Living Happily Ever After in a Land of Separate Church and State: Treatment of Islamic Marital Contracts*, 26 J. Am. Acad. Matrim. Law 113, 119 (2013); Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 214-15 (2002) ("The question of whether the couple meant to waive community property and equitable distribution rules implicates the Establishment Clause because interpreting mahr agreements necessarily entails an analysis of Islamic religious doctrine.").

3. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of

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4. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law means that the weight and credibility of the evidence provided by S[redacted] M[redacted] A[redacted] will be half of that of any male who testifies of provides evidence, including A[redacted] H[redacted] L[redacted]. Thus, S[redacted] M[redacted] A[redacted] will not be meaningfully heard nor afforded a meaningful opportunity to present evidence material to the controversy and cross-examine any witnesses. "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two

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Constitution and Texas Civil Practice and Remedies Code §171.047 in that she will not have a meaningful right to be heard and present evidence material to the controversy and cross-examine any witnesses. "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness, whereas a woman is not." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 554 (2016). "Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 499 (2013). "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal

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7. Violates the rights of the child of the parties to a determination on the best interest of the child standard according to Texas Family Code §153.002 because Islamic Law does not consider the best interest of the child in making determinations regarding conservatorship. Instead, Islamic Law determines conservatorship based on a formulaic determination of the age of the child and the gender of the parent.

8. Violates the public policy of the State of Texas. Texas courts should

decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). "[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App. – Houston [1st Dist.] 2019, no pet.), citing *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App. – Fort Worth 1982, no writ).

9. Violates S[redacted] M[redacted] A[redacted]'s right to a just and right division of the marital estate because Islamic Law makes no provision for a marital estate, community property or separate property. Nathan B. Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 306, 311 (2011); Nathan B. Oman, *Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization*, 45 Wake Forest L. Rev. 579, 590 (2010) ("There is nothing in Islamic law analogous to community or marital property."); Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 226 (2002) ("The Shari'a – whereby the wife is not permitted to work without permission but then is not allowed to claim ownership in anything that she does not herself earn – is so repugnant to public policy

that it outweighs any other choice-of-law concern.").

10. Violates S[redacted] M[redacted] A[redacted]'s right to remarry and maintain custody of her child.

11. Violates S[redacted] M[redacted] A[redacted]'s right under the Unites States Constitution to freedom of travel under the Privileges and Immunities Clause without the permission of her former spouse. U.S. Const. Art IV, sec. 2, cl. 1.

12. S[redacted] M[redacted] A[redacted] did not enter into the alleged arbitration provision voluntarily because Muslim women do not have the right or freedom to contract for themselves. Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 231 (2002).

II. Objections to the alleged prenuptial agreement as a whole.

The agreement as a whole is substantively unconscionable, illegal, and against the public policy of the State of Texas for the following reasons:

1. Changes the application of the laws of the State of Texas to Islamic Law. *Tex. Att'y Gen. Op. No. KP-0094* (2016); Tex. Civ. Prac. & Rem. Code §22.0041. Texas courts should decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort

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2. Violates the Establishment Clause which requires separation of government determination from religious activities under the United States Constitution and the Texas Constitution in that the arbitration agreement requires the application of Islamic Law in a court of the United States and the State of Texas with complete disregard of the laws of the State of Texas. Shiva Falsafi*, Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1926 (2014): Allison Gerli, *Living Happily Ever After in a Land of Separate Church and State: Treatment of Islamic Marital Contracts*, 26 J. Am. Acad. Matrim. Law 113, 119 (2013); Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 214-15 (2002) ("The question of whether the couple meant to waive community property and equitable distribution rules implicates the Establishment Clause because interpreting mahr agreements necessarily entails an analysis of Islamic religious doctrine.").

3. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the

United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law limits the rights of a woman to obtain a divorce absent consent of the husband and applies the laws differently to women versus men. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1918, 1933 (2014). "The Quran gives married men a right to divorce their wives. Nothing in the Quran gives married women the same right. In the Islamic law on divorce, in keeping with the Quran's provision, the husband has a unilateral right to obtain a divorce." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 553 (2016).

4. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law means that the weight and credibility of the evidence provided by S[redacted] M[redacted] A[redacted] will be half of that of any male who testifies of provides evidence, including A[redacted] H[redacted] L[redacted]. Thus, S[redacted] M[redacted] A[redacted] will not be meaningfully heard nor afforded a meaningful opportunity to present evidence material to the controversy and cross-examine any witnesses. "In Islamic law, the rules concerning witness testimony discriminate between men and women.

For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness, whereas a woman is not." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 554 (2016). "Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 499 (2013). "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal Protection Clause." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 512 (2013).

5. Violates S[redacted] M[redacted] A[redacted]'s right to Due Process under the United States Constitution and Due Course of Law under the Texas Constitution and Texas Civil Practice and Remedies Code §171.047 in that she will not have a meaningful right to be heard and present evidence material to the controversy and cross-examine any witnesses. "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness, whereas a woman is not." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 554 (2016). "Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 499 (2013). "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's

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9. Violates S[redacted] M[redacted] A[redacted]'s right to a just and right division of the marital estate because Islamic Law makes no provision for a marital estate, community property or separate property. Nathan B. Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 306, 311 (2011); Nathan B. Oman, *Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization*, 45 Wake Forest L. Rev. 579, 590 (2010) ("There is nothing in Islamic law analogous to community or marital property."); Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 226 (2002) ("The Shari'a – whereby the wife is not permitted to work

without permission but then is not allowed to claim ownership in anything that she does not herself earn – is so repugnant to public policy that it outweighs any other choice-of-law concern.").

10. Violates S[redacted] M[redacted] A[redacted]'s right to remarry and maintain custody of her child.

11. Violates S[redacted] M[redacted] A[redacted]'s right under the Unites States Constitution to freedom of travel under the Privileges and Immunities Clause without the permission of her former spouse. U.S. Const. Art IV, sec. 2, cl. 1.

12. Misinterprets the alleged agreement as a premarital agreement negotiated in contemplation of marriage; instead, the alleged agreement IS the marriage itself. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1917 (2014) ("…[T]he Qur'an defines the mahr as a gift to the bride for entering into the marriage contract, and not as a vehicle for apportioning property and resources at the time of divorce.); Nathan B. Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 321-22 (2011).

13. No disclosure of assets and liabilities was made between the parties and none was waived; thus, it is invalid as a premarital agreement under the laws of the State of Texas. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1917 (2014)

(…[T]here is neither a requirement for the 'fair and reasonable disclosure of the property' nor much sanction against what might be considered unconscionable behavior under statutory prenuptial regimes.")

14. S[redacted] M[redacted] A[redacted] did not enter into the alleged prenuptial agreement voluntarily because Muslim women do not have the right or freedom to contract for themselves. Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 231 (2002).

Upon a finding that the agreement is unconscionable, the question of a fair disclosure or waiver thereof is considered. The agreement did not provide that S[redacted] M[redacted] A[redacted] knowingly waive her rights under the Texas Constitution to a determination of the community property and separate property of the marital estate of the parties.

Further, S[redacted] M[redacted] A[redacted] did not sign the alleged arbitration agreement voluntarily. Instead, it was presented to her during the wedding ceremony for the first time where she was forced to sign it without reading it or having a meaningful opportunity to negotiate its contents.

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Respectfully submitted,

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Certificate of Service

I certify that a true copy of the *First Amended Notice Of Intent To Oppose Arbitration Award* was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 25, 2021 as follows:

Jeffrey O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

_____
MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stefanie Henderson on behalf of Michelle O'Neil
Bar No. 13260900
stefanie@owlawyers.com
Envelope ID: 53799951
Status as of 5/25/2021 4:24 PM CST

Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Linda CLowe		linda@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Lacee Greer		lacee@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
David H. Findley	24040901	david@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

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Michelle O'Neil		michelle@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Lisa Gray		lisa@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Stefanie Henderson		stefanie@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Mark RushWilliamson		mark@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Marisa Laney		marisa@owlawyers.com	5/25/2021 3:48:48 PM	SENT
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Filed: 5/25/2021 3:48 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53799951

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
S[redacted] M[redacted] A[redacted]	§	
AND	§	**416th JUDICIAL DISTRICT**
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

S[redacted] M[redacted] A[redacted]'S SECOND AMENDED ANSWER TO ORIGINAL COUNTERPETITION FOR DIVORCE

S[redacted] M[redacted] A[redacted], Counterrespondent, files this *Second Amended Answer to Original Counterpetition for Divorce and Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel.*

1. General Denial

S[redacted] M[redacted] A[redacted] denies the allegations of the *Second Amended Answer to Original Counterpetition for Divorce.*

2. Verified Denials

Subject to and without waiving the foregoing General Denial, S[redacted] M[redacted] A[redacted] enters the following verified denials:

a. S[redacted] M[redacted] A[redacted] denies the alleged agreement contains a valid and enforceable arbitration clause.

b. S[redacted] M[redacted] A[redacted] denies that the alleged arbitration clause is valid or enforceable.

c. The written agreement is without consideration.

d. S[redacted] M[redacted] A[redacted] denies that the alleged *Islamic Pre-Nuptial Agreement* is a valid contract.

e. S[redacted] M[redacted] A[redacted] denies that the alleged *Islamic Pre-Nuptial Agreement* is enforceable as a premarital agreement.

f. S[redacted] M[redacted] A[redacted] denies the enforceability of the alleged *Islamic Pre-Nuptial Agreement* as a premarital agreement pursuant to Tex. Fam. Code 4.003.

3. Affirmative Defenses

Subject to and without waiving the foregoing general denial and verified denial, S[redacted] M[redacted] A[redacted] asserts the following affirmative defenses to the alleged arbitration clause, the alleged agreement as a whole, and/or the case in chief under Rule 94 of the Texas Rules of Civil Procedure:

a. Unconscionability;

b. Constitutionality;

c. ambiguity;

d. duress;

e. estoppel;

f. failure of consideration;

g. fraud;

h. illegality;

i. waiver;

j. material breach; and

k. Statute of Frauds.

4. Special Defenses to the Alleged Arbitration Clause

Subject to and without waiving the foregoing general denial, verified denials, and affirmative defenses, S[redacted] M[redacted] A[redacted] asserts the following special defenses. The alleged arbitration provision is substantively unconscionable, illegal, and against the public policy of the State of Texas for the following reasons:

1. Changes the application of the laws of the State of Texas to Islamic Law. *Tex. Att'y Gen. Op. No. KP-0094* (2016); Tex. Civ. Prac. & Rem. Code §22.0041. Texas courts should decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). "[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App. – Houston [1st Dist.] 2019, no pet.), citing *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App. – Fort Worth 1982, no writ).

2. Violates the Establishment Clause which requires separation of government determination from religious activities under the United States Constitution and the Texas Constitution in that the arbitration agreement requires the application of Islamic Law in a court of the United States and the State of Texas with complete disregard of the

laws of the State of Texas. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1926 (2014): Allison Gerli, *Living Happily Ever After in a Land of Separate Church and State: Treatment of Islamic Marital Contracts*, 26 J. Am. Acad. Matrim. Law 113, 119 (2013); Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 214-15 (2002) ("The question of whether the couple meant to waive community property and equitable distribution rules implicates the Establishment Clause because interpreting mahr agreements necessarily entails an analysis of Islamic religious doctrine.").

3. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law limits the rights of a woman to obtain a divorce absent consent of the husband and applies the laws differently to women versus men. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1918, 1933 (2014). "The Quran gives married men a right to divorce their wives. Nothing in the Quran gives married women the same right. In the Islamic law on divorce, in keeping with the Quran's provision, the husband has a unilateral right to obtain a divorce." Barbara Massie, *Examining the*

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Subject to and without waiving the foregoing general denial, verified denials, and affirmative defenses, S[redacted] M[redacted] A[redacted] asserts the following special defenses. The agreement as a whole is substantively unconscionable, illegal, and against the public policy of the State of Texas for the following reasons:

1. Changes the application of the laws of the State of Texas to Islamic Law. *Tex. Att'y Gen. Op. No. KP-0094* (2016); Tex. Civ. Prac. & Rem. Code §22.0041. Texas courts should decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). "[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App. – Houston [1st Dist.] 2019, no pet.), citing *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App. – Fort Worth 1982, no writ).

2. Violates the Establishment Clause which requires separation of government determination from religious activities under the United States Constitution and the Texas Constitution in that the arbitration agreement requires the application of Islamic Law in a court of the United States and the State of Texas with complete disregard of the laws of the State of Texas. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1926 (2014): Allison Gerli, *Living Happily Ever After in a Land of Separate Church and State: Treatment of Islamic Marital Contracts*, 26 J. Am. Acad. Matrim. Law 113, 119 (2013); Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 214-15 (2002) ("The question of whether the couple meant to waive community property and equitable distribution rules implicates the Establishment Clause because interpreting mahr agreements necessarily entails an analysis of Islamic religious doctrine.").

3. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law limits the rights of a woman to obtain a divorce absent consent of the husband and applies the laws differently to women versus men. Shiva Falsafi, *Religion, Women, and the Holy*

Grail of Legal Pluralism, 35 Cardozo L. Rev. 1881, 1918, 1933 (2014). "The Quran gives married men a right to divorce their wives. Nothing in the Quran gives married women the same right. In the Islamic law on divorce, in keeping with the Quran's provision, the husband has a unilateral right to obtain a divorce." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 553 (2016).

4. Violates S[redacted] M[redacted] A[redacted]'s right to Equal Protection under the United States Constitution and the Texas Constitution as well as Texas Civil Practice and Remedies Code §171.047 in that the application of Islamic Law means that the weight and credibility of the evidence provided by S[redacted] M[redacted] A[redacted] will be half of that of any male who testifies of provides evidence, including A[redacted] H[redacted] L[redacted]. Thus, S[redacted] M[redacted] A[redacted] will not be meaningfully heard nor afforded a meaningful opportunity to present evidence material to the controversy and cross-examine any witnesses. "In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness,

whereas a woman is not." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 554 (2016). "Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 499 (2013). "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal Protection Clause." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 512 (2013).

5. Violates S[redacted] M[redacted] A[redacted]'s right to Due Process under the United States Constitution and Due Course of Law under the Texas Constitution and Texas Civil Practice and Remedies Code §171.047 in that she will not have a meaningful right to be heard and present evidence material to the controversy and cross-examine any witnesses.

"In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: 'And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her.' Apparently, a man is presumed to be a competent witness, whereas a woman is not." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 554 (2016). "Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying Islamic Law Under the New York Convention*, 98 Cornell L. Rev. 493, 499 (2013). "Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal Protection Clause." Saad U. Rizwan, *Foreseeable Issues and Hard Questions: The Implications of U.S. Courts Recognizing and Enforcing Foreign Arbitral Awards Applying*

Islamic Law Under the New York Convention, 98 Cornell L. Rev. 493, 512 (2013).

6. Violates S[redacted] M[redacted] A[redacted]'s right to obtain a divorce and dissolution of her marriage because Islamic Law limits the rights of a woman to seek divorce. Nathan B. Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 302 (2011). "The Quran gives married men a right to divorce their wives. Nothing in the Quran gives married women the same right. In the Islamic law on divorce, in keeping with the Quran's provision, the husband has a unilateral right to obtain a divorce." Barbara Massie, *Examining the Foundations: Comparing Islamic Law and the Common Law of the United States*, 11 Liberty U.L. Rev. 525, 553 (2016).

7. Violates the rights of the child of the parties to a determination on the best interest of the child standard according to Texas Family Code §153.002 because Islamic Law does not consider the best interest of the child in making determinations regarding conservatorship. Instead, Islamic Law determines conservatorship based on a formulaic determination of the age of the child and the gender of the parent.

8. Violates the public policy of the State of Texas. Texas courts should decline to apply Islamic law when "[t]he harshness of such a result … runs so counter to our notions of good morals and natural justice that

we hold that Islamic law in this situation need not be applied." *Seth v. Seth*, 694 S.W.2d 459, 463 (Tex. App. – Fort Worth 1985, no writ). "[A] court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Broussard v. Arnel*, 596 S.W.3d 911, 917 (Tex. App. – Houston [1st Dist.] 2019, no pet.), citing *Seth v. Seth*, 695 S.W.2d 459, 462-64 (Tex. App. – Fort Worth 1982, no writ).

9. Violates S[redacted] M[redacted] A[redacted]'s right to a just and right division of the marital estate because Islamic Law makes no provision for a marital estate, community property or separate property. Nathan B. Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 306, 311 (2011); Nathan B. Oman, *Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization*, 45 Wake Forest L. Rev. 579, 590 (2010) ("There is nothing in Islamic law analogous to community or marital property."); Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 226 (2002) ("The Shari'a – whereby the wife is not permitted to work without permission but then is not allowed to claim ownership in anything that she does not herself earn – is so repugnant to public policy that it outweighs any other choice-of-law concern.").

10. Violates S[redacted] M[redacted] A[redacted]'s right to remarry and maintain

custody of her child.

11. Violates S[redacted] M[redacted] A[redacted]'s right under the Unites States Constitution to freedom of travel under the Privileges and Immunities Clause without the permission of her former spouse. U.S. Const. Art IV, sec. 2, cl. 1.

12. Misinterprets the alleged agreement as a premarital agreement negotiated in contemplation of marriage; instead, the alleged agreement IS the marriage itself. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1917 (2014) ("…[T]he Qur'an defines the mahr as a gift to the bride for entering into the marriage contract, and not as a vehicle for apportioning property and resources at the time of divorce.); Nathan B. Oman, *How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts*, 2011 Utah L. Rev. 287, 321-22 (2011).

13. No disclosure of assets and liabilities was made between the parties and none was waived; thus, it is invalid as a premarital agreement under the laws of the State of Texas. Shiva Falsafi, *Religion, Women, and the Holy Grail of Legal Pluralism*, 35 Cardozo L. Rev. 1881, 1917 (2014) (…[T]here is neither a requirement for the 'fair and reasonable disclosure of the property' nor much sanction against what might be considered unconscionable behavior under statutory prenuptial regimes.")

14. S M A did not enter into the alleged prenuptial agreement voluntarily because Muslim women do not have the right or freedom to contract for themselves. Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women*, 76 S. Cal. L. Rev. 189, 231 (2002).

Upon a finding that the agreement is unconscionable, the question of a fair disclosure or waiver thereof is considered. The agreement did not provide that S M A knowingly waived her rights under the Texas Constitution to a determination of the community property and separate property of the marital estate of the parties.

Further, S M A did not sign the alleged arbitration agreement voluntarily. Instead, it was presented to her during the wedding ceremony for the first time where she was forced to sign it without reading it or having a meaningful opportunity to negotiate its contents.

6. *Attorney's Fees*

It was necessary to secure the services of Michelle May O'Neil and O'Neil Wysocki, P.C., licensed attorneys, to defend this suit. A H L should be ordered to pay a reasonable attorney's fee, and judgment should be rendered against A H L in favor of this attorney.

[INTENTIONALLY LEFT BLANK]

7. Prayer

S[redacted] MARIAM A[redacted] prays that the Court deny A[redacted] H[redacted] L[redacted] F's *Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel,* and that S[redacted] M[redacted] A[redacted] recover all attorney's fees and costs incurred.

Respectfully submitted,

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By: _____
MICHELLE MAY O'NEIL
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michelle@owlawyers.com
MARK RUSH WILLIAMSON
State Bar No. 21624650
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Attorney for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of this *S[redacted] M[redacted] A[redacted]s Second Amended Answer to Original Counterpetition for Divorce* was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on May 25, 2021:

Jeffery O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Verification

The undersigned states under oath: "I am the Counterrespondent in this case. I have read the above S[redacted] M[redacted] A[redacted]'s *Second Amended Answer to Original Counterpetition for Divorce*. The statements contained in paragraphs 3 through 9 in the *Second Amended Answer to Original Counterpetition for Divorce* are within my personal knowledge and are true and correct."

[redacted]

S[redacted] M[redacted] Ayad

State of Texas §
County of Dallas §

SIGNED under oath before me on the 25th day of May, 2021.

Stefanie Henderson

Notary Public, State of Texas

STEFANIE JEAN ANN HENDERSON NOTARY PUBLIC STATE OF TEXAS ID 13141294-2 EXP. 01-17-2022

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stefanie Henderson on behalf of Michelle O'Neil
Bar No. 13260900
stefanie@owlawyers.com
Envelope ID: 53799951
Status as of 5/25/2021 4:24 PM CST

Associated Case Party: A[redacted]H[redacted]L[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Lacee Greer		lacee@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Linda CLowe		linda@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT
David H. Findley	24040901	david@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
Michelle O'Neil		michelle@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Lisa Gray		lisa@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Stefanie Henderson		stefanie@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Mark RushWilliamson		mark@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Marisa Laney		marisa@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Claire Brown		claire@owlawyers.com	5/25/2021 3:48:48 PM	SENT

Filed: 5/25/2021 3:48 PM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53799951

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
S M A	§	
AND	§	**416th JUDICIAL DISTRICT**
A H L	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

SECOND AMENDED PETITION FOR DIVORCE

1. Discovery Level

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. Parties

This suit is brought by S M A, Petitioner. The last three numbers of S M A's driver's license number are 825. The last three numbers of S M A's Social Security number are 994.

A H L is Respondent.

3. Domicile

S M A has been a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding ninety-day period.

4. Service

Service of this document may be had in accordance with Rule 21a, Texas Rules of Civil Procedure, by serving A H L's attorney of record,

Jeffery O. Anderson; Orsinger, Nelson, Downing, & Anderson; 2600 Network Blvd., Suite 200, Frisco, Texas 75034.

5. Protective Order Statement

No protective order under title 4 of the Texas Family Code, protective order under subchapter A of Chapter 7B of the Texas Code of Criminal Procedure, or order for emergency protection under Article 17.292 of the Texas Code of Criminal Procedure is in effect in regard to a party to this suit or a child of a party to this suit and no application for any such order is pending.

6. Dates of Marriage and Separation

The parties were married on or about December 26, 2008 and ceased to live together as spouses on or about January 25, 2021.

7. Grounds for Divorce

The marriage has become insupportable because of discord or conflict of personalities between S[redacted] M[redacted] A[redacted] and A[redacted] H[redacted] L[redacted] that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

8. Children of the Marriage

S[redacted] M[redacted] A[redacted] and A[redacted] H[redacted] L[redacted] are parents of the following child of this marriage who is not under the continuing jurisdiction of any other court:

Name: A[redacted] A[redacted] A[redacted] (hereinafter "A.A.A.")
Sex: Male
Birth date: [redacted]

There are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships affecting the child the subject of this suit.

Information required by section 154.181(b) and section 154.1815 of the Texas Family Code will be supplemented upon request.

No property of consequence is owned or possessed by the child the subject of this suit.

S M A and A H L, on final hearing, should be appointed joint managing conservators. S M A requests the Court to apportion the rights and duties of a parent set out in section 153.132 of the Texas Family Code.

S M A should be designated as the conservator who has the exclusive right to designate the primary residence of the child. The primary residence of the child should be restricted to Collin County, Texas. The Court should award S M A the exclusive right to enroll the child in school. A H L should be ordered to provide support for the child, including the payment of child support and medical and dental support in the manner specified by the Court. S M A requests that the payments for the support of the child survive the death of A H L and become the obligations of A H L's estate.

9. Denial of Alleged Arbitration Clause

S M A denies the validity and enforceability of the alleged arbitration provisions in the alleged prenuptial agreement for the reasons and on

the grounds stated in her *Second Amended Answer to Original Counterpetition for Divorce* (and any subsequent revised pleadings thereafter) incorporated by reference as if set forth in full.

10. Denial of Alleged Premarital Agreement

S M A denies the validity and enforceability of the alleged prenuptial agreement for the reasons and on the grounds stated in her Second Amended Answer to Original Counterpetition for Divorce (and any subsequent revised pleadings thereafter) incorporated by reference as if set forth in full.

11. Division of Community Property

S M A believes the parties will enter into an agreement for the division of their estate. If such an agreement is made, S M A requests the Court to approve the agreement and divide their estate in a manner consistent with the agreement. If such an agreement is not made, S M A requests the Court to divide their estate in a manner that the Court deems just and right, as provided by law.

S M A should be awarded a disproportionate share of the parties' estate for the following reasons, including but not limited to:

a. disparity of earning power of the spouses and their ability to support themselves;

b. the spouse to whom conservatorship of the child is granted;

c. earning power, business opportunities, capacities, and abilities of the spouses; and

d. attorney's fees to be paid.

12. Separate Property

S[redacted] M[redacted] A[redacted] owns certain separate property that is not part of the community estate of the parties, and S[redacted] M[redacted] A[redacted] requests the Court to confirm that separate property as S[redacted] M[redacted] A[redacted]'s separate property and estate.

13. Postdivorce Maintenance

S[redacted] M[redacted] A[redacted] requests the Court to order that S[redacted] M[redacted] A[redacted] be paid postdivorce maintenance for a reasonable period in accordance with chapter 8 of the Texas Family Code.

14. Request for Temporary Orders and Injunction

S[redacted] M[redacted] A[redacted] requests that A[redacted] H[redacted] L[redacted] be authorized only as follows:

To make expenditures and incur indebtedness for reasonable and necessary living expenses for food, clothing, shelter, transportation, and medical care.

To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.

To make withdrawals from accounts in financial institutions only for the purposes authorized by the Court's order.

To engage in acts reasonable and necessary to conduct A[redacted] H[redacted] L[redacted]'s usual business and occupation.

15. Request for Temporary Orders Regarding Child

S[redacted] M[redacted] A[redacted] requests the Court, after notice and hearing, to

dispense with the necessity of a bond and to make temporary orders and issue any appropriate temporary injunctions for the safety and welfare of the child of the marriage as deemed necessary and equitable, including but not limited to the following:

Appointing S[redacted] M[redacted] A[redacted] and A[redacted] H[redacted] L[redacted] temporary joint managing conservators, and designating S[redacted] M[redacted] A[redacted] as the conservator who has the exclusive right to designate the primary residence of the child. S[redacted] M[redacted] A[redacted] requests the Court to apportion the rights and duties of a parent set out in section 153.132 of the Texas Family Code.

Ordering A[redacted] H[redacted] L[redacted] to provide support for the child, including the payment of child support and medical and dental support in the manner specified by the Court, while this case is pending.

Ordering reasonable periods of electronic communication between the child and S[redacted] M[redacted] A[redacted] to supplement S[redacted] M[redacted] A[redacted]'s periods of possession of the child.

Restricting the primary residence of the child to Collin County, Texas.

Awarding S[redacted] M[redacted] A[redacted] the exclusive right to enroll the child in school.

Ordering A[redacted] H[redacted] L[redacted] to produce copies of income tax returns for tax year 2019 and 2020, a financial statement, and current pay stubs by a date certain.

16. Collin County Standing Orders

S M A has attached to this petition the *Collin County Standing Order Regarding Children, Property, and Conduct of the Parties* dated January 8, 2021. *See* Exhibit "A". S M A requests the Court to make the *Collin County Standing Order Regarding Children, Property, and Conduct of Parties* temporary injunctions upon the parties effective immediately.

17. Attorney's Fees, Expenses, Costs, and Interest

It was necessary for S M A to secure the services of Michelle May O'Neil and O'Neil Wysocki, P.C., licensed attorneys, to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the child, judgment for attorney's fees, expenses, and costs through trial and appeal should be granted against A H L and in favor of S M A for the use and benefit of S M A's attorney and be ordered paid directly to S M A's attorney, who may enforce the judgment in the attorney's own name. S M A requests postjudgment interest as allowed by law.

18. Prayer

S M A prays that citation and notice issue as required by law and that the Court grant a divorce and all other relief requested in this petition.

S M A prays that the Court, after notice and hearing, grant a temporary injunction enjoining A H L, in conformity with

the allegations of this petition, from the acts set forth above while this case is pending.

S[redacted] MARIAM A[redacted] prays for attorney's fees, expenses, and costs as requested above.

S[redacted] M[redacted] A[redacted] prays for general relief.

Respectfully submitted,

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By: _____
MICHELLE MAY O'NEIL
State Bar No. 13260900
michelle@owlawyers.com
Attorney for S[redacted] M[redacted] A[redacted]

Certificate of Service

I certify that a true copy of the *Second Amended Petition for Divorce* was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 25, 2021 as follows:

Jeffrey O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Verification

The undersigned states under oath: "I am the Petitioner in this case. I have read the above *Second Amended Petition for Divorce*. The statements contained in paragraph 14 and 15 in the *Second Amended Petition for Divorce* are within my personal knowledge and are true and correct."

[redacted]

S[redacted] M[redacted] A[redacted]

State of Texas §
County of Dallas §

SIGNED under oath before me on the 25th day of May, 2021.

Stefanie Henderson
Notary Public, State of Texas

EXHIBIT
A

199th Judicial District, Hon. Angela Tucker
219th Judicial District, Hon. Jennifer Edgeworth
296th Judicial District, Hon. John Roach, Jr.
366th Judicial District, Hon. Tom Nowak
380th Judicial District, Hon. Benjamin N. Smith
401st Judicial District, Hon. George B. Flint

416th Judicial District, Hon. Andrea Thompson
417th Judicial District, Hon. Cynthia Wheless
429th Judicial District, Hon. Jill Renfro Willis
468th Judicial District, Hon. Lindsey Wynne
469th Judicial District, Hon. Piper McCraw
470th Judicial District, Hon. Emily A. Miskel
471st Judicial District, Hon. Andrea K. Bouressa

DISTRICT JUDGES
IN AND FOR
COLLIN COUNTY, TEXAS

STANDING ORDER ON CHILDREN, PROPERTY & CONDUCT OF PARTIES

On their own motion, the district judges issue this standing order, which shall apply to suits for dissolution of marriage and suits affecting the parent-child relationship, for the protection of the parties and their children, and for the preservation of their property.

1. SUITS FOR DISSOLUTION OF MARRIAGE

While a suit for dissolution of marriage is pending, it is ORDERED that each party is prohibited from:

1.1 Intentionally communicating in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, with the other party by use of vulgar, profane, obscene, or indecent language or in a coarse or offensive manner, with intent to annoy or alarm the other party;

1.2 Threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party;

1.3 Placing a telephone call, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm the other party;

1.4 Intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties or either party with intent to obstruct the authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;

1.5 Intentionally falsifying a writing or record, including an electronic record, relating to the property of either party;

1.6 Intentionally misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

1.7 Intentionally or knowingly damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

1.8 Intentionally or knowingly tampering with the tangible or intellectual property of the parties or either party, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party;

1.9 Unless specifically authorized by the Court:

1.9.1 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties or either party, regardless of whether the property is:

a) Personal property, real property, or intellectual property; or

b) Separate or community property;

1.9.2 Incurring any debt, other than legal expenses in connection with the suit for dissolution of marriage;

1.9.3 Withdrawing money from any checking or savings account in a financial institution for any purpose;

1.9.4 Spending any money in either party's possession or subject to either party's control for any purpose;

1.9.5 Withdrawing or borrowing money in any manner for any purpose from a retirement, profit sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party; or

1.9.6 Withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties;

1.10 Entering any safe deposit box in the name of or subject to the control of the parties or either party, whether individually or jointly with others;

1.11 Changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party or a child of the parties;

1.12 Cancelling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time the suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties;

1.13 Opening or diverting mail or e-mail or any other electronic communication addressed to the other party;

1.14 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party;

1.15 Taking any action to terminate or limit credit or charge credit cards in the name of the other party;

1.16 Discontinuing or reducing the withholding for federal income taxes from either party's wages or salary;

1.17 Destroying, disposing of, or altering any financial records of the parties, including a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement;

1.18 Destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

1.19 Modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;

1.20 Deleting any data or content from any social network profile used or created by either party or a child of the parties;

1.21 Using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account;

1.22 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance at the residence of either party, or in any manner attempting to withdraw any deposit paid in connection with any of those services;

1.23 Excluding the other party from the use and enjoyment of a specifically identified residence of the other party; or

1.24 Entering, operating, or exercising control over a motor vehicle in the possession of the other party.

2. SPECIFIC AUTHORIZATIONS

This standing order does not:

2.1 Exclude a party from occupying the party's residence;

2.2 Prohibit a party from spending funds for reasonable and necessary living expenses;

2.3 Prohibit a party from engaging in acts reasonable and necessary to conduct that party's usual business and occupation;

3. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

While a suit affecting the parent-child relationship is pending, it is ORDERED that each party is prohibited from:

3.1 During the pendency of an original suit, removing a child from the State of Texas for the purpose of changing the child's residence, acting directly or in concert with others, without the written agreement of the parties or an order from the presiding judge;

3.2 During the pendency of an original suit, disrupting or withdrawing a child from the school or day-care facility where the child is presently enrolled, without the written agreement of the parties or an order from the presiding judge;

3.3 During the pendency of an original suit, changing a child's current place of abode,

without the written agreement of the parties or an order from the presiding judge;

3.4 Hiding or secreting a child from the other parent; or

3.5 Disturbing the peace of a child

4. MANDATORY EXCHANGE OF INFORMATION

Within 30 days of a parent's appearance in a suit affecting the parent-child relationship, and before any hearing on temporary orders, each parent shall produce the following:

4.1 Information sufficient to accurately identify that parent's net resources and ability to pay child support;

4.2 Copies of income tax returns for the past two years, a financial statement, and current pay stubs;

4.3 Regarding each child's health insurance: the name of the carrier, the policy number, a copy of the policy and schedule of benefits, a health insurance membership card, and proof of the cost of the child's portion of the premiums; and

4.4 Regarding each child's dental insurance: the name of the carrier, the policy number, a copy of the policy and schedule of benefits, a dental insurance membership card, and proof of the cost of the child's portion of the premiums.

5. SERVICE & APPLICATION OF THIS ORDER

Each party must attach a copy of this order to the party's live pleading. This order is effective upon the filing of an original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the date of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of this court. This entire order will terminate and will no longer be effective when the court signs a final order or the case is dismissed.

6. EFFECT OF OTHER COURT ORDERS

If any part of this order conflicts with any part of a protective order, the protective order shall prevail. Any portion of this order not changed by a subsequent order remains in full force and effect until the court signs a final order.

7. MEDIATION

The parties are encouraged to settle their disputes amicably without court intervention. The parties are encouraged to use alternative dispute resolution methods, such as mediation, to resolve the conflicts that may arise in this lawsuit.

SIGNED ON THE 8TH DAY OF JANUARY, 2021.

HON. ANGELA TUCKER
199TH JUDICIAL DISTRICT COURT

HON. JENNIFER EDGEWORTH
219TH JUDICIAL DISTRICT COURT

HON. JOHN ROACH, JR.
296TH JUDICIAL DISTRICT COURT

HON. TOM NOWAK
366TH JUDICIAL DISTRICT COURT

HON. BENJAMIN N. SMITH
380TH JUDICIAL DISTRICT COURT

HON. GEORGE B. FLINT
401ST JUDICIAL DISTRICT COURT

HON. ANDREA THOMPSON
416TH JUDICIAL DISTRICT COURT

HON. CYNTHIA WHELESS
417TH JUDICIAL DISTRICT COURT

HON. JILL RENFRO WILLIS
429TH JUDICIAL DISTRICT COURT

HON. LINDSEY WYNNE
468TH JUDICIAL DISTRICT COURT

HON. PIPER MCCRAW
469TH JUDICIAL DISTRICT COURT

HON. EMILY A. MISKEL
470TH JUDICIAL DISTRICT COURT

HON. ANDREA K. BOURESSA
471ST JUDICIAL DISTRICT COURT

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Associated Case Party: A[redacted]H[redacted]L[redacted]

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David H. Findley	24040901	david@ondafamilylaw.com	5/25/2021 3:48:48 PM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

Name	BarNumber	Email	TimestampSubmitted	Status
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Stefanie Henderson		stefanie@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Mark RushWilliamson		mark@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Marisa Laney		marisa@owlawyers.com	5/25/2021 3:48:48 PM	SENT
Michelle O'Neil		michelle@owlawyers.com	5/25/2021 3:48:48 PM	SENT

Filed: 5/26/2021 9:27 AM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 53816913

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
S[redacted] M[redacted] A[redacted]	§	
AND	§	**416th JUDICIAL DISTRICT**
A[redacted] H[redacted] L[redacted]	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	**COLLIN COUNTY, TEXAS**

AMENDED NOTICE OF HEARING

NOTICE is hereby given to A[redacted] H[redacted] L[redacted] that a hearing has been set for **Friday, June 11, 2021 at 8:30 A.M.** at which time the 416th Judicial District Court of Collin County, Texas will consider:

- S[redacted] M[redacted] A[redacted]'s *Motion for Continuance* filed on May 13, 2021.
- S[redacted] M[redacted] A[redacted]'s *First Amended Motion to Bifurcate and for Separate Trials* filed on May 25, 2021.
- S[redacted] M[redacted] A[redacted]'s *First Amended Motion to Vacate or Reconsider Motion to Enforce Islam Pre-Nuptial Agreement* filed on May 25, 2021.
-

SIGNED on 5/26/2021.

Andrea S. Thompson | SJ
JUDGE/COURT COORDINATOR

Certificate of Service

I certify that a true copy of this *Amended Notice of Hearing* was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on May 26, 2021:

Jeffery O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

/s/Michelle May O'Neil
MICHELLE MAY O'NEIL
Attorney for S[redacted] M[redacted] A[redacted]

Automated Certificate of eService

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Lacee Greer		lacee@ondafamilylaw.com	5/26/2021 9:27:54 AM	SENT
Jamie Laird		jamie@ondafamilylaw.com	5/26/2021 9:27:54 AM	SENT

Associated Case Party: S[redacted]M[redacted]A[redacted]

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Claire Brown		claire@owlawyers.com	5/26/2021 9:27:54 AM	SENT
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Filed: 5/27/2021 11:22 AM
Lynne Finley
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Collin County, Texas
By Keri Crow Deputy
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NO. 416-50435-2021

IN THE MATTER OF	**§**	**IN THE DISTRICT COURT**
THE MARRIAGE OF	**§**	
	§	
SALMA MARIAM AYAD	**§**	
AND	**§**	**416TH JUDICIAL DISTRICT**
AYAD HASHIM LATIF	**§**	
	§	
AND IN THE INTEREST OF	**§**	
A.A.A., A CHILD	**§**	**COLLIN COUNTY, TEXAS**

SALMA MARIAM AYAD'S OBJECTIONS TO
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE JUDGE OF SAID COURT:

SALMA MARIAM AYAD, Petitioner, files her *Objections to Proposed Findings of Fact and Conclusions of Law*. This request is filed within ten (10) days of the date on which the proposed *Findings of Fact and Conclusions of Law* were filed.

I. Objections to Proposed Findings of Facts

SALMA MARIAM AYAD objects to the proposed findings of fact as follows:

1. SALMA MARIAM AYAD objects to the entirety of the proposed *Findings of Fact and Conclusions of Law* on the grounds that the findings of fact are conclusory in nature and not specific findings as to factual matters that were presented in evidence to support the Court's order as required by law. The findings of fact are a mere recitation of the Court's order. "The purpose of a request under [Tex. R. Civ. P. 296] is to 'narrow the bases of the judgment to only a portion of [the multiple] claims and defenses, thereby reducing the number of contentions that . . . must [be raised] on appeal.'" *Liberty Mut. Fire Ins. v. Laca*, 243 S.W.3d 791, 794 (Tex. App.–El Paso 2007, no pet.).

2. SALMA MARIAM AYAD objects to Finding of Fact 9 on the grounds that Imam Moujahed Bakhach was not designated as an expert.

3. SALMA MARIAM AYAD objects to Finding of Fact 9 on the grounds that no facts or evidence were presented at the hearing to find that Imam Moujahed Bakhach is qualified as an expert witness on Islamic Law.

4. SALMA MARIAM AYAD objections to Finding of Fact 9 on the grounds that it is conclusory and fails to state with specificity the actual facts and evidence relied upon.

5. SALMA MARIAM AYAD objects to Finding of Fact 10 on the grounds that Imam Moujahed Bakhach was not designated as an expert.

6. SALMA MARIAM AYAD objects to Finding of Fact 10 on the grounds that no facts or evidence were presented at the hearing to find that Imam Moujahed Bakhach's testimony established that the arbitration procedure contained in the Islamic Pre-Nuptial Agreement is both procedurally and substantively fair and equitable to both Petitioner and Respondent.

7. SALMA MARIAM AYAD objects to Finding of Fact 10 on the grounds that Imam Moujahed Bakhach's testimony is insufficient to find that the arbitration procedure contained in the Islamic Pre-Nuptial Agreement is both procedurally and substantively fair and equitable to both Petitioner and Respondent.

8. SALMA MARIAM AYAD objections to Finding of Fact 10 on the grounds that it is conclusory and fails to state with specificity the actual facts and evidence relied upon.

9. SALMA MARIAM AYAD objects to Finding of Fact 11 on the grounds that the trial court denied SALMA MARIAM AYAD the opportunity to present controverting evidence as to the procedural and substantive fairness of the arbitration proceeding established by the parties in the *Islamic Pre-Nuptial Agreement.*

10. SALMA MARIAM AYAD objects to Finding of Fact 12 on the grounds that the trial court denied SALMA MARIAM AYAD the opportunity to present controverting evidence that the agreement to arbitrate was procured by fraud or duress.

II. Objections to Proposed Conclusions of Law

SALMA MARIAM AYAD objects to the proposed conclusions of law as follows:

1. SALMA MARIAM AYAD objects to Conclusion of Law 2 on the grounds that no evidence was presented at the hearing to support the conclusion as a matter of law.

2. SALMA MARIAM AYAD objects to Conclusion of Law 2 on the grounds that no evidence was presented to establish as a matter of law that the *Islamic Pre-Nuptial Agreement* meets the requirements under the Texas Family Code.

3. SALMA MARIAM AYAD objects to Conclusion of Law 4 on the grounds that there is no evidence to support the conclusion as a matter of law in that the trial court denied Petitioner the right to present evidence at the hearing.

4. SALMA MARIAM AYAD objects to Conclusion of Law 5 on the grounds that there is no evidence to support the conclusion as a matter of law.

5. SALMA MARIAM AYAD objects to Conclusion of Law 5 on the grounds that the finding is conclusory and no evidence was presented to establish as a matter of law that the *Islamic Pre-Nuptial Agreement* contained a valid arbitration clause.

6. SALMA MARIAM AYAD objects to Conclusion of Law 7 on the grounds that no evidence was presented at the hearing to support the conclusion as a matter of law.

7. SALMA MARIAM AYAD objects to Conclusion of Law 8 on the grounds that no evidence was presented at the hearing to support the conclusion as a matter of law.

8. SALMA MARIAM AYAD objects to Conclusion of Law 9 on the grounds that no evidence was presented at the hearing to support the conclusion as a matter of law.

9. SALMA MARIAM AYAD objects to Conclusion of Law 10 on the grounds that no evidence was presented at the hearing to support the conclusion as a matter of law.

10. SALMA MARIAM AYAD objects to Conclusion of Law 11 on the grounds that no evidence was presented at the hearing to support the conclusion as a matter of law.

11. SALMA MARIAM AYAD objects to Conclusion of Law 12 on the grounds that no evidence was presented at the hearing to support the conclusion as a matter of law.

12. SALMA MARIAM AYAD objects to Conclusion of Law 13 on the grounds that no evidence was presented at the hearing to support the conclusion as a matter of law.

13. SALMA MARIAM AYAD objects to Conclusion of Law 20 on the grounds that the evidence is insufficient to support the conclusion as a matter of law in that the trial court denied Petitioner the right to present evidence.

14. SALMA MARIAM AYAD objects to Conclusion of Law 21 on the grounds that the evidence is insufficient to support the conclusion as a matter of law in that the trial court denied Petitioner the right to present evidence.

15. SALMA MARIAM AYAD objects to Conclusion of Law 25 on the grounds that Respondent presented no evidence or argument to support the conclusion as a matter of law.

16. SALMA MARIAM AYAD objects to Conclusion of Law 25 on the grounds that Respondent presented no evidence to establish as a matter of law that the method of appointing arbitrators in the *Islamic Pre-Nuptial Agreement* is valid under Texas law.

17. SALMA MARIAM AYAD objects to Conclusion of Law 30 on the grounds that the evidence is insufficient to support the conclusion as a matter of law in that the trial court denied Petitioner the right to present evidence.

Respectfully submitted,

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By: _____
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michael@owlawyers.com
MARK RUSH WILLIAMSON
State Bar No. 21624650
mark@owlawyers.com
Attorneys for SALMA MIRIAM AYAD

Certificate of Service

I certify that a true copy of this *Salma Miriam Ayad's Objections to Proposed Findings of Fact and Conclusions of Law* was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on May 27, 2021:

Jeffery O. Anderson by electronic filing manager.

Niles Illich by electronic filing manager.

Elisse Woelfel by electronic filing manager.

MICHELLE MAY O'NEIL
Attorney for SALMA MARIAM AYAD

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Lacee Greer		lacee@ondafamilylaw.com	5/27/2021 11:22:53 AM	SENT
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Associated Case Party: SalmaMariamAyad

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Claire Brown		claire@owlawyers.com	5/27/2021 11:22:53 AM	SENT
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Lisa Gray		lisa@owlawyers.com	5/27/2021 11:22:53 AM	SENT
Stefanie Henderson		stefanie@owlawyers.com	5/27/2021 11:22:53 AM	SENT
Mark RushWilliamson		mark@owlawyers.com	5/27/2021 11:22:53 AM	SENT
Marisa Laney		marisa@owlawyers.com	5/27/2021 11:22:53 AM	SENT

Filed: 5/27/2021 1:21 PM
Lynne Finley
District Clerk
Collin County, Texas
By Keri Crow Deputy
Envelope ID: 53879993

NO. 416-50435-2021

IN THE MATTER OF	**§**	**IN THE DISTRICT COURT**
THE MARRIAGE OF	**§**	
	§	
SALMA MARIAM AYAD	**§**	
AND	**§**	**416TH JUDICIAL DISTRICT**
AYAD HASHIM LATIF	**§**	
	§	
AND IN THE INTEREST OF	**§**	
A.A.A., A CHILD	**§**	**COLLIN COUNTY, TEXAS**

ORDER OF STAY

IT IS ORDERED that the bench trial set for June 25, 2021 at 9:00 A.M. is hereby STAYED until further order of the Court.

SIGNED on 5/27/2021.

Andrea S. Thompson
JUDGE PRESIDING

APPROVED AS TO FORM:

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

/s/ Michelle May O'Neil
MICHELLE MAY O'NEIL
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Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Jamie Laird		jamie@ondafamilylaw.com	5/27/2021 1:21:59 PM	SENT

Associated Case Party: SalmaMariamAyad

Name	BarNumber	Email	TimestampSubmitted	Status
Claire Brown		claire@owlawyers.com	5/27/2021 1:21:59 PM	SENT
Michelle O'Neil		michelle@owlawyers.com	5/27/2021 1:21:59 PM	SENT
Lisa Gray		lisa@owlawyers.com	5/27/2021 1:21:59 PM	SENT
Stefanie Henderson		stefanie@owlawyers.com	5/27/2021 1:21:59 PM	SENT
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Case Contacts

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Filed: 6/8/2021 11:45 AM
Lynne Finley
District Clerk
Collin County, Texas
By Keri Crow Deputy
Envelope ID: 54203367

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	**IN THE DISTRICT COURT**
SALMA MARIAM AYAD AND AYAD HASHIM LATIF	§	**416TH JUDICIAL DISTRICT**
AND IN THE INTEREST OF A[redacted] A[redacted] A[redacted], A CHILD	§	**COLLIN COUNTY, TEXAS**

MOTION FOR CONTINUANCE OF JUNE 11, 2021 HEARING

This *Motion for Continuance of June 11, 2021 Hearing* is brought by AYAD HASHIM LATIF, Respondent, who shows in support:

1. This case is presently set for a hearing on June 11, 2021 on the following motions filed by Petitioner, SALMA MARIAM AYAD:

   a. Motion for Continuance filed on May 13, 2021;

   b. First Amended Motion to Bifurcate and for Separate Trials filed on May 25, 2021; and

   c. First Amended Motion to Vacate or Reconsider Motion to Enforce Islam Pre-Nuptial Agreement and Refer Case to Muslim Court or Fiqh Panel filed on May 25, 2021.

2. The Court held a hearing on Respondent's Motion to Enforce Islam Pre-Nuptial Agreement and Refer Case to Muslim Court or Fiqh Panel on March 22, 2021. At that hearing, the Court heard testimony from Imam Moujahed Bakhach, a prominent Imam in North Texas, about the Fiqh Panel process and how the panel applies Islamic principles to resolve disputes between Muslims. Imam Bakhach is unavailable to testify on June 11, 2021 because that date is a Friday,

the Muslim holy day, and Imam Bakhash's weekly duties and responsibilities as an Imam on Fridays prevent him from being able to be present at the hearing to testify.

3. Imam Bakhash's testimony is material to Respondent's request that the Court sustain its enforcement of the parties' arbitration agreement and enforce its referral of this case to the Fiqh Panel pursuant to that agreement. Petitioner's Motion to Vacate or Reconsider is largely based on her premise that the arbitration agreement is unconscionable. Imam Bakhash, an Imam for 39 years who has years of experience of mediating and arbitrating disputes between Muslims using Islamic principles, will testify about the procedures employed by a Fiqh Panel located in North Texas to ensure that the decisions of the Fiqh Panel are in conformance not only with Islam, but also with the laws of the United States and the State of Texas. Imam Bakhash will provide material testimony on how both spouses are treated equally before the Fiqh Panel and that the rights of both spouses are not infringed upon. Imam Bakhash will provide material testimony in rebuttal of claims made by Petitioner about Islamic principles and how they are applied in a family law context. Imam Bakhash will provide material testimony that Petitioner's statements in her motion either misapply or misstate Islamic principles.

4. Petitioner will not be harmed by a continuance of this hearing. The June 25, 2021, trial setting in this case was stayed by an Order of Stay signed by the Court on May 27, 2021, the stay has not been lifted, and the case has not yet been reset for trial.

5. This continuance is not sought solely for delay but that justice may be done.

AYAD HASHIM LATIF prays that the Court grant this *Motion for Continuance of June 11, 2021 Hearing.*

Respectfully submitted,

ORSINGER, NELSON, DOWNING & ANDERSON, L.L.P.
2600 Network Blvd., Suite 200
Frisco, Texas 75034
Tel: (214) 273-2400
Fax: (214) 273-2470

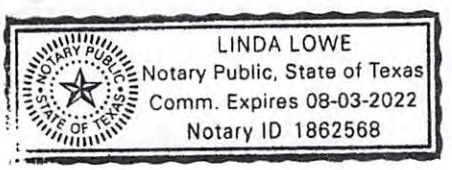
By: _____
Jeffrey O. Anderson
State Bar No. 00790232
jeff@ondafamilylaw.com
David H. Findley
State Bar No. 24040901
david@ondafamilylaw.com
Attorneys for AYAD HASHIM LATIF

Verification

The undersigned states under oath: "I am the attorney for the movant in the foregoing *Motion for Continuance*. I have read the motion. The statements contained in this motion are within my personal knowledge and are true and correct."

_____
Jeffrey O. Anderson

SIGNED under oath before me on June 8, 2021.



_____
Notary Public, State of Texas

Certificate of Conference

I have conferred with opposing counsel in an effort to resolve the issues contained in this motion without the necessity of Court intervention

Such efforts have been unsuccessful, and it is necessary to set a hearing on this motion.

Jeffrey O. Anderson
Attorney for AYAD HASHIM LATIF

CERTIFICATE OF SERVICE

I certify that a true copy of the above and foregoing was served on SALMA MARIAM AYAD by and through her attorneys of record, in accordance with the Texas Rules of Civil Procedure on June 8, 2021:

Michelle O'Neil
Mark Rush Williamson
O'Neil Wysocki, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Via Electronic Service: michelle@owlawyers.com;
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Jeffrey O. Anderson

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District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 54292817

NO. 416-50435-2021

IN THE MATTER OF	§	**IN THE DISTRICT COURT**
THE MARRIAGE OF	§	
	§	
SALMA MARIAM AYAD	§	
AND	§	**416TH JUDICIAL DISTRICT**
AYAD HASHIM LATIF	§	
	§	
AND IN THE INTEREST OF	§	
A[redacted] A[redacted]A[redacted], A CHILD	§	**COLLIN COUNTY, TEXAS**

BRIEF IN SUPPORT OF MOTION TO ENFORCE ISLAMIC PRENUPTIAL AGREEMENT AND REFER CASE TO MUSLIM COURT OR FIQH PANEL

NOW COMES AYAD HASHIM LATIF, Respondent, and files this his Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel. In support thereof, AYAD HASHIM LATIF respectfully shows the Court as follows:

I.
Preliminary Statement

On or about December 26, 2008, SALMA MARIAM AYAD and AYAD HASHIM LATIF entered into an Islamic Pre-Nuptial Agreement. A true and correct copy of the parties' Premarital Agreement is attached hereto as "**Exhibit A**," and is incorporated as if set forth fully herein.

In pertinent part, the parties' Premarital Agreement provides that –

> *"Any conflict which may arise between the husband and the wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in it's absence by a Fiqh Panel, which will consist of three Faqaihs (Muslim jurists and scholars), two of whom are to be appointed by the spouses (one for each spouse). The third Fiqh is to be appointed by the other two Faqihs and is to head the Panel. The appointees will not represent the parties in conflict, but rather, serve as impartial arbitrators and judges, guided by Islamic Law and it's principles.*
> *It is understood by both parties that the majority decision of the Fiqh Panel will be binding and final.*
>
> *In the case where a conflict is to be solved by a court of law in the United States or abroad, the court will solely apply Qur'anic injunctions, the Sunnah of the*

Prophet (peace and blessings be upon him) and Islamic Law (Fiqh). The law of the land will not be applied in these conflicts, except in cases where public order, safety, and/or health justly demand so. If, however, a Muslim court or a substituting institution is available, the case will be addressed to this court or institution."

See **Exhibit A**, pp. 1-2.

On March 4, 2021, AYAD HASHIM LATIF, through his counsel or record, requested that SALMA MARIAM AYAD submit all issues in connection with the dissolution of the parties' marriage to the Muslim Court or a Fiqh Panel pursuant to the terms of the parties' Islamic Pre-Nuptial Agreement. SALMA MARIAM AYAD refused to submit the dispute to the Muslim Court or a Fiqh Panel. After AYAD HASHIM LATIF file a motion to enforce the arbitration agreement in the Islamic Pre-Nuptial Agreement, the Court referred the case to the Fiqh Panel pursuant to the terms of the arbitration agreement on March 22, 2021. SALMA MARIAM AYAD has filed a motion requesting the Court to reconsider the referral to the Fiqh Panel, asserting new grounds not asserted in her original pleadings opposing the referral to arbitration. For the reasons set forth below, the Court should deny SALMA MARIAM AYAD's request to reconsider and stay all proceedings in this case until the parties have attended arbitration and an award is issued by the Fiqh Panel.

II.
Arguments and Authorities

A. Arbitration Clauses are Enforceable

Arbitration is a contractual proceeding by which the parties to a controversy voluntarily select arbitrators or judges of their own choice, and by consent submit the controversy to such tribunal for determination in substitution for the tribunals provided by the ordinary processes of the law. *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.3d 266, 268 (Tex. 1992). A written agreement

to arbitrate is valid and enforceable if the agreement is to arbitrate a controversy that exists at the time of the agreement or arises between the parties after the date of the agreement. TEX. CIV. PRAC. & REM. CODE ANN. § 171.001(a). Arbitration agreements are enforceable as contracts. *Hawdi v. Mutammara,* No 01-18-00024-CV at *3 (Tex. App. –Houston [1st Dist.] 2009)(mem. op.) citing *Steer Wealth Mgmt., LLC. v. Denson,* 537 S.W.3d 558, 566 (Tex. App. –Houston [1st Dist.] 2017, no pet.). A court shall order the parties to arbitrate on the application of a party showing an agreement to arbitrate and the opposing party's refusal to arbitrate. TEX. CIV. PRAC. & REM. CODE ANN. § 171.021(a). If a party opposing the application to arbitrate denies the existence of the agreement, the Court shall summarily determine that issue. TEX. CIV. PRAC. & REM. CODE ANN. § 171.021(b). The Court shall order the arbitration if it finds for the party that made the application. *Id.*

Once a valid arbitration agreement is established, a strong presumption favoring arbitration arises and doubts as to the scope of the agreement is resolved in favor of arbitration. *Rachal v. Reitz*, 403 S.W.3d 840, 850 (Tex. 2013). Once the party establishes a claim within the arbitration agreement, the court must compel arbitration and stay its own proceedings. *Jabri v. Qaddura*, 108 S.W.2d 404, 410 (Tex. App. –Fort Worth 2003, no pet.).

B. Burden of Proof

The party seeking to compel arbitration has the burden to establish that an arbitration agreement exists. *In re Oakwood Mobile Homes, Inc.,* 987 S.W.2d 571, 573 (Tex. 1999). However, that burden of proof does not require the movant to disprove the nonmovant's affirmative defenses to enforcement of the arbitration clause. *USB Fin. Serv., Inc. v. Branton*, 241 S.W.3d 179, 184 (Tex.App.—Fort Worth 2007, no pet.). Submission of an authenticated copy of the agreement

containing the clause generally suffices to meet this initial burden. *In re H.E. Butt Grocery Co.,* 17 S.W.3d 360, 367 (Tex.App.—Houston [14th Dist.] 2000, orig. proceeding).

After the party seeking to compel arbitration establishes the existence of the arbitration clause, the burden of proof shifts to the party opposing arbitration to raise defenses to the arbitration clause. *Wachovia Sec., L.L.C. v. Emery,* 186 S.W.3d 107, 113 (Tex.App.—Houston [1st Dist.] 2005, orig. proceeding).

C. Defenses to Arbitration Clause

A party may revoke an arbitration agreement only on a ground that exists at law or in equity for the revocation of a contract. TEX. CIV. PRAC. & REM. CODE ANN. § 171.001(b). However, the challenge to going to arbitration is limited to the arbitration agreement itself as arbitrators determine the defenses that apply to the whole contract, while courts decide defenses relating solely to the arbitration clause. *Perry Homes v. Cull*, 258 S.W.3d 580, 588 (Tex. 2008). For example, arbitrators must determine if an entire contract was fraudulently induced, while courts decide if the arbitration clause itself was fraudulently induced. *Id.* Thus, "while an arbitration agreement procured by fraud is unenforceable, the party opposing arbitration must show that the fraud relates to the arbitration provision specifically, not to the broader contract in which it appears." *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 56 (Tex. 2008).

A court may not enforce an arbitration agreement if the agreement was unconscionable at the time it was made. TEX. CIV. PRAC. & REM. CODE ANN. § 171.022. Arbitration agreements maybe either substantially or procedurally unconscionable or both. *Royston, Rayzor, Vickery & Williams, L.L.P. v. Lopez*, 467 S.W.3d 494, 499 (Tex. 2015). Substantive unconscionability refers to the fairness of the arbitration clause itself while procedural unconscionability refers to the

circumstances surrounding the adoption the arbitration clause. *Id* at 499-500. In applying the substantive unconscionability standard, the main issue is whether the arbitral forum is an adequate and accessible substitute to litigation where the litigant can effectively vindicate his or her rights. *In re Olshan Found. Repair Co.*, 328 S.W.3d 883, 893 (Tex. 2010). Procedural unconscionability does not exist merely because there was no opportunity to negotiate. *In re Halliburton Co.,* 80 S.W.3d 566, 572 (Tex. 2002), citing *Smith v. H.E. Butt Grocery Co.,* 18 S.W.3d 910, 912 (Tex.App.-Beaumont 2000, pet. denied). Procedural unconscionability has no precise legal definition, but is a determination made in the light of several factors including: 1) the "entire atmosphere" in which the agreement was made; 2) the alternatives, if any, available to the parties at the time the contract was made; 3) the "non-bargaining ability" of one party; 4) whether the contract was illegal or against public policy; and 5) whether the contract is oppressive or unreasonable. *Delfingen US-Texas, L.P. v. Valenzuela*, 407 S.W.3d 791, 798 (Tex.App.-El Paso 2013, no pet.). The totality of the circumstances is assessed at the time the agreement is formed and the circumstances surrounding the negotiations must be shocking enough to compel the court to intercede. *Id.* Cases where procedural unconscionability has been found are in cases which the party challenging the agreement appears to have been incapable of understanding the agreement without the arbitration provision being explained to them. *Id,* 407 S.W.3d at 803.

D. Premarital Agreements

In Texas, a man and a woman have wide latitude and freedom to enter into a premarital agreement effecting and altering rights to property and support, which are otherwise set out in the Family Code. *See* TEX. FAM. CODE ANN. Ch. 4; TEX. CONST. art. XVI, § 15. A premarital agreement is an agreement between prospective spouses made in contemplation of marriage and

is effective on marriage. TEX. FAM. CODE ANN. § 4.001(1). Premarital Agreements must be in writing and signed by both parties. TEX. FAM. CODE ANN. § 4.002. Premarital agreements are enforceable without consideration. *Id.* A premarital agreement is effective on marriage (TEX. FAM. CODE ANN. § 4.004), after which, it may be amended or revoked only by a written agreement signed by the parties (TEX. FAM. CODE ANN. § 4.005).

The parties to a premarital agreement may contract with respect to the choice of law governing the construction of the agreement; and any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty. TEX. FAM. CODE ANN. § 4.003(a)(7)-(8); *see also* TEX. CONST. art. XVI, § 15. The only statutory restriction on the use of premarital agreements is that the agreement may not adversely affect the right of a child to support. TEX. FAM. CODE ANN. § 4.003(b). This restriction was intended to discourage obligors from fraudulently characterizing assets so as to diminish or extinguish the amount of the child support obligation, consistent with the constitutional mandate that premarital agreements cannot be made for the purpose of committing fraud. *In re Knott*, 118 S.W.3d 899, 903 (Tex. App.—Texarkana 2003, no pet.).

On the written agreement of the parties, the court may refer both a suit for dissolution of marriage and a suit affecting the parent-child relationship to arbitration. TEX. FAM. CODE ANN. §§ 6.601(a); 153.0071(a). The arbitration provisions of the Family Code are augmented by and operate alongside the provisions of the Texas General Arbitration Act. *In re M.W.M.,* 523 S.W.3d 203, 207 (Tex. App. –Dallas 2017, orig. proceeding).

E. Selection of Arbitrators

The method of appointment of arbitrators is as specified in the arbitration agreement. TEX.

CIV. PRAC. & REM. CODE ANN. § 171.041(a). If the parties agree on the qualifications for the arbitrators in the arbitration agreement, then it is not the function of the court to change them or prescribe other qualifications. *Mewbourne Oil Co. v. Blackburn*, 793 S.W.2d 735, 737 (Tex. App.—Amarillo 1990, orig, proceeding). Courts presume that the parties to an arbitration agreement intend that arbitrators, not courts, decide disputes about the meaning and application of particular procedural preconditions for the use of arbitration. *G.T. Leach Builders, LLC v. Sapphire V.P., LP,* 458 S.W.3d 502, 521 (Tex. 2015).

F. Challenges to Arbitration Award

The Texas Supreme Court is required to adopt rules that require a party who intends to seek enforcement of a judgment or an arbitration award based on foreign law that involves a marriage or parent-child relationship shall provide timely notice to the Court and to each other party and describe the Court's authority to enforce the judgment or award. TEX. GOV'T. CODE ANN. § 22.0041(c)(1). The party seeking enforcement of such an award must give this notice within 60 days of filing an original pleading to enforce the arbitration award. Tex. R. Civ. P. 308b(d)(1). The Texas Supreme Court is also required to adopt rules that require a party intending to oppose a judgment or arbitration award based on foreign law that involves a marriage or parent-child relationship shall timely provide notice to the Court and to each other party and explain the basis for the opposition and stating whether the party asserts that the judgement or award violates constitutional rights of public policy. TEX. GOV'T. CODE ANN. § 22.0041(c)(2). The party opposing enforcement of an arbitration award based on foreign law must give this notice within 30 days of receiving the notice of enforcement of the arbitration award. Tex. R. Civ. P. 308b(d)(2).

Within seventy-five days of the date that the party seeking enforcement of the arbitration

award serves the required notice, the Court must conduct a pretrial conference to set deadlines and make other appropriate orders regarding the submission of material for the court to consider in determining the foreign law, the translation of foreign-language document, and the designation of expert witnesses. Tex. R. Civ. P. 308b(e). The Court must conduct a hearing on the record on enforcing the arbitration award 30 days before trial and must issue a written order on the determination that includes findings of fact and conclusions of law. Tex. R. Civ. P. 308b(f)(1),(2). The Court may consider any material or source in determining foreign law. Tex. R. Evid. 203(c). The determination of foreign law is a ruling on a question of law. Tex. R. Evid. 203(d).

III.
Argument

The Islamic Pre-Nuptial Agreement is in writing and was signed by both parties before the parties were married. Therefore, the Islamic Pre-Nuptial Agreement is a valid and enforceable premarital agreement under Texas Law. Parties to premarital agreements may include in those agreements the requirement to arbitrate or use some other form of alternative dispute resolution to resolve disputes that arise under the terms of the agreement. TEX. FAM. CODE ANN. § 4.003(a)(7), (8). Arbitration agreements are enforceable as contracts, and the Court is required to order the parties to arbitration upon the showing of an agreement to arbitrate and the refusal of the opposing party to arbitrate.

The Islamic Pre-Nuptial Agreement contains an agreement to arbitrate before a Muslim Court or Fiqh Panel. *See* **Exhibit A**, p. 1. While the word "arbitration" does not specifically appear in the agreement, Petitioner cites no authority to support her "rhetorical" argument that the word "arbitration" must appear in the provision for a valid arbitration agreement to exist. That is not what the law requires. The Islamic Pre-Nuptial Agreement provides that the parties each

voluntarily select an Imam to act as an arbitrators or judges of their own choice. The agreement further contains the parties' consent to submit the controversy to the Fiqh Panel which is a tribunal for determination in substitution for the tribunals provided by the ordinary processes of the law. See *Jack B. Anglin Co., Inc. v. Tipps*, 842 S.W.3d 266, 268 (Tex. 1992). Texas law does not permit the Court to modify qualifications or method of appointing the arbitrators if those terms are in the arbitration agreement. *Mewbourne Oil Co. v. Blackburn*, 793 S.W.2d 735, 737 (Tex. App.—Amarillo 1990, orig, proceeding). The dispute resolution provisions of the Islamic Pre-Nuptial Agreement meet the definition of an arbitration agreement under Texas law.

Petitioner asserts in her Motion to Vacate or Reconsider that the agreement to arbitrate in unconscionable and against public policy. *See* First Amended Motion to Vacate or Reconsider Motion to Enforce Islamic Pre-Nuptial Agreement, pp 4-12. However, Petitioner also makes the same arguments as to the enforceability of the Islamic Pre-Marital Agreement as a whole. *See* First Amended Motion to Vacate or Reconsider Motion to Enforce Islamic Pre-Nuptial Agreement, pp 13-21. Petitioner does not identify any distinctions in fact between her challenge to the arbitration clause as opposed to her challenge to the Islamic Pre-Nuptial Agreement as a whole. Petitioner's challenge is, in fact, a challenge to the whole contract and not just the arbitration clause. *Perry Homes v. Cull*, 258 S.W.3d 580, 588 (Tex. 2008); *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 56 (Tex. 2008). Texas law is clear that challenges to the entire contract are decided by the arbitrators and not by the Courts. *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 56 (Tex. 2008). The law is clear that Petitioner must challenge the validity of the Islamic Pre-Nuptial Agreement before the Fiqh Panel – not before the Court.

Petitioner's only issue regarding the enforceability of the Arbitration Clause that is

properly before the Court is whether the process was either procedurally or substantially unconscionable at the time the agreement was made. TEX. CIV. PRAC. & REM. CODE ANN. § 171.022. Petitioner cannot establish procedural unconscionability as a matter of law. Petitioner was 22 years old and a was in her final semester of college for her bachelor's degree in journalism at the time the Islamic Pre-Nuptial Agreement was signed. Petitioner was fully aware of what she was signing, and she voluntarily signed the agreement. Petitioner cannot establish that she did not have the alternative of not signing the agreement and not marrying Respondent. Petitioner cannot establish that she did not have equal bargaining power with Respondent. Petitioner cherry-picks one clause about permitting Respondent to marry a second wife with Petitioner's permission to establish that the agreement is somehow illegal or against public policy, but she does not establish how that clause is material to the agreement and is not severable from the rest of the premarital agreement for purposes of enforcing the public policy of this state that premarital agreements are enforceable. In reviewing the totality of the circumstances, the Islamic Premarital Agreement is not procedurally unconscionable.

Petitioner also cannot establish that the agreement to submit the case to the Fiqh Panel is substantively unconscionable. Petitioner cites no Islamic authority for the existence of any Islamic principle or procedure that she references in her motion. Her sole sources of authority for the existence of the Islamic principles that she references in her argument come from law review articles, some of which do not even contain the propositions Petitioner asserts in her motion. Petitioner should be required to identify, with competent and credible evidence, the specific procedures or principles that Fiqh Panels in Texas use that she believes violates her constitutional rights or the public policy of this State.

The message of Petitioner's motion to vacate and reconsider is that any application of Islamic principles in the arbitration of a family law matter constitutes a *per se* violation of her constitutional rights or public policy. However, none of the sources cited by Petitioner come to the broad conclusion that Petitioner wishes the Court to adopt in this case. The Attorney General opinion cited by Petitioner on page 4 of her motion merely states that the enforcement of family disputes decided under foreign law would not be enforceable if enforcement would be contrary to Texas public policy or would violate a party's right to due process. *Tex. Att'y Gen. Op. No. KP-0094 (2016)* at 7. The opinion is not a blanket condemnation of deciding family law disputes under Islamic principles as Petitioner asserts. Petitioner also argues that the courts should decline to apply Islamic law when the harshness of the result is contrary to public policy, but, as stated above, she cites no Islamic authority that contains a principle that would be applied to her in the Fiqh Panel that would violate her constitutional rights or the public policy of this state.

Petitioner also asserts that submitting the case to a contractually agreed upon Fiqh Panel violates the Establishment Clause. However, the Court has done nothing more than refer this case to arbitration pursuant to the terms of the parties' premarital agreement. While the arbitration agreement in the Islamic Premarital Agreement provides that the arbitrators be Muslim jurists and scholars, those qualifications were agreed upon by the parties. If the parties agree on the qualifications for the arbitrators in the arbitration agreement, then it is not the function of the court to change them or prescribe other qualifications. *Mewbourne Oil Co. v. Blackburn*, 793 S.W.2d 735, 737 (Tex. App.—Amarillo 1990, orig, proceeding). The Establishment Clause is not implicated by the referral of this case to the Fiqh Panel agreed upon by the parties in their premarital agreement to resolve their disputes in this case.

Petitioner's motion does not address the procedures and practices of Fiqh Panels based in the United States, and particularly those based in Collin County and surrounding counties. In North Texas, the Islamic Tribunal was established to "resolve any dispute among Muslims residing in the USA while complying with the federal laws of the United States and Texas state laws under the approval of the Texas Judicial System." *See* Islamic Tribunal – Our Constitution, Art. 1 (https://www.islamictribunal.org/our-constitution/ retrieved on June 7, 2021). The Constitution of the Islamic Tribunal contains procedures that ensure fairness to the parties and that any award is subject to judicial review by the Courts of this state. The Islamic Tribunal requires the parties to submit a written brief of the conflicts. *Id* at Art. 8(b). If a party is absent, the Islamic Tribunal "shall work diligently following Texas civil procedure to protect the rights of the absent party." *Id* at Art. 9. The Islamic Tribunal will have an advisor lawyer present when their decision is made. *Id* at Art. 10(c). The Islamic Tribunal even goes so far as to require that summary notes be dictated by the presiding judge. *Id* at Art. 10(d). The Islamic Tribunal even acknowledges in its constitution that its decisions are subject to review by the Courts of this state. *Id* at Arts. 12(b), 13.

The law on challenging the application of foreign law to judgments and arbitration awards in family law cases also supports Respondent's argument that the parties must go through the arbitration process with the Fiqh Panel before Petitioner's arguments are ripe for consideration by this Court. The Texas Government Code, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence all require that the challenge of the application of foreign law to a family court case be to a ***judgment*** or arbitration ***award***. *See* TEX. GOV'T. CODE ANN. § 22.0041; Tex. R. Civ. P. 308b; Tex. R. Evid. 203. Judgments and arbitration awards do not exist until the foreign trials or arbitrations have been completed and final decisions are made by the foreign tribunal or

arbitrator(s). The parties in this case have not even started the arbitration process because Petitioner refuses to participate in the process. Until the parties go through the arbitration with the Fiqh Panel and the Fiqh Panel makes its arbitration award, Petitioner's arguments regarding the application of foreign law are not ripe for consideration by the Court.

Based on the foregoing, the Court should enforce the terms of the parties' Islamic Pre-Nuptial Agreement and refer the case to a Muslim Court or Fiqh Panel and continue its stay all further actions in this case pending resolution by the Muslim Court or Fiqh Panel.

IV.
Prayer

AYAD HASHIM LATIF prays that this Court GRANT this Motion in all things and enforce the terms of the parties' Premarital Agreement. AYAD HASHIM LATIF further prays that this Court refer the case to a Muslim Court or Fiqh Panel for resolution. AYAD HASHIM LATIF further prays that this Court stay all further actions in this case pending resolution by the Muslim Court or Fiqh Panel.

AYAD HASHIM LATIF prays for general relief.

Respectfully submitted,

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Attorneys for AYAD HASHIM LATIF

CERTIFICATE OF SERVICE

I certify that a true copy of the above and foregoing was served on SALMA MARIAM AYAD by and through her attorney of record, Michelle May O'Neil, O'NEIL & WYSOCKI, P.C., 5323 Spring Valley Road, Suite 150, Dallas, Texas 75093 in accordance with the Texas Rules of Civil Procedure on June 10, 2021.

Jeffrey O. Anderson

In the name of Allah, the Beneficent, the Merciful

Islamic Association of North Texas, Inc.

P.O. Box 833010
Richardson, TX 75083

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Richardson, Texas 75081

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www.iant.com
www.iqa.iant.com

Islamic Pre-Nuptial Agreement

Date 12-26-08 No. 677

To Whom It May Concern

We the undersigned, agree of our own free will, in the presence of witnesses, to follow Islam in its totality and we make vows of commitment to apply Islam in its entirety in all aspects of our personal and family lives by agreeing to the following:

With our belief that Islam is the only acceptable way of living, which is binding on us in all spheres of life, we hereby agree upon and affirm that Islam will be the only basis of our relationship, which includes:

a) Validity, voidability, and dissolution of our marriage contract and all procedural and jurisdictional issues.
b) The rights, duties, liabilities and responsibilities of both husband and wife.
c) The husband will never unilaterally divorce his wife either verbally or in written form.
d) The husband will not have the right to marry a second wife without getting the written consent of the first living wife.
e) Neither of us will engage in extra-marital relationships.
f) Parent – child relations in all aspects including custody, conservatorship possession, support and adoption.
g) Raising the children as Muslims and nurturing them in a healthy Islamic atmosphere.
h) Property rights and liabilities.
i) Inheritance of the estates and assets.
j) The dowry (Mahr/Sadaq) to be given from the husband to the wife will be in the amount of $ 32/- , with $ 32/- to be paid in advance and NONE to be paid at a later date as agreed upon. The other conditions and stipulations being: NIL.

In all cases and matters, whether mentioned explicitly in this document or otherwise, the Qur'an, Sunnah of the Prophet Muhammad (peace and blessings be upon him), and Islamic Law (Fiqh) will be applied.

Any conflict which may arise between the husband and the wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in it's absence by a Fiqh Panel, which will consist of three Faqaihs (Muslim jurists and scholars), two of whom are to be appointed by the spouses (one for each spouse). The third Fiqh is to be appointed by the other two Faqihs and is to head the Panel. The

EXHIBIT
A

appointees will not represent the parties in conflict, but rather, serve as impartial arbitrators and judges, guided by Islamic Law and it's principles.
It is understood by both parties that the majority decision of the Fiqh Panel will be binding and final.

In the case where a conflict is to be solved by a court of law in the United States or abroad, the court will solely apply Qur'anic injunctions, the Sunnah of the Prophet (peace and blessings be upon him) and Islamic Law (Fiqh). The law of the land will not be applied in these conflicts, except in cases where public order, safety, and/or health justly demand so. If, however, a Muslim court or a substituting institution is available, the case will be addressed to this court or institution.

Bride's full name SALMA MARIAN AHMED

Social Security # [redacted]

Address [redacted]

Signature [signature]

Groom's full name AYAD HASHIM LATIF

Social Security # [redacted]

Address [redacted]

75082

Signature [signature]

NAUSHTAQ AHMED

Witness's full name [signature]

Social Security # [redacted]

Address [redacted]

Signature [signature]

Witness's full name RAAD HASHIM LATIF

Social Security # [redacted]

Address [redacted]

Signature [signature]

Wali's full name HABIB AHMED

Social Security # [redacted]

Address [redacted]

Signature [signature]

Imam's Signature Dr. YUSUF Z. KAVAKCI

Automated Certificate of eService

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Lacee Greer		lacee@ondafamilylaw.com	6/10/2021 12:11:37 PM	SENT
Jamie Laird		jamie@ondafamilylaw.com	6/10/2021 12:11:37 PM	SENT

Filed: 6/14/2021 10:05 AM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 54371866

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	IN THE DISTRICT COURT
SALMA MARIAM AYAD AND AYAD HASHIM LATIF	§	416TH JUDICIAL DISTRICT
AND IN THE INTEREST OF A[redacted] A[redacted] A[redacted] A CHILD	§	COLLIN COUNTY, TEXAS

ORDER OF REFERRAL TO ARBITRATION

The Court vacates the Order dated March 24, 2021. CPRC 171.021 requires that "A court shall order the parties to arbitrate on application of a party showing: (1) an agreement to arbitrate; and (2) the opposing party's refusal to arbitrate." The Supreme Court of Texas has repeatedly held that courts must refer parties to arbitration when it is contracted by the parties. As such, the Court has no discretion but to enforce the agreement of the parties in their Prenuptial Agreement signed on December 26, 2008, and refer the parties to arbitration per the terms of their agreement.

In their agreement of December 26, 2008, the parties agreed to resolve their disputes through arbitration and they agreed to a selection process for the arbitrators. Therefore, this case is submitted as agreed, to arbitration under CPRC Chapter 171. If any arbitration award is based on foreign law, the court will follow the procedures set forth in TRCP 308b ("American Law in American Courts", H.B. 45, 85th Leg. eff. Sept. 1, 2017) to determine whether the award violates constitutional rights or public policy. Additionally, upon proper application of a party pursuant to TFC 153.0071 the court will hold a hearing to determine if the arbitration award is not in the best interest of the child.

SIGNED 6-14-21 Andrea Thompson
Judge Presiding

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Associated Case Party: AyadHashimLatif

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	6/14/2021 10:05:23 AM	SENT
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Melissa Cowle	24101652	Melissa@armstronglawtexas.com	6/14/2021 10:05:23 AM	SENT
Linda CLowe		linda@ondafamilylaw.com	6/14/2021 10:05:23 AM	SENT
Lacee Greer		lacee@ondafamilylaw.com	6/14/2021 10:05:23 AM	SENT
Jamie Laird		jamie@ondafamilylaw.com	6/14/2021 10:05:23 AM	SENT

Case Contacts

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Associated Case Party: SalmaMariamAyad

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Marisa Laney		marisa@owlawyers.com	6/14/2021 10:05:23 AM	SENT

Filed: 6/14/2021 9:49 AM
Lynne Finley
District Clerk
Collin County, Texas
By Julie Lipic Deputy
Envelope ID: 54370862

NO. 416-50435-2021

IN THE MATTER OF	**§**	**IN THE DISTRICT COURT**
THE MARRIAGE OF	**§**	
	§	
SALMA MARIAM AYAD	**§**	
AND	**§**	**416th JUDICIAL DISTRICT**
AYAD HASHIM LATIF	**§**	
	§	
AND IN THE INTEREST OF	**§**	
A.A.A., A CHILD	**§**	**COLLIN COUNTY, TEXAS**

ORDER VACATING ORDER ON MOTION TO ENFORCE ISLAMIC PRENUPTIAL AGREEMENT AND REFER CASE TO MUSLIM COURT OR FIQH PANEL

On June 11, 2021, the Court heard SALMA MARIAM AYAD's *Motion to Vacate or Reconsider Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court of Fiqh Panel.*

After considering the facts and arguments of counsel, the Court finds that the *Order on Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Pane* signed by the Court on March 22 24, 2021 should be vacated and set aside and replaced by the order dated June 14, 2021.

IT IS THEREFORE ORDERED that the *Order on Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel* signed on March 22 24, 2021 is hereby VACATED and replaced by the order dated June 14, 2021.

SIGNED ON 6/17/2021, 2021.

Andrea S. Thompson
JUDGE PRESIDING

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Associated Case Party: SalmaMariamAyad

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Associated Case Party: AyadHashimLatif

Name	BarNumber	Email	TimestampSubmitted	Status
David H. Findley	24040901	david@ondafamilylaw.com	6/14/2021 9:49:23 AM	SENT
Jeffrey Owen Anderson	790232	jeff@ondafamilylaw.com	6/14/2021 9:49:23 AM	SENT
Melissa Cowle	24101652	Melissa@armstronglawtexas.com	6/14/2021 9:49:23 AM	SENT
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Lacee Greer		lacee@ondafamilylaw.com	6/14/2021 9:49:23 AM	SENT
Jamie Laird		jamie@ondafamilylaw.com	6/14/2021 9:49:23 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Niles Illich		niles@scottpalmerlaw.com	6/14/2021 9:49:23 AM	SENT

NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	IN THE DISTRICT COURT
SALMA MARIAM AYAD AND	§	416th JUDICIAL DISTRICT
AYAD HASHIM LATIF	§	
AND IN THE INTEREST OF A.A.A., A CHILD	§	COLLIN COUNTY, TEXAS

PETITIONER'S FORMAL BILL OF EXCEPTION

TO THE HONORABLE JUDGE OF SAID COURT:

SALMA MARIAM AYAD, Petitioner in the above styled and numbered cause, presents this bill of exception to the Court and asks the Court to approve, sign, and file the bill as part of the record in this case.

1. On June 11, 2021, the Court heard Petitioner's First Amended Motion to Vacate or Reconsider Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel.
2. On June 11, 2021, each side was provided 20 minutes each for presentation of evidence. Petitioner believes that the Respondent's time objection during her presentation as well as the court's questions were counted against her time as well. Counsel for Petitioner objected to the time limits and requested additional time to present evidence. This request was denied. See transcript attached as Exhibit "A."

3. Attached as Exhibit "B" is an affidavit of SALMA MARIAM AYAD, which presents a summary of what her testimony would have been if Petitioner had been given adequate time to present evidence.
4. Attached as Exhibit "C" is an affidavit of M. ZUHDI JASSER, MD, which presents a summary of what his testimony would have been if Petitioner had been given adequate time to present evidence.
5. Attached as Exhibit "D" is an affidavit of HABIB AHMED, which presents a summary of what his testimony would have been if Petitioner had been given adequate time to present evidence.

Respectfully submitted,

O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road, Suite 150
Dallas, Texas 75254
Tel: (972) 852-8000
Fax: (214) 306-7830

By: _____
Michelle May O'Neil
State Bar No. 13260900
michelle@owlawyers.com
Mark Rush Williamson
State Bar No. 21624650
Attorneys for SALMA MARIAM AYAD

Certificate of Service

I certify that a true copy of Petitioner's Formal Bill of Exception was served in accordance with rule 21a of the Texas Rules of Civil Procedure on the following on June 22, 2021:

Jeffery O. Anderson by electronic filing manager.

Michelle May O'Neil
Attorney for SALMA MARIAM AYAD

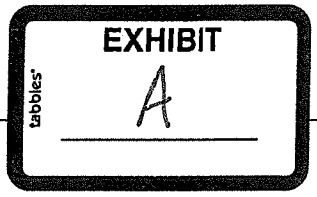
ACCEPTANCE OF THE BILL

_____The Court finds that the bill is correct, approves it, and orders the clerk of the Court to file the bill of exception as part of the record in this case.

_____ The Court refuses to approve the bill.

SIGNED on _____, 2021.

PRESIDING JUDGE



REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF SALMA MARIAM AYAD AND AYAD HASHIM LATIF AND IN THE INTEREST OF [redacted], A CHILD,	§ § § § § § § § §	IN THE DISTRICT COURT OF COLLIN COUNTY, TEXAS 416TH JUDICIAL DISTRICT

MOTION TO RECONSIDER

On the 11th day of June, 2021, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Judge Andrea Thompson, Judge presiding, held via Zoom in accordance with the Supreme Court of Texas' Emergency Orders Regarding the COVID-19 State of Disaster;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

FOR THE PETITIONER:

Ms. Michelle M O'Neil
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Mr. Michael Wysocki
SBOT NO. 24042257
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FOR THE RESPONDENT:

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CHRONOLOGICAL INDEX
VOLUME 1
(MOTION TO RECONSIDER)

ALPHABETICAL INDEX

PETITIONER'S EXHIBIT INDEX

NO.	DESCRIPTION	OFFERED	ADMITTED	VOL
13	Curriculum Vitae of M. Zuhdi Jasser, M.D., F.A.C.P.	42		1
14	Islamic Pre-Nuptial Agreement	32	32	1
15	Marriage Contract	32	32	1

P R O C E E D I N G S

THE COURT: 416-50435-2021; In the Matter of the Marriage of Ayad and Latif and In the Interest of Child.

Okay. So one of the issues we have, this was the rehearing on the referral to arbitration. I had a request that we have an issue with one of the witnesses, but I want to clarify we are not rehearing. The Court has already heard this. I've also read all the supplemental motions and everything else. We're not having a full blown rehearing.

The one issue that is a fact question is about voluntariness. I don't know if your experts that everyone brought are going to be able to speak to that. The only reason I'm allowing testimony on that, which I really expect to just be from the parties, is because we did not take testimony from them.

At the last hearing there was no objection from the attorney that was representing the wife at that hearing to that, but because I now have an objection from her new attorney, I am going to allow at least some testimony as to voluntariness which is the only fact question that the Court has. So I don't know if that changes anybody's issues with their experts and their timing.

MR. FINDLEY: If it's just about the fact issue, Your Honor -- am I on mute? Okay. If it's just about the fact issue of whether or not at the time they executed the premarital agreement it was voluntary then I don't know if either expert is going to have any relevant testimony to offer the Court on that fact issue.

MS. O'NEIL: Well, I appreciate Mr. Findley not speaking for us, but I believe that my expert will, and I assume that --

THE COURT: Okay. Was your expert present?

MS. O'NEIL: He was not present.

THE COURT: Okay. Then he cannot speak to the fact issues surrounding the signing and the voluntariness of the agreement, can he?

MS. O'NEIL: I believe that he can testify about the cultural norms and expectations of these agreements, but beyond that, Your Honor --

THE COURT: The Court has already -- the Court has already received evidence on that at the last hearing so I need to be clear. Your client was represented by counsel at the last hearing. They had the opportunity to bring other witnesses. The only testimony the Court didn't take at the last hearing was

from the parties as it related to the fact question of voluntariness, and as I said, I didn't receive an objection at that time so I am willing to take some testimony today. What I will tell you is that's going to be about 15 minutes per side.

I suppose if you want to spend your 15 minutes talking about things that are not related to the fact question then you can spend your time how you choose to spend your time but that is the sole testimony that the Court's going to be taking today and the time that you're going to have for it.

The remaining issues are matters of law, and I've already received the arguments and additional arguments from everyone so I just want to be clear we're not starting --

MS. O'NEIL: Your Honor --

THE COURT: Hang on, Ms. O'Neil. Ms. O'Neil, let me finish. We are not starting over from scratch. I appreciate that you think and maybe you can do a better job than was done the first go around for your client, but that's not how this works. She was represented by counsel. They had an opportunity to be heard. They put on evidence and testimony with the sole exclusion, as I said, to the parties as to voluntariness. I did not allow that the last time. I

did not receive an objection which means I don't necessarily have to allow it this time, but I'm willing to do that.

What I am not willing to do is have a complete rehearing starting from scratch on the entire matter.

MS. O'NEIL: And, Your Honor, you heard expert testimony from their expert. I am not --

THE COURT: Your client -- your client's prior attorney had an opportunity to bring expert testimony at that time and did not. Again, I'm going to say this again. This is not a complete rehearing. She does not get every other bite at the apple again. I am clearing up the one issue that, again, I did not have an objection to the last time, but I am willing to allow it this time. So we will be taking testimony on voluntariness. Again --

MS. O'NEIL: I'd like to be heard.

THE COURT: Not until I'm done speaking, please. When I'm done, you'll have an opportunity to be heard.

Your client had the opportunity to bring an expert to the last hearing, and they would have been heard. They did not so we are not going to start over from scratch and completely rehear this trial -- the

hearing on this matter. So is that clear?

MS. O'NEIL: May I be heard?

THE COURT: No, I want to make sure you understand what I've said.

MS. O'NEIL: I hear what you've said, Your Honor. May I be heard?

THE COURT: Okay. Go ahead.

MS. O'NEIL: Your Honor, at the last hearing Mr. Anderson was the only lawyer allowed to present evidence. Ms. Woelfel --

THE COURT: Hang on. Let me stop you there. Ms. Woelfel did not have any other evidence or any other witnesses that she had identified the Court outside of her client, which is your client, that I said will be able to bring testimony today.

I've also told you if you want to spend the limited time I'm giving you today on your expert, I suppose you can spend your time that way, but I'm not giving you additional time for an expert that could have been brought at the first hearing that was not.

MS. O'NEIL: May I be heard?

THE COURT: Are you going to tell me that she had an expert at that hearing that was not heard because that's not the case? And having said that, I don't want to keep repeating myself. I understand you

don't like my decision today, but that is my decision and it will not change.

MS. O'NEIL: My question for the Court, when you say you are willing to hear evidence on the fact issue of voluntariness, we have also pled a fact issue on public policy, illegality, and unconscionability.

THE COURT: Those are not fact issues. They're questions of law that will be addressed separately, but those are not fact questions.

MS. O'NEIL: But they are questions that require evidence of disputed facts and so those are questions that I believe I am entitled to present evidence upon.

THE COURT: Okay. You can spend your 15 minutes how you like.

That said, Mr. Findley, I think our issue today was the timing of your expert?

MR. FINDLEY: Correct, and he does not -- he's not going to offer any testimony on voluntariness. He wasn't present.

THE COURT: All right. Then I'm putting you-all back in the waiting room. You can come back in a half hour if you'd like, and we will begin at that time.

MR. FINDLEY: Your Honor, real quickly, am I allowed to excuse my expert with the ruling from the Court that this is solely on the fact issue of voluntariness?

THE COURT: As I said, Ms. O'Neil disagrees. You're welcome to spend the time the Court is giving you how you want, but I wanted to make it clear your time is limited so it's your choice how you use it.

MR. FINDLEY: Okay. All right. Understood.

(Recess taken)

THE COURT: Okay. We're back on the record in Ayad and Latif. There is no one in the courtroom viewing the proceeding so I'm going to minimize that screen so we can make everybody else's boxes bigger.

All right. Do you want to make your arguments first or take the testimony first?

MS. O'NEIL: I'd like to make a brief argument, Your Honor.

THE COURT: Okay. I mean, the arguments in the case, if you want to spend some of your time for the testimony to make an additional opening argument, I suppose you can use your time that way.

MS. O'NEIL: Thank you.

THE COURT: Okay. I have 20 minutes a side for each of you. I think it's Ms. O'Neil's motion so you may proceed.

MS. O'NEIL: Thank you, Your Honor.

Your Honor, you previously heard this matter, and we believe that the hearing was not held on the proper issues. The issue when there's an arbitration agreement is that, first, the arbitration agreement must be found valid and that it is severed from the rest of the agreement.

At the hearing there was no evidence and no testimony as to the validity of the arbitration agreement itself. There was no finding about the validity of the arbitration agreement, and there was much discussion about the agreement as a whole, but nonetheless, Mr. Latif -- Dr. Latif's side of this presented no evidence as to the validity of the arbitration agreement.

We believe that the law says that the validity of the arbitration agreement must be found by this court first before it puts the burden on us to prove our defenses. That being said, presuming that you somehow found that arbitration agreement to be a valid arbitration agreement, which we dispute, then it -- the

burden shifts to us to prove our defenses. Our defenses involve -- points straight to the arbitration agreement.

THE COURT: Hang on. I'm going to pause your time for a second because I have a question. I think the case law in Texas is that the premarital agreements are presumed enforceable so I don't think anyone had to prove that it was enforceable. I think it's presumed enforceable then the burden shifts to proving that it's not.

MR. FINDLEY: That's my understanding, Your Honor.

MS. O'NEIL: May I respond to that, Your Honor?

THE COURT: Yes.

MS. O'NEIL: My understanding, Your Honor, is that there are no cases that interpret this interplay of a arbitration agreement and a premarital agreement so we look to arbitration law as far as how those contracts are determined. It's my --

THE COURT: Incidentally then, courts are required then to refer to arbitration, so the presumption in each of these arguments the presumption favors arbitration and the presumption favors the premarital agreement that was the position the Court started from.

MS. O'NEIL: If I could continue what I was going to say, Your Honor. My position and my belief is that the law is the same, that contracts are presumed valid, that arbitration agreements are presumed valid, but that doesn't change the fact that they had to put in issue whether there was a valid arbitration agreement. They have to make some scintilla of proof of that as to the arbitration agreement itself not just the premarital agreement as a whole.

The hearing that was previously held talked a whole lot about the premarital agreement as a whole but almost nothing about the validity of the arbitration agreement specifically. That being said, if -- once the burden shifts to our side to prove or to put in issue the defenses then we look to -- to me, my opinion, because there's no authority on this specifically, I think you look to both 4.006 of the Family Code as to the defenses as well as the defenses available to an arbitration agreement. They are almost identical that being said. 4.006 says that we look to voluntariness and unconscionability.

THE COURT: Let me stop you. So I want to make sure you're using your time in the way that you intend. I said we were going to have some arguments. You're now down to 17 minutes for the testimony that --

MS. O'NEIL: My understanding was you stopped my clock there for a minute so I want to make sure that I get --

THE COURT: I did, and it restarted when you started talking but -- so I want to be clear, you have 20 minutes to have testimony and then --

MS. O'NEIL: I understand that, Your Honor, but I also think --

THE COURT: Hang on.

MS. O'NEIL: -- that it's important that you understand --

THE COURT: Hang on. You're not listening. Okay. Ms. O'Neil, if I'm talking, you can't talk because the court reporter can't write us down. I know what you're saying is very important, and you'll have a chance to say it. I'm trying to preserve your time. We're going to have time for your witnesses's testimony and we are going to have time for argument.

That's why I asked you at the beginning of this if you want to make a brief opening before any testimony then that's what we're doing, but I want to make sure you're not confused because if this -- this is what I would think we would do during the argument part, but I am going to be running the clock for testimony, so do you want to take testimony for your client?

MR. WYSOCKI: Just call your first witness.

MS. O'NEIL: I will call my first witness, Your Honor.

THE COURT: Okay. I just want to make sure you don't get to the end of your 20 minutes and then tell me you need to call your client because you spent it on argument that I will have time for later.

MS. O'NEIL: I -- I appreciate the Court direction.

THE COURT: All right. Ms. Ayad and Mr. Latif, can you please unmute?

MR. LATIF: Good morning everyone.

THE COURT: Can I get both of you to raise your right hands, please.

I'm sorry, and then we have what appears to be two witnesses here. Do the --

MR. FINDLEY: Yes, Your Honor, the Imam, and unfortunately, I think the Imam's down to about a minute left of his availability, but he is on.

THE COURT: Okay. Let me have all four people that might potentially testify, let's have everybody unmute, so Mr. Bakhach, Mr. Jasser, can you unmute?

DR. JASSER: Yes.

THE COURT: All right. Let's have all four of you raise your right hand.

(Witnesses sworn by the Court)

THE COURT: All right. Thank you.

All right. Ms. O'Neil, now you can call your client.

MS. O'NEIL: Thank you, Your Honor.

MARIAM AYAD,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. O'NEIL:

Q. Would you state your name please for the Court?

A. Mariam Ayad.

Q. And, Ms. Ayad, you are the petitioner in this suit for divorce; is that right?

A. Yes.

Q. And you are aware that we are here to discuss the supposed premarital agreement in this case, right?

A. Yes.

Q. What was the date that you got married?

A. December 26th, 2008.

Q. And what was the first time that you saw -- and I'm going to ask you about both the marriage contract and the premarital contract. What was the first date that you saw either of those documents?

A. The marriage contract I saw on the date of the marriage in 2008, and the prenuptial agreement I saw for the first time on -- in September of last year.

Q. Of 2020?

A. Yes.

Q. Okay. So the day you got married, when did you see the supposed documents that you signed?

A. When we were in the middle of what's called a nikah ceremony, when the Imam asks us both if we agree to marry each other and then we sign the contract that says that we've completed that ceremony.

Q. And so how were these documents presented to you?

A. Once the Imam had done his part of the ceremony then he, you know, slid the document to my husband and then slid it towards me, and I -- that's when I had it to sign.

Q. And who is the Imam that --

THE COURT: Hang on. Can we clarify, is this the document entitled Islamic Prenuptial Agreement?

MS. O'NEIL: Can I clarify that, Your Honor?

THE COURT: Yes, please.

Q. (BY MS. O'NEIL) So Ms. Ayad, what was the document that was on top that you signed?

A. The marriage contract.

Q. All right.

MS. O'NEIL: Can I pull that up, Your Honor?

THE COURT: Yes.

Q. (BY MS. O'NEIL) Ms. Ayad, can you see the document that we pulled up on the screen?

A. Yes, I can.

Q. Is that the document that was on top?

A. Yes.

Q. The --

MS. O'NEIL: And then pull up the premarital agreement, please.

Q. (BY MS. O'NEIL) And this is the prenuptial agreement. Did you ever actually see this document on the day of your marriage?

A. No.

Q. Were there two documents on top -- one behind the other that you signed?

A. I thought it was one document, but yes.

Q. But you signed twice?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Okay. And who was the Imam that presented

these to you?

A. I don't remember.

Q. Okay. Not the Imam that's the witness in this case though, correct?

A. I don't believe so, no.

Q. And did he just point to where you sign?

A. Yes.

Q. Were you given --

MR. FINDLEY: Objection, leading.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Were you given an opportunity to read the document, either of them, in advance?

A. No.

Q. Were you given an opportunity to consult with an attorney about either of these documents?

A. No.

Q. Were you given an opportunity to --

A. I apologize.

Q. Were you given an opportunity to obtain -- to obtain financial disclosures?

A. No.

MR. FINDLEY: Objection, leading.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Can you state whether or not anybody ever gave you any financial disclosures about

either -- about your husband's marital estate?

MR. FINDLEY: Objection, leading.

A. I never received anything.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Were you given an opportunity to even ask for such disclosures?

MR. FINDLEY: Objection, leading.

A. No.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Did anybody read the document to you?

A. No.

Q. What did you think that you were signing?

A. I thought it was a document that said that we had completed the cultural ceremony to effect the marriage and that now husband and I were married, that we get to start our lives together.

Q. Okay. And did you think that it was an agreement to raise your children Muslim?

MR. FINDLEY: Objection, leading.

THE COURT: Sustained.

A. Yes, to raise our child Muslim and to live --

MR. FINDLEY: Objection, Your Honor, no question for the witness.

Q. (BY MS. O'NEIL) Hold on. Let me ask the next

question.

Did you -- did you have any reason to believe in signing this agreement that you were waiving any substantive legal rights that you might have in the United States?

MR. FINDLEY: Objection, calls for a legal conclusion; speculative.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) What was your understanding in signing this agreement as to the application of U.S. law to the agreement?

A. I didn't think that it had any effect on my rights, all my rights.

Q. I'm going to show you page 2. Do you see -- do you see the paragraph where it says "in the case"?

A. Yes.

Q. At the time that you signed this, did you -- were you able to read this?

A. No.

Q. Did anybody allow you an opportunity to read the document?

A. No.

MR. FINDLEY: Objection, leading. It goes outside the four corners of the document.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Were you aware that you agreed to waive the law of the United States?

A. No.

Q. Were you aware that you agreed to submit everything about your divorce to Islamic law?

A. No.

MR. FINDLEY: Objection, leading.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Were you aware that the U.S. Constitution would no longer apply to you in the event you sought a divorce?

MR. FINDLEY: Objection, misstates the document.

MR. WYSOCKI: It says it right there.

MR. FINDLEY: I didn't realize Mr. Wysocki was answering the witness, Your Honor.

THE COURT: Which one of you will be participating in today's hearing?

MS. O'NEIL: I am handling the witness, Your Honor.

THE COURT: All right. Thank you. Please proceed.

Q. (BY MS. O'NEIL) Were you aware that you were waiving your constitutional rights?

A. No.

MR. FINDLEY: Objection, misstates the document in evidence.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Do you believe that the Constitution of the United States is part of the law of the United States?

MR. FINDLEY: Objection, relevance.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Were you aware that you were waiving any rights that you had to marital property?

A. No.

MR. FINDLEY: Objection, misstates the document in evidence.

THE COURT: Sustained.

MS. O'NEIL: Your Honor, the objections are being made after the answer so they're untimely.

MR. FINDLEY: I'm making them as soon as I hear the question, Your Honor. It might be just the whelms of technology if she --

THE COURT: I agree. So if we need to give Ms. -- tell Ms. Ayad to wait to see if there's an objection, I guess we need to do that based on the limitations of Zoom.

Please proceed.

Q. (BY MS. O'NEIL) So you were not allowed to

talk to an attorney; there was not an attorney at the ceremony for you?

MR. FINDLEY: Objection, leading.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Would you state whether or not there was an attorney provided to you during the marriage ceremony?

A. No, there was not an attorney available.

Q. Would you state whether or not there was an attorney available to discuss with you your rights to Texas marital property law?

A. No, there was not an attorney --

MR. FINDLEY: Objection, relevance.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Was that information withheld from you as far as the rights that you were giving up under this document?

MR. FINDLEY: Objection, calls for speculation; assumes facts not in evidence.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Did you have information available to you that you were waiving any rights that you might have under Texas law or the United States law?

MR. FINDLEY: Objection, leading.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) What did you believe that you were agreeing to as far as Texas law and United States law?

MR. FINDLEY: Objection, relevance, and probably -- I'll just object to relevance.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) How long did you have to look at this document before the Imam told you to sign it?

MR. FINDLEY: Objection, assumes facts not in evidence, particularly with regard to whether or not the Imam told her to sign it.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) How did you come to sign this document?

A. The Imam slid the document toward me and pointed to where I needed to sign.

Q. Okay. And did you feel like he was telling you to sign it?

A. Yes.

MR. FINDLEY: Objection, speculative and hearsay to the extent that it calls for speculation.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) And so how long did you have between him signing it in front of you and when you were signing it?

A. There was no time.

Q. Okay. Not even a few minutes, right?

A. Absolutely not.

Q. All right. And nobody volunteered to you any information about disclosure of assets, correct?

A. Correct.

Q. And nobody volunteered any information to you about the changing of any laws that would apply to you, correct?

MR. FINDLEY: Objection, leading. Objection, speculative.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) What is your understanding in the arbitration -- if there is an arbitration proceeding, what is your understanding of the weight that will be given to your testimony?

MR. FINDLEY: Objection, speculative. Witness -- the witness is not an expert to testify about weight of evidence.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Do you have a general understanding, ma'am, of how the arbitration proceeding will happen?

MR. FINDLEY: Objection, calls for legal conclusions.

THE COURT: Overruled. Ma'am, you can answer that question.

A. Yes.

Q. (BY MS. O'NEIL) And what is your understanding of how that will happen?

A. I would choose a male religious leader, husband would, and then they would choose between them another one, so there'd be a panel of three men that would be making a decision based on my argument, husband argument of how anything would be divided.

Q. And what's your understanding of how your viewpoint would be viewed in that proceeding?

A. I believe that I would not have my voice --

MR. FINDLEY: Objection, speculative.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Go ahead.

A. I believe I would not have my voice heard as well as husband would.

Q. Okay. What is your understanding of the law regarding -- or what is your understanding of how the proceeding would effect your marital property rights?

A. They would be divided on how the panel would think is best based on both of our testimonies with my testimony not being given as much weight.

MS. O'NEIL: Pass the witness.

MR. FINDLEY: Your Honor, may I share the screen?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. FINDLEY:

Q. Ma'am, I want to show you -- okay. Can you see the premarital agreement, ma'am?

A. I can't on the screen, but I can pull it up here.

Q. Here we go. I've got it. Do you see the premarital agreement now, ma'am?

A. Yes, I can.

Q. And turning to the second page, is that your signature on page 2?

A. Yes, it is.

Q. And nobody put a gun to your head to force you to sign this agreement, did they, ma'am?

A. No.

MS. O'NEIL: Objection, argumentative.

THE COURT: Overruled.

Q. (BY MR. FINDLEY) You signed this document without any -- without anybody, you know, making any threats to you, did they, ma'am?

A. No.

Q. And --

MR. FINDLEY: I'll pass the witness.

MS. O'NEIL: Pull up the marriage -- pull up the premarital agreement, Kim. Go to the first page please.

REDIRECT EXAMINATION

BY MS. O'NEIL:

Q. And, ma'am, did you --

MS. O'NEIL: Well, no, go to the marriage contract.

Q. (BY MS. O'NEIL) So were you given an opportunity to read this document?

A. No.

Q. Were you given an opportunity to -- to read the paragraph that starts with "any conflict which may arise?" Were you given an opportunity to read that -- that part of the document?

A. No.

THE COURT: Can I clarify? Is the date of that also --

MS. O'NEIL: Scroll down.

THE COURT: -- in '08? I think it's at the top.

MS. O'NEIL: Yes, Your Honor.

THE COURT: 12/26/08 is the date of both documents, and that was the date of the marriage

ceremony?

MS. O'NEIL: Yes, Your Honor.

THE COURT: Okay.

Q. (BY MS. O'NEIL) And just to clarify, Ms. Ayad, you signed both of these documents apparently at the same time during the marriage ceremony is that what you --

A. Correct.

Q. And the last paragraph of this document says, "In the case of any conflict to be solved by any court in the State of Texas or the U.S., the Court will solely apply Qur'anic rules, Sunnah of the Prophet, and Islamic law Fiqh on the case." Were you allowed to read that before you signed it?

MR. FINDLEY: Objection, leading.

A. No.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) And where it says, "The law of the land will not be applied in these conflicts at all," were you aware of that sentence when you signed it?

A. No.

Q. And would you have agreed to waive the U.S. Constitution and the laws of the State of Texas had you been given an opportunity?

MR. FINDLEY: Objection, that's not what

the document says.

THE COURT: Sustained.

MR. FINDLEY: Misstates the evidence.

Q. (BY MS. O'NEIL) Did you have any intent to waive the laws of the United States when you signed this document?

A. Absolutely not.

Q. Okay. Did --

MS. O'NEIL: Your Honor, I'd offer Exhibits 14 and 15.

MR. FINDLEY: Which are those?

MS. O'NEIL: The premarital agreement and the marriage contract.

MR. FINDLEY: No objection to the premarital agreement. I can only see part of the marriage agreement.

MS. O'NEIL: We've given you our exhibits in advance.

MR. FINDLEY: No objection to the 15, Your Honor.

THE COURT: Okay. 14 and 15 are admitted.

MS. O'NEIL: Pass the witness.

RECROSS-EXAMINATION

BY MR. FINDLEY:

Q. Ms. Ayad, you were not required to sign this

agreement, were you?

MS. O'NEIL: Asked and answered, Your Honor.

THE COURT: Overruled.

A. I believe I was.

Q. (BY MR. FINDLEY) And how were you required to sign this agreement?

A. It was my understanding that in order to complete the marriage ceremony that I would need to sign the agreement.

Q. Did you want to complete the marriage ceremony?

A. Yes.

Q. Okay. And so you were willing to execute whatever documents were necessary to complete the marriage ceremony?

A. No.

Q. But you wanted to complete the marriage ceremony?

A. Yes.

Q. Okay. And, in fact, the Imam who prepared this agreement was the Imam related to your family, correct?

A. No.

Q. He was the Imam chosen by your family to conduct the ceremony, correct?

MS. O'NEIL: Objection, asked and

answered.

THE COURT: Overruled.

A. No.

Q. (BY MR. FINDLEY) In fact, isn't it true, ma'am, that the Imam and your representatives were there with the paperwork at the time Dr. Latif arrived to begin the ceremony?

A. Not that I recall.

MR. FINDLEY: Pass the witness.

MS. O'NEIL: No further questions.

THE COURT: Ma'am, I think we talked about this the last time. I want to make sure I'm remembering it correctly. The two witnesses on the prenuptial agreement, I think you said were your father and your uncle?

THE WITNESS: Yes.

THE COURT: Okay. And it also has a dowry on here that's to be paid to your family. What do you know about that? How is that -- it's a fill-in-the-blank form and there appears to be some amounts filled in. How was that discussed?

THE WITNESS: Yes, Your Honor, that was the $32 that was discussed -- that specific amount was discussed ahead of time, and husband had given me $32 cash at some point and you know, I -- and that was that.

THE COURT: Okay. So there was some discussion about at least the dowry that's in here in advance. What else was talked about in advance?

THE WITNESS: Nothing else that's in this agreement.

THE COURT: Okay. And then is this a -- this looks like a preprinted form from the Islamic Association of North Texas. Have you ever seen a form like that before?

THE WITNESS: No.

THE COURT: Okay. Do you have any other family members or anybody that got married? Is this an unusual thing to stop the wedding and sign forms in the middle of it?

THE WITNESS: No, it's not unusual.

THE COURT: Okay. When you've seen that in other weddings, what is it you think they're signing?

THE WITNESS: That the marriage is -- it's, in fact, the ceremony is complete and that husband and wife can now live together and start their lives together.

THE COURT: Okay. I think Mr. Findley had asked if anybody had threatened you and you said that they didn't, but that you were given this, didn't really have a chance to read it. Did you ask to stop and

review it during the ceremony then if you were unaware of what the contents were?

THE WITNESS: I thought I knew what the contents were. No, I did not.

THE COURT: Okay. So because you thought you already knew then you didn't ask to read it again at the time?

THE WITNESS: Correct.

THE COURT: Okay. And you thought you knew because you just assumed what was in it or because you had seen other documents and these were traded out; these aren't the documents you had seen previously?

THE WITNESS: I had not seen any other documents.

THE COURT: Okay. So you weren't confused --

THE WITNESS: It was my --

THE COURT: I just want to make sure you weren't confused that you thought you were signing one document and this is different --

THE WITNESS: No, Your Honor, that's not the case.

THE COURT: -- than what you were signing?

THE WITNESS: That's not the case, correct.

THE COURT: Okay. What happened -- what happened -- do you know what happens if in the middle of that you say I don't want to sign that?

THE WITNESS: It's -- I imagine quite similar to a bride refusing to say I do. It's in the middle of a ceremony. That's quite a tense, unusual, stressful, and awkward situation and unpleasant situation.

THE COURT: Okay. All right. Any other questions from either attorney based on what I asked?

MS. O'NEIL: No questions, Your Honor.

MR. FINDLEY: No, Your Honor.

The Imam needs to be excused to go conduct his duties as the Imam for the Friday holy day. May he be excused?

THE COURT: Yes sir, you're free to leave. Thank you.

MS. O'NEIL: May I have a time check, Your Honor?

THE COURT: You have two minutes and 45 seconds, and Mr. Findley has 17-and-a-half.

MS. O'NEIL: Did you say two minutes or ten minutes? I couldn't hear you.

THE COURT: Two -- 2:45 so basically three minutes.

MS. O'NEIL: Your Honor, I would ask for a couple minutes to be able to call Dr. Jasser and to present argument. I don't know that I can get that done in two to three minutes so I would ask --

THE COURT: You're going to have an opportunity off the clock to make your argument so spend your time on Dr. Jasser.

MS. O'NEIL: Thank you. I would call Dr. Jasser then. Unmute yourself, please.

M. ZUHDI JASSER, M.D., F.A.C.P.,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. O'NEIL:

Q. Dr. Jasser, have you testified before Congress and acted in ways that would make you an expert witness in the application of civil rights under the U.S. Constitution to the application of Sharia law in the U.S.?

MR. FINDLEY: Objection, Your Honor, multifarious and failure to lay proper predicate for expert testimony.

THE COURT: Sustained.

MS. O'NEIL: Your Honor, I would ask -- I would ask for the Court's indulgence. For me to prove him up as an expert is going to take more than three

minutes, and I don't have that unless Your Honor gives me additional time.

MR. FINDLEY: Your Honor, she has a CV that she turned over in discovery and we could start with that. I do have objection to him testifying as an expert in this matter.

THE COURT: Let me make clear. I've stopped the clock while we discuss this. All right. Go ahead, Mr. Findley.

MR. FINDLEY: My objection to Mr. Jasser testifying in this matter is that -- well, Ms. O'Neil might be able to get him there, but I doubt she will because he's not going to have firsthand knowledge of the specific culture in North Texas with regard to these premarital agreements. He appears to be a cardiologist by training. He doesn't have any, you know, background in Islamic law or Islamic interpretations.

He may be a practicing Muslim, but I mean, if you use that argument to make him an expert, Your Honor, then it would just be like a lay a parishioner in a Catholic church saying that they're an expert on Cannon law without going to seminary. It's kind of -- that's kind of the position that Dr. Jasser's in. We don't think that Dr. Jasser is going to have the necessary, firsthand experience to testify as to the

specifics with regard to this premarital agreement and how it was executed.

And we would also question, Your Honor, you know, depending on, you know, how Ms. O'Neil proves him up, you know, whether or not they're claiming that there is a monolith when it comes to learned Islam versus, you know, different interpretations or subcultures that happen to practice Islam.

And so on that ground, Your Honor, we would object to Mr. -- to Dr. Jasser testifying as not qualified to give opinion in this case.

MS. O'NEIL: May I respond?

THE COURT: Yes.

MS. O'NEIL: Your Honor, that's like saying that to be an expert in pedophilia you have to be a pedophile first. Dr. Jasser has qualifications and experience and expertise in Sharia law, in the Sharia jurisprudence system, and he doesn't have to have attended whatever their colleges are to be that expert.

He is qualified by his expertise, experience, and knowledge in the Muslim community as a Muslim himself and as a basically world-renowned expert that the U.S. Government has relied upon to be a watchdog in various religious matters overseas in the Middle East, and he can testify in detail about his

immense qualifications in the time period that Your Honor hasn't given me.

I would ask that Your Honor allow me the indulgence of getting his opinions and then you can take them for the weight that you believe they're worth based on his CV.

MR. FINDLEY: Further, Your Honor, we just got Dr. Jasser's disclosure last after -- yesterday afternoon at 5:00, and so in going through his CV, none of the experience in Sharia law or Sharia practice or any of the other, you know, kind of relevant matters to this case are listed on his CV.

He -- and, you know, again, I don't know what Ms. O'Neil's trying to, you know, come at with regard to her opening, you know, response to my argument, but I think, Your Honor, that unless Ms. O'Neil can show the Court the relevant experience that Dr. Jasser has that's not on his CV, he writes a lot of articles opining about Islam, but that's no different than a lay person, lay Christian writing articles about Christianity.

THE COURT: Mr. Findley.

MR. FINDLEY: There's nothing specific about it.

THE COURT: Okay. Like I said, at the

last hearing there was an opportunity to have brought expert witnesses. We had an expert witness for the father present. Mom's attorney did not choose to do that at that time. Ms. O'Neil, I told you you could use your time how you wanted to use your time. You have two minutes left, and again, like I said, I'm not sure, not having been present at the ceremony, what he can tell me as the fact issue as the voluntariness of this particular signature on this agreement. So if you have anything that he can tell me about that then I guess you have a few minutes to do that, but you have two minutes left.

MS. O'NEIL: Your Honor, I would move to admit Wife's Exhibit 13 as a summary of Dr. Jasser's experience and qualifications.

MR. FINDLEY: No objection to W13 as a summary of the -- his experience to the extent listed therein.

THE COURT: All right. Then 13 is admitted.

Q. (BY MS. O'NEIL) Dr. Jasser, have you been found to be -- or do you consider yourself an expert in the matters of which I'm going to ask you about?

MR. FINDLEY: Objection, vague.

A. Yes, I've studied this anomaly my entire life,

but we've studied the importance of it and the dismissal --

MR. FINDLEY: Objection, vague, Your Honor.

A. -- of Constitutional --

THE COURT: Overruled.

A. -- law and these proceedings.

Q. (BY MS. O'NEIL) What is your -- the basis of your opinion about the voluntariness of Ms. Ayad's signature on this document?

MR. FINDLEY: Objection --

A. This is a --

THE COURT: Hang on. Hang on.

MR. FINDLEY: -- conclusory and not based on any facts.

THE WITNESS: The basis is made on my --

THE COURT: Hang on, Mr. Jasser. Please don't answer until we ask you another question. The objection is sustained.

Ms. O'Neil, if you can establish personal knowledge about the facts of this case then I will allow questions related to those.

Q. (BY MS. O'NEIL) Dr. Jasser, have you reviewed the agreements that are the subject of this hearing?

A. Yes, I have.

Q. Have you spoken with Ms. Ayad about the circumstances surrounding the signatories of this?

A. Yes, I have.

Q. Are you also familiar with the cultural customs of the type of ceremony that she had?

A. Very familiar with it, over hundreds --

MR. FINDLEY: Objection -- Your Honor, may I take this witness on voir dire before he answers this question?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. FINDLEY:

Q. Dr. Jasser, where are you from?

A. I was born in the United States, served in the Navy 11 years. My family's from Syria. I'm of the Sunni sect similar to the Hanafi extraction that Mariam is.

Q. Okay. But Mariam is not of Syrian descent, is she, sir?

A. If you're implying in a very uninformed way that somehow Syrian Islam --

MR. FINDLEY: Objection, Your Honor --

A. -- is different than Pakistani --

MR. FINDLEY: -- sidebar comment.

THE COURT: Mr. Jasser, hold on. That

was -- I think that was a yes or no question. Can you please answer the question that was asked?

A. Can you repeat the question, please, Mr. Findley?

Q. (BY MR. FINDLEY) Mariam -- Ms. Ayad is not of Syrian descent, is she, sir?

A. No, she's not.

Q. She's of Pakistani descent, isn't she, sir?

A. I believe so.

Q. And are there cultural distinctions between Syrians and Pakistanis?

A. The Imam himself that she's using is of the --

MR. FINDLEY: Objection, nonresponsive.

A. -- Lebanese extraction.

THE COURT: Again, sir, that was a yes or no question. To the extent you get a yes or no question, I'm going to ask you to answer yes or no.

THE WITNESS: Cultural differences that he's asking about are such a vague question, I'm not sure how to answer that question.

Q. (BY MR. FINDLEY) Are there cultural practices with regard to marriage that differ between Syrians and Pakistanis?

A. My understanding, sir, is the proceedings are about religious issues not cultural issues related to

this document.

Q. So is it your testimony, sir, that there are no distinctions culturally between a Syrian and a Pakistani as far as the culture of the family surrounding the execution of an Islamic premarital agreement concerning to an Islamic marriage?

A. In my contact, many years with many, many mosques, I've had many contacts with the Indo-Pakistani community as I have the Arabic community --

MR. FINDLEY: Objection, Your Honor, nonresponsive.

MS. O'NEIL: Your Honor, he's trying to answer the question.

THE COURT: Okay. Mr. Findley, Ms. O'Neil has one minute left to spend with Mr. Jasser. Can we please just let her have her minute? I don't want to cut off your time. You have 15-and-a-half minutes. I suppose you can spend them how you like.

MR. FINDLEY: I would just object to, you know -- based on -- I just want one more -- just ask this -- answer this one question. Sorry, I can't speak today.

Q. (BY MR. FINDLEY) Is it your testimony, sir, that there is no cultural distinction made as far as religious ceremonies in Islam between Syrians and

Pakistanis?

A. Not of relevance to this case, sir.

Q. Okay.

MR. FINDLEY: I'll -- that's all I have, Your Honor.

THE COURT: Go ahead, Ms. O'Neil.

MS. O'NEIL: Thank you.

DIRECT EXAMINATION CONTINUED

BY MS. O'NEIL:

Q. Dr. Jasser, what do you think is the cultural consequence to Ms. Ayad if she had refused to sign the documents in the middle of her wedding ceremony?

MR. FINDLEY: Objection, Your Honor, he just said there's no cultural difference and that this is a religious -- this is a religious difference, and that's why I had him on voir dire asking him the questions between Syrian and Pakistani.

MS. O'NEIL: I'll ask the question differently, Your Honor.

THE COURT: Thank you.

Q. (BY MS. O'NEIL) Dr. Jasser, what were the consequences to Ms. Ayad if she refused to sign the documents?

A. I think it's very important that the Court understand that in many of these, if not all of the

situations, that the men that sign the document, the men that lead the proceedings --

MR. FINDLEY: Objection, nonresponsive, Your Honor.

A. -- treat a tribal inertia that forces the woman into --

THE COURT: Hang on. Hang on.

A. -- difficult --

THE COURT: Hang on. Hang on. Okay. We asked for anything specific to this case. Ms. Ayad has already said she wasn't threatened. So do you have any other information specific to this case, the fact that harm that would be coming to her that you know from your personal knowledge?

THE WITNESS: Your Honor, the harm is not only physical. It is a psychological sense of honor. The parents tell them that they're going to dishonor the family by asking any questions. They don't see the documents before. It is coercive. They aren't allowed to ask any questions and simply told it's ceremonial, it's traditional. They can't defend the family. The concept of honor, the tribal misogynistic inertia --

MR. FINDLEY: Objection, Your Honor, this is --

THE WITNESS: -- that a woman --

MR. FINDLEY: -- conclusory. This is --
THE WITNESS: -- that is forced by --
(Simultaneous speaking - indiscernible)
THE COURT: Hang on. Stop, stop, stop. One at a time. Mr. Findley's making an objection, Mr. Jasser.
MR. FINDLEY: His answer has now gotten to conclusory and argumentative.
MS. O'NEIL: He's answering the Courts's question.
THE COURT: Okay. The Court's heard enough. We've gone past the time that we had with Mr. Jasser. We did before the Court's question, so Ms. O'Neil, I'll give you one follow-up question.
Q. (BY MS. O'NEIL) Dr. Jasser, do you think that Ms. Ayad had any choice but to sign the documents in the middle of the ceremony?
A. I do not think so at all. The document itself proves --
MR. FINDLEY: Objection --
A. -- that by her signing --
MR. FINDLEY: -- nonresponsive after no.
A. -- it's done --
THE COURT: Hang on. Sustained.
A. -- and refusing to follow the laws of the land.

THE COURT: Dr. Jasser -- sir, please stop talking when other people are talking. Okay. We have -- in our system, when someone objects we have to stop and listen to the objection. The objection is sustained after no.

All right. Ms. O'Neil, that's your time.

Mr. Findley, do you have anymore questions for Mr. Jasser or is he free to leave?

MR. FINDLEY: He's free to leave.

THE COURT: Thank you, sir.

MS. O'NEIL: Your Honor, we're going to ask that he remain on the feed in case there's a need for future expert testimony, to hear any additional evidence that is presented.

THE COURT: All right. Mr. Findley, call your --

MR. FINDLEY: Your Honor, I'm going to move the Court to -- for -- basically, rule now that Ms. Ayad has not met her burden with regard -- involuntarily executing either the premarital agreement or, you know, the arbitration agreement which is the relevant portion of this. And we ask the Court to basically affirm it's prior ruling and order this case to go to arbitration.

THE COURT: Okay. Let me clarify. Do you have any other witnesses you intend to call? I'm not

going to make that determination until I've given the parties an opportunity to make any final argument.

MR. FINDLEY: Well, in that case, Your Honor, I'll call my client.

THE COURT: All right. Thank you, sir. Can you unmute?

THE WITNESS: Hello everyone.

AYAD HASHIM LATIF,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FINDLEY:

Q. Please state your name for the record.

A. Ayad Hashim Latif.

Q. And are you the respondent in this case?

A. Yes, sir.

Q. And you're the husband of Mariam Ayad, correct?

A. Yes, sir.

Q. When -- were you present at the time that the premarital agreement was signed between you and your wife in this case?

A. Yes, sir.

Q. Okay. Tell the Court the circumstances under which the premarital agreement was signed.

A. We were in a room in the mosque and --

THE COURT: Hang on. Hang on. I'm sorry.

Destiny, are you having trouble hearing him or is it just me?

Sir, can you pull your microphone closer, maybe turn up the volume on your computer.

THE WITNESS: Sure, Your Honor.

THE COURT: You might just need to sit closer to the computer itself so the microphone can pick you up.

THE WITNESS: Is it better now, ma'am?

THE COURT: It's a little bit better. Destiny, is that better? Okay. Go ahead.

THE WITNESS: Thank you, Your Honor.

A. What was the question, sir?

Q. (BY MR. FINDLEY) What were the circumstances surrounding the execution of the premarital agreement?

A. So Mariam's family had organized the Imam. I had actually called Imam ahead of time, and they said they were not busy that day. Then Mariam's family -- and they had recommended so they called the same Imam.

MS. O'NEIL: Objection, Your Honor, hearsay.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Dr. Latif, without telling the Court what any third person said, what -- what was -- what were the circumstances, and what I mean by that,

when you signed the premarital agreement, what happened?

A. So I was there in the room in the mosque where the nikah was being conducted and the paperwork was being completed before the nikah ceremony started and --

Q. Who was working on the paperwork?

A. I believe Mariam's aunt along with sharing the paperwork with me and Mariam.

Q. And was Mariam present?

A. Yes, sir.

Q. Okay.

MS. O'NEIL: Your Honor, I'm going to object to that -- the answer to both of those questions based on lack of personal knowledge. He said "I believe," which establishes that he didn't have personal knowledge of the --

THE COURT: Hang on, just a second. Mr. Latif, were you present in the room with the aunt?

THE WITNESS: Yes, ma'am. Yes, Your Honor.

THE COURT: All right. The objection's overruled.

Q. (BY MR. FINDLEY) When you walked into the room, did you and Ms. Ayad discuss the terms of the premarital agreement?

A. Yes, sir.

Q. What terms did you discuss?

A. It's been 12 years, I can't tell you all the details, but we generally discussed the contract.

Q. And what terms of the contract do you remember discussing with her?

A. We talked about the Mahr.

Q. And that's the dowry, correct?

A. Yes.

Q. Okay. Do you remember talking about any other provisions of this agreement before you signed it?

A. As I said, I cannot recall exactly which ones, but yes, we did talk generally about the agreement.

Q. Did Ms. Ayad express to you any reservations about signing the agreement?

A. None at all.

Q. Okay. How many times had you and Ms. Ayad discussed signing the agreement before you signed the agreement?

A. Well, that was a back and forth conversation. I don't remember how many minutes or how many questions or what, but that day we talked, and I don't see any reason why we were being forced.

MS. O'NEIL: Objection, nonresponsive.

THE COURT: Sustained.

Q. (BY MR. FINDLEY) What conversations did --

MR. FINDLEY: Strike that.

Q. (BY MR. FINDLEY) What conversations did you and Ms. Ayad have about finances before you signed this agreement?

A. I cannot recall the details, but she never told me about --

MS. O'NEIL: Objection, nonresponsive after "cannot recall."

THE COURT: Sustained.

Q. (BY MR. FINDLEY) Did Ms. Ayad ever express any reservations about signing the agreement?

A. No, sir.

Q. Did Ms. Ayad -- did you say anything to Ms. Ayad to, you know, demand that she sign this agreement?

A. No, sir.

Q. Okay. Had she not signed the agreement would you have married her?

A. Why not?

Q. So --

MS. O'NEIL: Objection, nonresponsive.

THE COURT: Overruled.

Q. (BY MR. FINDLEY) When you signed the agreement did --

MR. FINDLEY: Strike that.

Q. (BY MR. FINDLEY) When you signed the agreement

with Ms. -- with Ms. Ayad, who else signed the agreement?

A. Her father signed, Mr. Habib Ahmed. Her uncle, Mr. Mushtag Ahmed whose wife was also involved in introducing us to get --

MS. O'NEIL: Objection, nonresponsive.

THE COURT: Overruled.

A. And my brother, Raad Latif.

Q. (BY MR. FINDLEY) And did you witness Ms. Ayad -- did you witness Ms. Ayad express any reservations about signing the agreement?

A. Not at all.

Q. Did the Imam read the agreement out loud?

A. Yes, sir.

Q. When did he do that?

MS. O'NEIL: Objection, hearsay.

THE COURT: Overruled.

A. Before finalizing the signatures.

Q. (BY MR. FINDLEY) Okay. Did Ms. Ayad say anything after the Imam read the agreement out loud?

A. No, sir.

Q. Did Ms. Ayad, you know, show any expression after the Imam read the agreement out loud?

A. No, sir.

Q. And this was before or after you signed the

agreement?

A. Before.

Q. Okay. And she signed the agreement?

A. Yes, sir.

Q. And her family and members of her family signed the agreement?

A. Yes, sir.

Q. And who selected the Imam to perform the ceremony?

A. Her family.

Q. Okay.

A. In fact, they're the ones who --

(Zoom crosstalk - indiscernible)

Q. Wait for the question, Dr. Latif.

THE COURT: Hang on. Hang on. Wait for the next question, please.

Q. (BY MR. FINDLEY) And even though her family selected the Imam, you had no problem with this Imam, you know, doing the ceremony?

A. No, sir.

MR. FINDLEY: I will pass the witness.

MS. O'NEIL: May I have an opportunity for cross, Your Honor?

THE COURT: I'll give you -- your time has expired. I'll give you 60 seconds.

CROSS-EXAMINATION

BY MS. O'NEIL:

Q. Dr. Latif, which document was read out loud to Ms. Ayad?

A. Both the documents.

Q. And she testified that neither document was read out loud to her; do you understand that?

A. I do.

Q. When Mr. Findley asked you how long she was given to consider the documents, you said you didn't know how many minutes; in other words, it was in the middle of the ceremony. She wasn't given these documents ahead of time, correct?

A. I believe we both had access to the documents before the ceremony.

MS. O'NEIL: Objection, nonresponsive.

MR. FINDLEY: He answered the question.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) And did she have opportunity to consult with a lawyer?

MR. FINDLEY: Objection, speculative.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Was there a lawyer in the room when y'all were signing the documents?

MR. FINDLEY: Objection, relevance, not

required to have a lawyer in the room.

THE COURT: Overruled.

You can answer, sir.

A. Not to my knowledge, but I don't -- I can't say for sure. There were a lot of people from her family's side. I don't know if there were any of them who were attorneys at that time.

THE COURT: All right. Thank you. That's your time, Ms. O'Neil.

MS. O'NEIL: I have one more question, Your Honor. May I --

THE COURT: Your time's expired. I'd already given you additional time. Thank you.

Mr. Findley, any other questions based on Ms. O'Neil's?

MR. FINDLEY: No, Your Honor.

THE COURT: Okay.

MS. O'NEIL: Your Honor, for the record, I don't want to be seen as agreeing that I don't get additional time. I would like additional time to ask at least one more question.

THE COURT: I appreciate that. The Court already gave you additional time that Mr. Findley was not given and isn't using so we're going to stay with the additional time you already received. Thank you.

MR. FINDLEY: No further questions for this witness, Your Honor.

THE COURT: Okay. I have a couple of questions for the attorneys. So probably this goes more for Ms. O'Neil, but I guess Mr. Findley may have an answer as well.

At the last hearing the Court made it very clear that the Court would be applying 308(b) which states that after any award is made, any party can come back and object that whatever award was made violates the constitutional rights or public policy of the Court.

We also talked about Texas Family Code 153.0071 that says if anything is not in the best interest of the child then there's also an opportunity to be heard and have this court, I guess, invalidate any award that's not in the best interest of the child.

So a lot of the discussion at the last hearing was about there are remedies, so to the extent we're making public policy arguments and things, I guess, we don't know presumably what this panel of Imams that the parties chose should the Court choose to enforce the arbitration agreement, at this time we don't know yet what they might determine. So to the extent everything they determine is within the Family Code and constitutional and public policy of the State of Texas

then I'm not sure what we're complaining about.

To the extent they don't then Ms. Ayad has recourse under 308(b) and under 153.0071, and the Court certainly has the opportunity to overturn anything. So having made clear the Court is not going to impose religious law, and there are some -- we don't know yet. So a lot of the arguments are based on they're going to do things that are prejudicial to her, against public policy, but we don't know, and at the time that you do know after arbitration that something does violate constitutional rights and public policy, are not in the best interest of the child, there are remedies for all of that.

So help me understand then how the Court doesn't have the obligations and the presumptions we have for parties to contract, arbitrations, all of that, and then we have a remedy for most of what was complained of in both motions against the enforcement.

So Ms. O'Neil, can you speak to that first then I want to hear from Mr. Findley on the same issue?

MS. O'NEIL: Yes, Your Honor. My answer to that is fairly simple in the first part. The first part is that we are challenging the validity of the arbitration clause as being invalid, illegal, and unconscionable, and an unconscionable arbitration

agreement cannot be enforced.

I think I provided Your Honor with a notebook in advance. There is a Ken Paxton OAG opinion in that that very clearly says that a court may refuse to enforce such agreements when they solely apply the laws -- the Islamic law and not the laws of the land. And this agreement, regardless of any other evidence, this agreement on its own states that the law of the United States will not be applied and only the law of Sharia will be applied. And so the religious law is the only thing that's going to be applied so we do not believe we even get to the point that Your Honor is speaking of because the arbitration agreement itself is invalid as against public policy and unconscionable.

THE COURT: Okay. But if it's not and the Court finds it's a valid arbitration agreement, that's my question.

MS. O'NEIL: Then I think the next evaluation is going to be whether the supposed arbitration panel would consider whether the entire agreement is invalid because if you find the arbitration provision valid then the argument over the validity of the entire agreement will go to the arbitration panel. And only after the arbitration panel will it then go to the Court.

My understanding is that I, as Ms. Ayad's lawyer, will not be permitted to be in the proceeding, that only a jurist educated in Islamic law will be permitted to be in the proceeding and that she will therefore be denied by counsel. Further, it's my understanding that the decision of the panel, the Fiqh panel, will be binding on her unless you decide that it is then unconscionable as an application of Sharia law.

THE COURT: That's not my question so can we get to --

MS. O'NEIL: How are we going to know?

THE COURT: Very simply. At the end of all of that she has a remedy with this court to apply Texas law if anything the Fiqh panel does is not constitutional and is against public policy.

MS. O'NEIL: She has an inadequate remedy, Your Honor, because there's no guarantee of a record. There's no guarantee of representation of counsel. She's already been denied her right to disclosure in the agreement. She's already been denied her right to counsel in executing the agreement. So how are we going to know -- how are you going to know if her rights have been followed in the proceeding and if Texas law has been followed? Your Honor couldn't even attend that proceeding if you wanted to because we are women.

THE COURT: Let me just ask for the sake of argument. Does it matter if the outcome is in the best interest of the child and falls within the guidelines of the Texas Family Code. So let's say they come back with joint managing conservators, something similar to akin to that, mom is primary, a fifty-fifty division of community property, if -- I'm asking the question. If the end result is completely in line with what all of the presumptions in our Texas Family Code are then what is the complaint, that she doesn't get more than that?

MS. O'NEIL: My understanding is that we will not even be entitled to discovery of his assets under Islamic law because they do not consider community property. They consider everything that's in his name is his and everything that she has not been allowed to earn as hers, and she will get $32, and that's it.

THE COURT: In which case that doesn't comply with the just and right division of community property under Texas law, and therefore, your remedy under 308(b) would kick in. That's what I'm having a hard time getting around.

MS. O'NEIL: And the agreement itself doesn't comply with Texas law because it requires that those laws of the religion and the foreign country be

applied, so the agreement itself already says -- already answers that question so there's no need to go through the logistics of that to get to this court and come back here and say, oh, look, they applied Sharia law because the agreement already says they're going to do that. And Sharia law says that everything that he has and everything that he earned is his, and she only gets the stuff in her name and her $32 and go about your business. And she doesn't get custody because the age of discernment, seven for boys, nine for girls is when the father gets the choice of custody. They don't appoint joint managing conservator.

MR. FINDLEY: I'm surprised Ms. O'Neil is an expert on Islamic law.

MS. O'NEIL: I've read the code. I've provided --

(Simultaneous speaking - indiscernible)

THE COURT: One at a time. Stop. The court reporter cannot write down what you're both saying.

Ms. O'Neil, my point is that in that case you have an argument that whatever is decided about the best interest of the child, that's where 153.0071 comes in. This is not the only time the Court will have received arbitration agreements and awards and -- so I

guess, that's my question. So this is a common practice in the Muslim community, then divorces are -- arbitration awards are turned into divorce decrees. This is -- we're acting like this is the first time this has ever been seen and it's not, and in most of the cases that I have seen then, the dooms day outcome that we're attributing to this panel has not come to past.

That's my question. At this point, it's speculation as to what this panel -- assuming the agreement is found to be valid. It may not. I have not made a determination on that yet. But assuming it's found to be valid, our dooms day predictions about what this panel will do we have absolutely -- it doesn't necessarily work out that way, and then there is a remedy.

That's the difficulty I'm having getting around, is if ultimately it comes back to this court where Texas law eventually is applied assuming -- I get it's a lot of hoops to jump through if you have to do that, but that's the way our legislature has written these laws. I certainly find it to be inefficient, but that doesn't mean that's not the way the law goes if we follow it to its natural conclusion.

MS. O'NEIL: And, Your Honor, I don't think there's anything that I've heard that says that

these are -- that this agreement in this case is the common agreement in every case, and if Your Honor's relying on something else, I just don't know it.

My understanding is --

THE COURT: Okay.

MS. O'NEIL: -- agreements get entered --

THE COURT: Hang on. Hang on. Let me tell you. So what I'm looking at is the face of the agreement. It is a preprinted, fill-in-the-blank agreement that seems to come from the Islamic Association of North Texas. I think we discussed it at the last hearing that it seems to be a preprinted, fill-in-the-blank agreement that is handed out to anybody that goes to the Islamic Association. So I think there has been discussion that this is not a unique prenuptial agreement --

MS. O'NEIL: I think we're making --

THE COURT: -- to this case.

MS. O'NEIL: I think we're making an assumption about that, but beyond that --

THE COURT: I don't disagree, but we don't have anything that tells me this applies only to them either and that it's not. So in a vacuum that we don't know if it's unique or not then --

MS. O'NEIL: Can I answer your question --

the underlying question you had? We do have an answer. In my exhibit, I believe it's 21 -- don't pull it up. In my Exhibit 21 I have provided you with what I am told is the Family Code for Muslim communities in North America as provided by the Islamic Tribunal of North Texas as well as the jurist association that they've referenced in that web site.

MR. FINDLEY: It wasn't admitted into evidence, Your Honor.

THE COURT: Yeah, I do not recall it being admitted.

MS. O'NEIL: It was not admitted, Your Honor, but I think -- but you're asking me a specific question about information, and I'm giving it to you in a way that I think you can probably take judicial notice of. On page 25 --

THE COURT: I think what I said a minute ago is we don't have evidence that it is standard, and we don't have evidence that it isn't, so we don't --

MS. O'NEIL: I was answering your other question which is about what law they're going to apply and I believe --

THE COURT: That wasn't my question.

MS. O'NEIL: -- the law they're going to apply --

THE COURT: That wasn't my question. I understand what law their agreement says will apply. My question is, this court will be applying Texas law and that there are multiple avenues to cure the wrongs your arguments are saying will happen to Ms. Ayad.

So Mr. Findley, can you speak to that?

MR. FINDLEY: Your Honor, actually, my understanding is the same as yours with regard to when the challenge to Islamic law takes place. The Attorney General opinion that Ms. O'Neil references was actually written three years before Texas Government Section 22.0041 was ratified by the Texas Legislature which calls for, you know, how you deal with foreign judgments and foreign awards. And that statute led to the promulgation of Rule 308(b) that you discussed at the last hearing.

The legislature's made its decision, and it kind of merges in with how the Supreme Court has traditionally handled arbitration jurisprudence. You go through the process, and if there's a problem with the process, you deal with it afterwards. If the law wasn't applied properly or if it was against public policy.

And by the way, there's a provision in this premarital agreement, second to last sentence, where it says, "The law of the land will not be applied

in these conflicts except in cases where public order, safety, and/or health justly demands so." So there is a consideration in here for public policy of this state.

(Ms. O'Neil Zoom audio distortion - unintelligible)

MR. FINDLEY: So the fact of the matter is, Your Honor, this argument that Ms. O'Neil is making is premature at best. This argument needs to be made after the parties go to arbitration. There's been no evidence, which is Ms. O'Neil's burden to show, how this Fiqh panel would apply whatever law it was going to apply that was going to be unfair to the wife. No evidence was presented to the Court on this point.

So without that evidence, the Court cannot do what Ms. O'Neil is asking the Court to do and stop the arbitration process. I'm with -- I think the Court's absolutely right that the time to complain about this is after the process has been completed, and if Ms. Ayad believes that her rights were violated, she can bring those violations to the Court's attention, pointing out the foreign law as the motion -- you know, not -- you know, or to deny the motion to confirm the arbitration award.

I think the whole point is you go through the process and that the process has the rules that, you

know -- or applies some policy that's against public policy, at that point there's no question as to what law's been applied.

Ms. O'Neil didn't present the Court with evidence before this hearing as to how -- how this law would have been applied so I think -- I think the Court needs to stick with its original ruling.

MS. O'NEIL: May I respond?

THE COURT: Yes.

MS. O'NEIL: Your Honor, I think that the -- the family code of the tribunal that they are seeking to have hear this has specific rules about how custody is determined, about how marital property is determined, and it tells us, it tells us that the age of discernment, seven for boys, nine for girls is the age at which the father gets custody.

Like, we already know the answer to these questions. They are already available for us. We already know that they're not going to apply Texas law. We already know that they're not going to apply community property law. We already know that they're not going to appoint joint managing conservators. We already know that they're going to restrict Ms. Ayad's ability to travel if she is given custody. We already know that they're going to restrict her ability to

remarry if she is given custody.

We already know that their law violates Texas public policy, and Attorney General Paxton set that out in his opinion letter on this issue and the law that has come about since then has set about that. The *Sharif v Moosa* case out of Ben Smith's court set that out as well and found an agreement similar to this to be unconscionable.

What we don't know and what the Court and Counsel is speculating about is whether this agreement is a standard agreement, and I would submit that it is not, but they have provided you no evidence about that. The only question before the Court today is whether this arbitration provision is valid or whether we have proven it against public policy and/or unconscionable and/or involuntary. One of those is a question of fact; one of them's a question of law.

We believe that the face of the agreement shows them to be unconscionable because they already -- we already know that the face of the agreement requires only the application of Sharia law and not the application of the laws of the United States including our Constitution and the Texas Family Code. We already know this. The agreement -- the arbitration agreement already says it is not going to apply U.S. law so the

arbitration agreement is invalid, unconscionable, obtained through fraud, duress, and involuntary execution. We already know this. We don't need to go through the other steps.

MR. FINDLEY: Except we don't, Your Honor.

THE COURT: Hang on. Hang on one second. So people are allowed to contract. They're even allowed to make bad contracts, and the Court has to presume in favor of arbitration agreements and premarital agreements. The only two things that I'm aware of in Family Code 4.002 for premarital agreements is that it's in writing and signed by the parties, so --

MS. O'NEIL: But Your Honor.

THE COURT: -- that's what we appear to have here. So then I move on to was it voluntary or was it unconscionable which are two defenses to a premarital agreement, and unfair, unpleasant, embarrassing the case law has already found does not even -- doesn't rise to the level of unconscionable. We'll take the voluntariness as a separate question, but unfair --

MS. O'NEIL: Your Honor --

THE COURT: -- is not unconscionable.

MS. O'NEIL: The public policy does go to those issues. There is sufficient case law, I think I've provided it to you in the notebook I provided you

that says --

THE COURT: But again --

MS. O'NEIL: -- that the parties don't have the right to contract in an unconscionable agreement, and unconscionable agreement is one that does not apply the law of the United States.

THE COURT: Ms. O'Neil, you're telling me you have never seen a result, an award from a Fiqh panel that was agreed to by the parties that gave a reasonable award anywhere close to what the family court provides?

MS. O'NEIL: I'm not purporting to be an expert on a Fiqh panel because I would have not ever even been allowed to be in one and neither would Your Honor. What I'm saying is that the agreement --

THE COURT: The control issue that your client agreed to and people are allowed to agree to things, so because she agreed, I have to have a reason not to apply something that she agreed to.

MS. O'NEIL: Your Honor, the reason is that it on its face refuses to apply the United States law and the case law and General Paxton's opinion are clear that when you refuse -- and the *Sharif v Moosa* case which is directly on point here. When you contract for something that is a violation of public policy that contract is void regardless of the presumption of the --

THE COURT: But there is an exception that Mr. Findley did read that the law is applied except. So we have --

MS. O'NEIL: That doesn't say --

THE COURT: -- public order, safety, and/or health.

MS. O'NEIL: Because it says safety, safety. It says public safety.

THE COURT: No, it says --

MS. O'NEIL: That's not the same.

(Simultaneous speaking - indiscernible)

MR. FINDLEY: -- public policy of the State of Texas. Okay.

THE COURT: Hang on. Stop. Stop. One at a time.

Let me read it. "The law of the land will not be applied in these conflicts except in cases where public order, safety, and/or health justly demands so."

MS. O'NEIL: None of that says the law of the United States, marital property law, best interest. It doesn't say that. It says public order, public safety. It doesn't say public policy. That is a completely different statement.

THE COURT: I don't think we have a definition of what that does mean, so.

MS. O'NEIL: I think we know what it does not mean.

THE COURT: Mr. Findley, anything else?

MR. FINDLEY: Just, Your Honor, all these arguments about what Ms. O'Neil believes is going to happen, there's no evidence as to what's going to happen. And so with -- and since it's her burden to show that somehow the application of this process is unconscionable, I think the Court should stick with its original ruling and order this case to go to the Fiqh panel.

THE COURT: All right. Thank you-all. I will be e-filing my ruling, hopefully today, but if not Monday. Thank you-all.

(Proceedings concluded at 12:01 p.m.)

THE STATE OF TEXAS)

COUNTY OF COLLIN)

I, Destiny M. Moses, Official Court Reporter in and for the 416th District Court of Collin County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred via Zoom in accordance with the Supreme Court of Texas' Emergency Orders Regarding the COVID-19 State of Disaster and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $1,027 and was paid by O'Neil Wysocki, P.C.

WITNESS MY OFFICIAL HAND this the 15th day of June, 2021.

/s/ Destiny M. Moses
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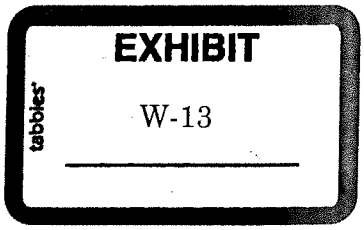

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Birthdate/ birthplace:	November 17, 1967, Canton, Ohio
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PROFESSIONAL CERTIFICATION and FELLOWSHIP

Diplomate, American Board of Internal Medicine, November 1, 1996,
Recertification Exp: December 31, 2024 # 170499

Diplomate, Certification Board of Nuclear Cardiology, December 7, 2002
Recertification Exp: March 1, 2024 # 2409

Fellow, American College of Physicians-American Society of Internal Medicine, Jan. 2000.

Diplomate, National Board of Medical Examiners, July 1, 1993, # 410741

EDUCATION

Doctor of Medicine with Honors in Research, May 16, 1992, Medical College of Wisconsin, August 1988- May 1992, Milwaukee, Wisconsin

Bachelor of Science with Honors, *magna cum laude in Zoology with University Honors Program completion*, May 14, 1988, University of Wisconsin-Milwaukee, August 1985- May 1988, Milwaukee Wisconsin

Target MD Program Student, B.Sc. /M.D. joint accelerated program of the University of Wisconsin- Milwaukee and Medical College of Wisconsin, Aug. 1985- May 1992

POSTGRADUATE TRAINING

Residency, Internal Medicine, National Naval Medical Center, Bethesda, Maryland, May 1994- April 1996

Categorical Medicine Internship, National Naval Medical Center, Bethesda, Maryland, July 1992- June 1993.

HOSPITAL STAFF PRIVILEGES

Banner University Medical Center-Phoenix, Active-unsupervised, June 1999-present

LICENSURE

Arizona Board of Medical Examiners, #27073, Phoenix, Arizona, Exp: March 17, 2022

ACADEMIC APPOINTMENTS

Associate Professor, University of Arizona School of Medicine- Phoenix, Department of Internal Medicine. July 2019-present

Clinical Medicine Instructor, Internal Medicine Residency Program, Department of Medicine, Banner Good Samaritan Medical Center, Phoenix, Arizona, August 1999-present

Medical Ethics Curriculum Coordinator, July 2001-present

Clinical Instructor, Cardiology Fellowship, Banner Good Samaritan Medical Center, Phoenix, Arizona, July 1999-present

Nuclear Cardiology Curriculum Coordinator, August 2005-2017

Medical Ethics Curriculum Coordinator, July 1999-present

Past Academic appointments:

Assistant Professor, Department of Medicine, F. Edward Hébert School of Medicine, Uniformed Services University of the Health Sciences, June 1996-April 1999

Teaching fellow, Department of Medicine, F. Edward Hébert School of Medicine Uniformed Services University of the Health Sciences, May 1995- May 1996

MILITARY HONORS

Meritorious Service Medal, for professional achievement as Staff Internist to the Office of the Attending Physician, US Capitol, U.S. Congress, Washington D.C., March 1999

Navy Achievement Medal, for professional achievement as Chief Resident, June 1997

Navy Achievement Medal, for professional achievement as Medical Department Head aboard

the U.S.S. El Paso (LKA-117), April 1994

Meritorious Unit Commendation, National Naval Medical Center, January 1996

Battle Efficiency Ribbon, U.S.S. El Paso (LKA-117), 1994

National Defense Medal

Pistol Expert Medal and Rifle Expert Medal

HOSPITAL COMMITTEE AND HEALTH PLAN APPOINTMENTS

Lead Bioethicist and Consultant, Western Region, Banner Health Network, January 2010 - present

Hospital Bioethics Committee, Chairman, Banner University Medical Center-Phoenix, Phoenix, Arizona, January 2001- present, Member, June 1999-present

Credentialing Committee Member, Banner Health Network, January 2013- present

Hospital Medicine Committee, member, Banner Good Samaritan Medical Center, Phoenix, Arizona, May 2000-December 2007

Professional Consultation Committee, Chaplain Residency Program, Banner Health Systems, Banner Good Samaritan Medical Center, Phoenix, Arizona, January 2002-December 2007

Past appointments

Hospital Ethics Committee, member, National Naval Medical Center, Bethesda, Maryland, July 1996- May 1997, House staff representative Jan. 1995- July 1996

Islamic Chaplain Search committee member, National Naval Medical Center, Bethesda, Maryland, July 1996- May 1997.

Executive Committee of the Medical Staff, Housestaff representative, National Naval Medical Center, Bethesda, Maryland, October 1995- October 1996

Graduate Medical Education Committee, Housestaff representative, National Naval Medical Center, Bethesda, Maryland, January 1996- October 1996.

GRADUATE MEDICAL EDUCATION HONORS

Winner, Podium Presentation, Regional Associates' Meeting, American College of Physicians', Washington, D.C. Chapter, May 11, 1996

Governor's Award, American College of Physicians, U.S. Navy Region, October 7, 1995.

First Place, Poster Competition, Second Annual Regional Associates Meeting, American College of Physicians, Washington D.C. Chapter, May 6, 1995.

Third Place, Poster Presentation, Regional Associates' Meeting, American College of Physicians,

United States Navy Region, October 26, 1994

MEDICAL EDUCATION HONORS

Alpha Omega Alpha Medical Honor Society, September 1991

President, Wisconsin Beta Chapter, 1991-1992

The Research Award, awarded to "graduating senior demonstrating the best potential for contributing to the advancement of medicine through research" May 16, 1992

Honors in Research Program graduate, Medical College of Wisconsin, May 1992

The Roche Laboratories Award for Excellence in Basic Science Research, Medical Student Division, 32nd Annual National Student Research Forum, Galveston, Texas, April 13, 1991

First Place Award in Oral Presentations, Medical Student, Midwest Student Medical Research Forum XXII, Omaha, Nebraska, February 9, 1991

Recognition Award, service to Medical College of Wisconsin Students, May 1991

Medical Student Travel Award, National Meeting of the American College of Rheumatology, Seattle, Washington, October 1990

AMA-Medical Student Section Award for Outstanding Membership Recruitment, Dec. 1989

Research Fellowships (Medical Student Grants)

-M & I Bank, June1990- August 1990, Milwaukee, Wisconsin

-Medical College of Wisconsin, June 1989- August 1989, Milwaukee, Wisconsin

United States Navy Health Professions Scholarship Program, full medical education scholarship at the Medical College of Wisconsin, August 1988- May 1992

PAST MEDICAL EDUCATION LEADERSHIP POSITIONS

Chairman, Executive Committee of the Resident Medical Staff, October 1995- August 1996. Founded Resident Medical Staff structure and drafted bylaws endorsed by privileged staff of National Naval Medical Center enacting Resident Medical Staff, August 1995.

Housestaff Representative, Executive Committee of the Medical Staff, National Naval Medical Center, October 1995- September 1996.

Vice-President, Intern Class, National Naval Medical Center, Bethesda, Maryland, July '92- June '93

President, Alpha Omega Alpha Medical Honor Society, Wisconsin Beta Chapter, 1991-1992

American Medical Association

National Delegate for U.S. Navy Delegation, House of Delegates of the AMA- Resident Physicians' Section. Annual Meeting, June 1996. Interim Meeting, December 1995

Medical Student Representative to State Medical Society of Wisconsin Executive Board of Directors, January 1991- May 1992

National Delegate for Medical College of Wisconsin Delegation, House of Delegates of the AMA-Medical Student Section. Interim Meeting, 1991, Annual Meeting, 1990, Interim Meeting, 1990.

President, AMA-Medical Student Section, Medical College of Wisconsin, 1989-1990

Medical Student Representative, Medical Society of Milwaukee County Executive Board of Directors, August 1989- December 1990

Medical Student Representative, Public Education Committee of the Medical Society of Milwaukee County, September 1990- May 1992

COMMUNITY AND PROFESSIONAL APPOINTMENTS

Commissioner, United States Commission on International Religious Freedom, appointed by Senator Mitch McConnell (R-KY) March 2012 - May 2016

Vice-Chair, June 2013-June 2014, June 2015-May 2016

Member, Maricopa County Board of Health, June 2005-June 2013

Board of Directors, Area Agency on Aging, September 2007-September 2012

Board of Directors, PrimeCare Healthcare Network, Phoenix, Arizona, January 2005-2012

Member, Quality Oversight Committee (QOC), Care1st Healthplan Arizona, Inc., April 2005-2009

Chairman, Board of Directors, ElderFriends, Transitional Housing Program for Elder Victims of Domestic Violence. September 2004-present. (Member 2002-September 2007)

Board of Directors. Arizona Interfaith Movement. Muslim Representative. December 2001-2012

EMT Program Director, Coordinating medical team providing 911 response on Capitol Hill, Office of Attending Physician, U.S. Capitol, May 1997- April 1999

Allergy Program Coordinator, Oversight of allergy immunotherapy program, Office of Attending Physician, U.S. Capitol, May 1997-April 1999

AED Program Coordinator, Oversight of AED Training Program for Capitol Hill Clinics, Office of Attending Physician, U.S. Capitol, May 1997-April 1999

COMMUNITY HONORS

Defender of the Home Front Award, Center for Security Policy, October 2007.

Director's Community Leadership Award, FBI Phoenix Office, January 2007

PROFESSIONAL AND COMMUNITY SERVICE ORGANIZATION LEADERSHIP POSITIONS

Host, Podcast, *"Reform This!"* Blaze Radio Podcast Network. 2017-present. iTunes, Spotify,

Soundcloud.

Co-Founder, Muslim Reform Movement, U.S., Canada, and Europe, December 2015-present. www.muslimreformmovement.org (previously American Islamic Leadership Coalition-AILC)

Board Member, American Conservative Union, 2015-present

Board of Advisors, Gatestone Institute: International Policy Institute. New York, 2012-present

Chair, Private Practice Physicians Section (PPPS) of the American Medical Association, November 2020- present.

Chair, Private Practice Physicians' Congress of the AMA House of Delegates 2010-2020.

Delegate to the AMA House of Delegates, Arizona Medical Association, June 2008- present

Past-President, Member-Executive Committee, Arizona Medical Association, June 2008-present

Chairman, Arizona Disaster Preparedness Task Force. Arizona Medical Assoc., 2007-2011

Immediate, Past-President, Member-Executive Committee, Arizona Medical Association, June 2007-June 2008

President, Arizona Medical Association, June 2006-June 2007

President-elect, Arizona Medical Association, June 2005-June 2006

Vice-President, Arizona Medical Association, June 2004-June 2005

Member, Board of Directors. Direct Member. ArMA. June 2002- June 2004

Board Member, Maricopa County Board of Health, Phoenix, Arizona, June 2005-June 2012.

Chairman, Board of Directors, Elderfriends, Transitional Housing for Victims of Elder Abuse. Area Agency on Aging. September 2004-2011

Member, Board of Directors. Elderfriends. Transitional Housing for Victims of Elder Abuse. Area Agency on Aging. Jan 2002-September 2004.

Advisory Committee. Medical Choice for Arizona, Anthem, Arizona, March 2008- 2012

Advisory Council Member and contributing writer, AZMED. Journal of the Arizona Medical Association. January 2002- present.

Advisory Committee Member, Seeds of Peace Arizona Chapter, January 2003-2006

Founder, Board President, American Islamic Forum for Democracy, Phoenix, Arizona, October 2002- present. www.aifdemocracy.org.

Co-Founder, American Islamic Leadership Coalition (AILC), Washington, D.C., September 2010-2015. www.americanislamicleadership.org.

Co-Founder, Save Syria Now!, Phoenix, Arizona, March 2011-present. www.savesyrianow.com.

Past-President, Arizona Medical Association (ArMA) June 2008-present

Delegate to AMA House of Delegates, Arizona Medical Association, June 2008-present

Chairman, Arizona Disaster Preparedness Task Force. ArMA, June 2007- present

Immediate, Past-President, Member-Executive Committee, ArMA, June 2007-June 2008

President, Arizona Medical Association, June 2006-June 2007

President-elect, Arizona Medical Association, June 2005-June 2006

Vice-President, Arizona Medical Association, June 2004-present

Member, Board of Directors. Direct Member. ArMA. June 2002- June 2004

Board Member, Maricopa County Board of Health, Phoenix, Arizona, June 2005-June 2012

Chairman, Board of Directors, Elderfriends, Transitional Housing for Victims of Elder Abuse. Area Agency on Aging. September 2004-present.

Member, Board of Directors. Elderfriends. Transitional Housing for Victims of Elder Abuse. Area Agency on Aging. Jan 2002-September 2004.

Advisory Committee. Medical Choice for Arizona, Anthem, Arizona, March 2008- present

Advisory Council Member and contributing writer, AZMED. Journal of the Arizona Medical Association. January 2002- present.

Advisory Committee Member, Seeds of Peace Arizona Chapter, January 2003-2006

Board Member, Muslim Representative, Arizona Interfaith Movement, Phoenix, Arizona, October 2001- 2012

Coordinator, Founding Member, Children of Abraham, Muslim-Jewish Dialogue Group, Scottsdale, Arizona, November 2000-2010

Chairman, Interfaith Committee, Islamic Center of the Northeast Valley, Scottsdale, Arizona. January 2006-2007.

Speakers Bureau Member, Arizona Medical Association, Phoenix, Arizona. January 2002-present.

President, Osler Medical Society of Phoenix, Phoenix, Arizona, July 2001-June 2002.

Member, June 2000-June 2001

OCCASIONAL MEDIA APPEARANCES WITH THE FOLLOWING PROGRAMS

Television:

Al Jazeera – July 2010 – present

Al Jazeera English

BBC – March 2011 - present

Newsnight. BBC 2

The World Report

CBS – September 2010 - present

The Early Show. CBS.

CNN October - 2007 - present

American Mornings. CNN.

Anderson Cooper 360. CNN.

The Glenn Beck Show. CNN Headline News.
In the Arena with Eliot Spitzer. CNN.
The Joy Behar Show. CNN Headline News.
The Newsroom. CNN.
The Situation Room with Wolf Blitzer. CNN
World Report. CNN International

Fox News - January 2009 - present
Fox and Friends
America's Newsroom.
Tucker Carlson Tonight
The Ingraham Angle
Life, Liberty, and Levin
Justice with Judge Jeanine
Cavuto Live
Hannity
Fox News Tonight
Follow the Money. Fox Business.
Fox and Friends. Fox.
Happening Now. Fox.
On the Record with Greta Van Sustern. Fox
The O'Reilly Factor. Fox.

Fox Business Network
Varney & Company
After the Bell
The Intelligence Report
Making Money with Charles Payne
Mornings with Maria Bartiromo
The Lou Dobbs Show
Cavuto on Business

MSNBC
The Chris Matthews Show
Jansing & Company.
Morning Joe

Print/Online:

Jasser, M. Zuhdi. Contributing Writer

Arizona Republic. www.azcentral.com. March 2003-present

The Blaze. www.theblaze.com. February 2011 - present

The Daily Caller. www.dailycaller.com. February 2010- present

The Dallas Morning News. www.dallasnews.com. February 2007 - present

FoxNews.com. www.foxnews.com. May 2010 - present

Huffington Post. www.huffingtonpost.com. February 2009- present

Hudson Institute-NY. www.hudsonny.org. November 2008- present

National Review Online. www.nationalreview.com.

New York Post. www.nypost.com. May 2010 - present

Wall St. Journal. www.wsj.com. September 2010 - present

Washington Times. www.washingtontimes.com. March 2006 – present

Center for Security Policy. www.centerforsecuritypolicy.org January 2021-present

Radio:

Podcast Host, *"Reform This!"* Blaze Radio Podcast Network. 2017-present [weekly]. iTunes, Spotify, Soundcloud.

The Glenn Beck Show 2011-present

The Mark Levin Show 2010-present

The Dennis Prager Show. June 2012 – present

The Michael Medved Show. June 2012 – present

The Wall Street Shuffle. June 2012 - present

The Mike Rosen Show. September 2011 – present

America's Radio News Network. March 2011 – present

The Dennis Miller Show. June 2010 - present

Kilmeade & Friends. July 2010 - present

The Mike Broomhead Show. July 2010 – present

The Roy Green Show. November 2009 - present

Secure Freedom Radio. November 2009 – present

The Bill Bennett Show. November 2009 – present

The Laura Ingraham Show. November 2009 - present

The Vicki McKenna Show. November 2009 – present

Religion on the Line. November 2009 – present

National Public Radio. November 2009 - present

Documentaries

Fox News Reporting: A Question of Honor. Produced by Fox News, 2011. (Featured interview)

America at Risk: The War with No Name. Produced by Citizen's United Productions in association with Gingrich Productions and Peace River Company, LLC, 2010. (Featured interview)

Muslim Brotherhood Expands Westward. Produced by the BBC World Service Monday Documentary, August 2010 (featured interview)

The Third Jihad. Produced by Raphael Shore and Wayne Kopping of PublicScope Films, 2009. (narrator and featured interview).

Islam vs. Islamists. Produced by ABG Films, Inc. appeared on PBS, 2007. (Featured in one of five segments)

PUBLISHED BOOKS

Jasser, M. Zuhdi. *A Battle for the Soul of Islam: An American Muslim Patriot's Fight to Save His Faith*, Simon & Schuster, Inc, 2012.

PUBLISHED CHAPTERS

Jasser, M. Zuhdi. Political Islam, Liberalism and Diagnosis of a Problem. *Islamism: Contested Perspectives on Political Islam,* edited by Abbas Barzegar and Richard C. Martin; Stanford University press, 2010; pp 104 - 110

Jasser, M. Zuhdi. Americanism versus Islamism. *The Other Muslims: Moderate and Secular*, edited by Zeyno Baran; Palgrave and MacMillan, 2010; pp 175 – 193

Jasser, M. Zuhdi. The Synergy of Islam and Libertarianism. *Vital Speeches of the Day*, 2006. Vol LXXII. No. 14-15 pp 44-49.

Jasser, M. Zuhdi and Shahid, Sid. A Struggle for the Soul of a Faith: Spiritual Islam versus Political Islam. *The Impact of 9-11 on Religion and Philosophy – The Day that Changed Everything,* Edited by Matthew J. Morgan; Palgrave and MacMillan, 2009; pp 31-51

PUBLISHED ARTICLES

The American Islamic Forum for Democracy Website

Jasser, M. Zuhdi.

"They just don't get it (CAIR)," April 2, 2006

"Can Muslims Separate Religion and State," March 25, 2006.

"Think Globally, Act Locally- Local Muslim Paper prints hate cartoon," December 9, 2005

The Arizona Republic

Jasser, M. Zuhdi.

"Uproar over 'Rolling Stone' cover photo missed real story: Jasser: Normal look defines face of terrorism," Op-Ed July 23, 2013

"Sentence will affect honor-killing message," Op-Ed April 30, 2011

"Voices of moderation face irrational rants," The Issues Section. February 18, 2011

"Divisive Debate on Ground Zero," Op-Ed August 17, 2010

"It's time to root out political Islam," Op-Ed. January 9, 2010.

"D Minus: Proposal by White House a bureaucratic mess," Op-Ed. August 18, 2009

"A forum to oppose Muslim radicals," Letter to the Editor. August 14, 2007.

"From a Muslim Outlook, Imams have missed the point on flight behavior," Viewpoints Section. December 11, 2006.

"Immigrants Raise Voices for Democracy," Op-Ed. October 10, 2004.

"A Disgrace to Islam: Fascists use Allah as an Excuse for Murder," Op-Ed. September 26, 2004.

"Hooded Al Qaeda Thugs real enemies of Islam," Op-Ed. June 23, 2004.

"Why Muslims should rally vs. Terrorism," Op-Ed. April 11, 2004.

"Left out Muslims," Letter to the Editor. July 9, 2002.

"Vast Core of U.S. Muslims Loyal to the Flag," My Turn. November 4, 2001

Jasser, M. Zuhdi and Khalsa, Soul. "American Secularism offers lesson to France," November 28, 2005.

Weblog

Jasser, M. Zuhdi.

"More Liberty in the infirmary than the courtroom," *WeBlog.* March 27, 2006.

"A Moderate Voice of Muslim Pluralism with a Washington Address," *WeBlog.* March 25, 2006.

"All that's fit to print– for the right price," *WeBlog: PluggedIn.* March 24, 2006.

"Death Threats Against a List of Moderate Muslims in the West," *WeBlog.* April 13, 2006

"Murdering the Truth: Revealing Islamo-fascism," *WeBlog.* September 19, 2005.

"Neo-Nazis applaud Islamofascists," *WeBlog.* March 11, 2005.

"Killers stage a rally: A farce written in Blood," *WeBlog.* March 11, 2005.

"Struggle for the soul of Islam," *WeBlog.* March 5, 2005.

"Syria's Historic Blunder," *WeBlog.* February 25, 2005.

"Iraq's Winds of Change: rebirth of a nation," *WeBlog.* January 28, 2005

"Religious Voting Blocs: Shades of Theocracy," *WeBlog.* October 31, 2004.

"Muslims Must Lead the War on Terror: and Rise up soon," *WeBlog.* October 31, 2004.

"Bin Laden's Sleight of Hand: Sign of His Decline," *WeBlog.* October 31, 2004.

AZMED

Jasser, M. Zuhdi.

"Paved with Good Intentions," July/August 2003.

"Ethical and Legal Realities of the Right to Privacy," January/February 2003

"The Fragmentation of Medicine," 2002

"The Disappearing Soul of Medicine," 2002

Big Peace

Jasser, M. Zuhdi.

"Syrian Reform Starts At Home," May 28, 2011

"CAIR Spreads Propaganda for Radical Saudis on Islam's Holiest Day," November 17, 2010

"Muslim Soldier," July 22, 2010

"We Hold These Truths to Be Self-Evident," July 4, 2010

The Blaze

Jasser, M. Zuhdi.

"A Letter to the People of Egypt from an American Muslim," February 16, 2011

"Understanding Egypt: Islamic Socialism and the Left" February 6, 2011

The Daily Caller

Jasser, M. Zuhdi.

"Herman Cain's Muslim comments are misguided," June 10, 2011

"New York Times and CNN miss critical analysis of overhyped Muslim counter-radicalization video," August 27, 2010

"Time to take sides," July 27, 2010

"Taking a stand," May 5, 2010

"American Muslims respond to Al-Awlaki's call for jihad," March 18, 2010

"Failing at force protection: The misguided Pentagon report on the Ft. Hood massacre," February 8, 2010

The Dallas Morning News

Jasser, M. Zuhdi.

"The next step after Bin Laden – Reboot our Middle-East strategy," May 3, 2011

"U.S. wrongly sides with Muslim teacher," December 23, 2010

"This Isn't Prejudice," February 11, 2007.

Family Security Matters

Jasser, M. Zuhdi.

"How can we thwart future Islamist attacks?" May 5, 2010

"When it Comes to Islamist Terror, An Islamic Problem Needs an Islamic Solution," December 14, 2009

"Rifqa Bary, Islam, Muslims, Shari'iah and Apostasy (Part I1 of II)," September 22, 2009

"Rifqa Bary, Islam, Muslims, Shari'iah and Apostasy (Part 1 of II)," September 21, 2009

"What about the 'Jihadi' Nuclear Scientist?" June 18, 2009

"Obama Administration Stacking the Deck with Islamists," April 15, 2009.

"Is Negotiating with an Islamist Entity a Good Idea?" March 12, 2009.

"The Plight of Women Under Islamism: Time for Muslims to Shed the Denial," February 17, 2009.

"Defeating Salafism and Wahhabism, the Right Way," January 20, 2009.

"HLF Terrorism Case Guilty Verdict Signals a Sea Change," November 26, 2008.

"Where Does the Fight Against Islamism Go from Here?" November 11, 2008

"Honor Killings and the Struggle of Moderate Islam," October 7, 2008.

"Action, Not Talk, is the Order of the Day," September 11, 2008

"What it Comes to Islamism, the DNC doesn't get it," September 1, 2008.

"As the West Sleeps, Islamists Work on Establishing a Worldwide Islamic State (2 of 2)," August 25, 2008.

"The Muslim Brotherhood Shows its Cards," August 8, 2008.

"As the West Sleeps, Islamists Work on Establishing a Worldwide Islamic State (1 of 2)," July 25, 2008

"What War of Ideas?" July 25, 2008.

"CAIR Chairman Resignation Needs Careful Analysis," July 9, 2008.

"Islamism and the So-Called 'Muslim Voting Bloc': Shades of Theocracy," July 4, 2008.

"Chicago Tribune Misses the Mark on Radical Islamists-Coming Soon to a Town Near You," June 11, 2008.

"The War of Ideas: Revealing the Moral Weakness and Hypocrisy of the Islamist Imam- Part Two of Two," May 8, 2008.

"The War of Ideas: Finally A Debate-Part One of Two," April 11, 2008

"Lessons for American Muslims from the Conviction of AbuJihaad," March 7, 2008.

"Radical Islamists: A Clear Danger," February 25, 2008.

"Slouching Towards Sharia," February 2, 2008.

"In the War Against Islamism, We Must Listen to the Words of Our Enemies," January 31, 2008.

"Challenge to the American Pakistani Community: Make a Difference for Freedom," January 3, 2008.

"With Friends Like These: CAIR Reaches Out for a Setup," December 7, 2007.

"Begin the Debate: Nine-Point Guide to Discern Islamist from Non-Islamist Schools," November 25, 2007

"What Ramadan is Really About: Atonement and Renewal," October 12, 2007.

"Ideological Standards Needed to Confront Militant Islam: What Are They," October 1, 2007.

"The Muslim World Needs Advocates for Freedom, Not Democracy," September 30, 2007.

"Which Islam? Whose Islam? All Muslims Own the Interpretation of the Koran-Part Four of Four," September 14, 2007.

"Which Islam? Whose Islam? All Muslims Own the Interpretation of the Koran-Part Three of Four," September 12, 2007.

"Which Islam? Whose Islam? All Muslims Own the Interpretation of the Koran- Part Two of Four. September 12, 2007.

"Which Islam? Whose Islam? All Muslims Own the Interpretation of the Koran- Part One of Four," August 24, 2007.

"Fascism Spares No One," August 9, 2007.

"Accommodation as an Islamist Political Instrument," July 27, 2007.

"Congressman Ellison Carries the Islamists' Water," July 19, 2007.

"When Will We Learn?" June 29, 2007.

"CAIR's Islamism Revealed," June 14, 2007.

"Why the Pew Study of American Muslims is Dangerously Incomplete," June 4, 2007.

"Islamism, not Islam is the Problem," May 18, 2007.

"The Mainstream Media: Islamist Facilitators," April 24, 2007.

"The Flying Imams: A Defining Moment in American Values?" April 9, 2007.

"Treason by any other Name. March 23, 2007.

"The Not-So-Moderate Muslim Brotherhood," March 11, 2007.

"Our Government's Dangerous Partnering with the Wrong Muslims," February 23, 2007.

FoxNews.com

Jasser, M. Zuhdi.

"Where is the US Government in defense of Pastor Abedini and religious freedom" January 27, 2013

"America must protect religious freedom abroad" January 20, 2013

"An American Muslim's View- Why Our Community Needs the King Hearings On Radical Islam" March 9, 2011

"Bill of Rights Day – A Muslim's View," December 15, 2010

"My Fellow Muslims, We Must Wake Up!" May 7, 2010

The Hill's Congress Blog

Jasser, M. Zuhdi.

"Eighth Anniversary of 9/11 calls for...," September 10, 2009

"The NYC Bomb Plot: A Teachable Moment for American Security," May 27, 2009

The Hudson Institute

Jasser, M. Zuhdi.

"Wake-up Call: Islamists Insert Themselves into Healthcare Debate," September 9, 2009

"CAIR's Rule of Law," December 23, 2008.

The Huffington Post

Jasser, M. Zuhdi.

"Lesson of Ramadan for Muslims," August 28, 2009

"Getting Real on Shariah," May 11, 2009.

"Pious Muslims are Needed to Defeat Islamists," April 30, 2009.

National Review Online

Jasser, M. Zuhdi.

"The Times and the Muslims," January 27, 2012

"Zuhdi Jasser's Counter-Jihad: the administration refuses to utilize a strong opponent of radical Islam," October 6, 2011

"*Lack of Space Technology Is Not the Muslim World's Problem*," July 7, 2010

"On the Job Training," December 30, 2009

"The Unfought War on Islamism," September 11, 2008

"Suicide Reversal? Polling the Muslim World," July 26, 2007.

"Jihad in Jersey: A Garden State Reminder- We're at War," May 9, 2007.

"Why Do They CAIR About Jack Bauer?" January 29, 2007.

"How It's Looking. Iraq Three Years In," March 21, 2006.

"Dreams and Realities: Cartoon Problems," February 10, 2006.

The New York Post

Jasser, M. Zuhdi.

"Of films and fear," January 29, 2012

"Leaders' who fail the Awlaki test," October 10, 2011

"Why Muslims must look in the mirror," December 30, 2010

"Mosque unbecoming: Not at Ground Zero," May 24, 2010

The Wall Street Journal

Jasser, M. Zuhdi.

"The Islamist Threat Inside Our Military," August 19, 2011

"Questions for Imam Rauf from an American Muslim," September 10, 2010

The Washington Times

Jasser, M. Zuhdi.

"It's Not Over Till It's Over," August 14, 2009

"Overcoming Islamism: Defeat the Ideology and Claim Majority Victory- Part Three of Three," August 4, 2006.

"Muslims in the Crosshairs- Part Two of Three," August 3, 2006.

"Faux 'moderate' Islamists-Part One of Three," August 2, 2006.

"Cancer in its Midst," March 30, 2006

Swett, Katrina Lantos and Jasser, M. Zuhdi. "No human rights without religious freedom," September 27, 2012

Franks, Rep. Trent (R-AZ) and Jasser, M. Zuhdi. "American Muslims disagree: Islamist advocate's message won't resonate here," May 13, 2010

Other Publications

Jasser, M. Zuhdi.

"Asylum seekers deserve better from America: Opinion," *NJ.com*, June 28, 2013

"Obama must hold Myanmar's Thein Sein accountable for human rights violations," *Yahoo News*, May 19, 2013

"We Should Have Heeded the Warning Signs of Islamist Antisemitism," *JewishPress.com*, May 17, 2013

"Ethiopia Does Have a Legitimate Fear of Violent Religious Extremism," *Vital Speeches International*, April 2013

"Moderate Muslims Must Oppose Islamism," *New Age Islam*, April 20, 2013

"Jews face 'volatile synergy of hate' in Europe, Republicans warn," *The Telegraph*, February 28, 2013

"Islamist Censorship Charges On," *National Review Online*, February 11, 2013

"America Must Protect Religious Freedom Abroad," *Arutz Sheva*, January 23, 2013

"Government must protect nonbelievers," *Richmond Times-Dispatch*, January 20, 2013

"Sept. 11 terrorist attacks awakened us to a 'battle for the soul of Islam," *The Washington Post*, September 18, 2012

"American Islamists Find Common Cause with Pamela Geller," *American Thinker*, February 13, 2011

"What the Muslims in America can do," *Des Moines Register*, October 6, 2010

"A Course on Islam," *The Jewish News of Greater Phoenix*, July 30, 2010

"Religious tolerance starts at home," *The Milwaukee Journal Sentinel*, March 27, 2010

"We have a lot of work to do," *The Jewish News of Greater Phoenix*, February 19, 2010

"The HSR Interview," *Jane's Homeland Security Review*, August 4, 2009

"Hizb ut-Tahrir in America," *IsraelNationalNews.com*, August 4, 2009

"What President Obama should say to the Muslim World," *Investigative Project on Terrorism*, January 24, 2009

"What President Obama should say to the Muslim World," *Investigative Project on Terrorism*, January 24, 2009.

"Exposing the "Flying Imams," Middle East Quarterly. December 6, 2007.

"Waking Up to Islamo-fascism," *Beliefnet.com*. July 17, 2005

"A military clerkship can be invaluable to a civilian HPSP medical student," *Journal of the Military Medical Student Association*. 4:3, pp.14-15, Fall, 1991

Glazov, Jamie, Jasser, M. Zuhdi. Furnish, Timothy, Hamid, Tawfik, Spencer, Robert, "Symposium: The World's Most Wanted: A "Moderate Islam"," *Frontpage Magazine*, May 27, 2010

Cheriathundam, E., Doi, S.Q., Knapp, J.R., Jasser, M.Z., Kopchick, J.J., Alvares, A.P. Consequences of Over Expression of Growth Hormone in Transgenic Mice on Liver Cytochrome P450 Enzymes. *Biochemical Pharmacology*. 1998

Clemons, Jeannette, Jasser, M. Zuhdi. Noble, Gary, Monahan, Brian P. Gaucher's Disease Initially Diagnosed as Depression. *The American Journal of Psychiatry*. 154:2, February 1997.

Shakir, K.M.M., Jasser, M. Zuhdi. Yoshihashi, Ann K., Drake, Almond J., and Eisold, John F. Pseudocarcinoid Syndrome Associated with Hypogonadism and Response to Testosterone Therapy. *Mayo Clinic Proceedings*.71:12, pp.1145-1149, December 1996.

Jasser, M. Zuhdi. Mitchell, Peter G., Cheung, Herman S. Induction of Stromelysin-1 and Collagenase Synthesis in Fibrochondrocytes by Tumor Necrosis Factor- Alpha. *Matrix Biology*. 14:3, pp 241-49. April 1994.

Jasser, M. Zuhdi. Mitchell, Peter G., Cheung, Herman S. The Induction of Stromelysin and Collagenase Synthesis in Chondrocytes. *JAMA*. 266:17, pp. 2455, Nov. 6, 1991. (abstract)

Jasser, M. Zuhdi. Mitchell, Peter G., Cheung, Herman S. The Induction of Stromelysin and Collagenase in Chondrocytes. *Clinical Research*. 39:3, pp. 787A, October, 1991. (abstract)

CONGRESSIONAL TESTIMONY

Jasser, M. Zuhdi. "The Muslim Brotherhood's Global Threat". Congressional testimony before: The House Committee on Oversight and Government Reform, Subcommittee on National Security "*The Muslim Brotherhood's Global Threat*". July 2018

Jasser, M. Zuhdi. "Willful Blindness and Radical Islam," Testimony to U.S. Senate Subcommittee on Oversight, Agency Action, Federal Rights and Courts, June 28, 2016

Jasser, M. Zuhdi. "The Global Religious Freedom Crisis and Its Challenge to U.S. Foreign Policy" Testimony to U.S. Congress, House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, June 16, 2016

Jasser, M. Zuhdi. "Human Rights Abuses in Egypt" Testimony to U.S. Congress, House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, December 10, 2013

Jasser, M. Zuhdi. "Religious Minorities in Syria: Caught in the Middle," Testimony to U.S. Congress, House Foreign Affairs Joint Subcommittee, June 25, 2013.

Jasser, M. Zuhdi. "Anti-Semitism: A Growing Threat to All Faiths," Testimony to the U.S. House of Representatives, Foreign Affairs Committee, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations. February 27, 2013.

Jasser, M. Zuhdi. "The American Muslim Response to Hearings on Radicalization within their Community." U.S. House of Representatives Committee on Homeland Security., June 20,2012.

Jasser, M. Zuhdi. "See Something, Say Something Act of 2011," US House of Representatives Committee on the Judiciary Subcommittee on the Constitution, June 24, 2011

Jasser, M. Zuhdi. "The Extent of Radicalization in the American Muslim Community and that Community's Response," US House of Representatives Committee on Homeland Security., March 10, 2011

INVITED LECTURES, PUBLIC APPEARANCES

Jasser, M. Zuhdi. "Human Relations Commission" City of Scottsdale , January 27, 2016

Jasser, M. Zuhdi. "Foreign Policy and Global Security " Steamboat Institute, January 21, 2016

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Sun City Grand Republican Interest Group , January 16, 2016

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Phoenix Country Club, January 06, 2016

Jasser, M. Zuhdi. "Muslim Reform Conference" Heritage Foundation, December 3, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Desert Mountain Golf Club, November 30, 2015

Jasser, M. Zuhdi. "Law Enforcement and the Islamic Community " Maricopa County Attorney's, November 20, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" The Winter Night Club ,November 17, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Republican Women of Clifton and Northern Virginia , October 21, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Foot Hills Community Foundation, October 13, 2015

Jasser, M. Zuhdi. "Violations of Religious Freedom" ICERM, October 9, 2015

Jasser, M. Zuhdi. "Americans For a Safe Israel" Ina Levine Jewish Community Center, September20, 2015

Jasser, M. Zuhdi. "Islamists and Jihadists" UMPAC, September 18, 2015

Jasser, M. Zuhdi. "Constitution Day Program" Oklahoma State University ,September 17, 2015

Jasser, M. Zuhdi. "Islam" Arizona Association of Conflict Resolution, September 12, 2015

Jasser, M. Zuhdi. "How US should approach the Middle East and the threat of ISIS " Heritage Foundation , September 8, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" California Tea Party, July 25, 2015

Jasser, M. Zuhdi. "International Policy Council " Gatestone Institute, June 16, 2015

Jasser, M. Zuhdi. "Coptic Solidarity Annual Conference" Coptic Solidarity , June 11, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Nehemiah Hasak Club, June 7, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Republican Women of Prescott, May 26, 2015

Jasser, M. Zuhdi. "Islam" Gold Canyon Republican Club, March 14, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" All Saints Lutheran Church March 13, 2015

Jasser, M. Zuhdi. "Manning Networking Conference " Manning Center For Building Democracy , March 5, 2015

Jasser, M. Zuhdi. "America's Security in the Age of Jihad" CPAC, February 25, 2015

Jasser, M. Zuhdi. "Islam" The United Methodist Church, February 8, 2015

Jasser, M. Zuhdi. "Religion In America "Federalist Society U of A , February 5, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Sun Lakes Republican Club, January 13, 2015

Jasser, M. Zuhdi. "Muslim Minorities in the US & Europe" Georgetown University, December 15, 2014

Jasser, M. Zuhdi. "Stopping Radical Islam" Stand With Us, New York, December 10, 2014

Jasser, M. Zuhdi. "Stopping Radical Islam" Stand With Us, Philadelphia, December 9, 2014

Jasser, M. Zuhdi. "Stopping Radical Islam " Stand With Us, San Diego , December 7, 2014

Jasser, M. Zuhdi. "Reforming Islam" Global Faith Institute Omaha, December 6, 2014

Jasser, M. Zuhdi. "Stopping Radical Islam" Stand With Us, Los Angeles, November 5, 2014

Jasser, M. Zuhdi. "Middle East" Arizona Federation of Republican Women , October 24, 2014

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Jewish Community Association , September 11, 2014

Jasser, M. Zuhdi. "Exploring Deterrence Foundations Symposium " United States Strategic Command, August 13, 2014

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Unitarian Universalist Church ,July 6, 2014

Jasser, M. Zuhdi. "Global Challenges & Issues that face the US & the American Military" Air Force Civic Leaders Dallas, June 12, 2014

Jasser, M. Zuhdi. "Islam and Gender Quality Debate" Oxford Union , May 21, 2014

Jasser, M. Zuhdi. "Resolve Conflicts Peacefully " Portland State University , April 8, 2014

Jasser, M. Zuhdi. "What Should Be America's Place in 2017... After Obama " CPAC, March 6, 2014

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" American Lutheran Church, February 23, 2014

Jasser, M. Zuhdi. "Religious Liberties and Law " ASU Symposium, January 24, 2014

Jasser, M. Zuhdi. "Old Religions New Challenges " Temple Beth Shalom, January 23, 2014

Jasser, M. Zuhdi. "Islam, Muslims, and Religious Liberty. " Encore University Valley Presbyterian Church, January 18, 2013

Jasser, M. Zuhdi. "Human Rights Abused in Egypt" Testimony, December 10, 2013

Jasser, M. Zuhdi. "Stand With Us" Chicago IL, December 8, 2013

Jasser, M. Zuhdi. "Threat of terrorism; enemies of democracy in the Middle East; intolerance

for Israel at UN" Tauro Institute , December 3, 2013

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Arizona State University, November 24, 2013

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Deer Valley Tea Party, November 1, 2013

Jasser, M. Zuhdi. "Torch of Liberty " Anti-Defamation League, October 24, 2013

Jasser, M. Zuhdi. "How to support international religious freedom. Which organizations to support." Philanthropic Roundtable, October 17, 2013

Jasser, M. Zuhdi. "God and Truth Panel" Scottsdale Community College, October 8, 2013

Jasser, M. Zuhdi. "Security Briefing for law enforcement" Houston TX, October 3, 2013

Jasser, M. Zuhdi. "Human Rights Abuse in Egypt" 2172 Rayburn, October 1, 2013

Jasser, M. Zuhdi. Steamboat Institute, August 22, 2013

Jasser, M. Zuhdi. "The Struggle to be Heard" Friends of Simon Weisenthal, May 8, 2013

Jasser, M. Zuhdi. "Syria" UN Meetings, May 7, 2013

Jasser, M. Zuhdi. "Sharing Words, Changing Worlds" Arizona Humanities Council, April 28, 2013

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" ACT of America, February 9, 2013

Jasser, M. Zuhdi. "Current Events in the Middle East," American Lutheran Church, February 5, 2013.

Jasser, M. Zuhdi. "Religious Liberties and Law," Arizona State University, January 24, 2013.

Jasser, M. Zuhdi. "Threat of terrorism, enemies of democracy in the Middle East; intolerance for Israel at UN," Tauro Institute, December 3, 2013.

Jasser, M. Zuhdi. "Current events in the Middle East," Mensa, November 30, 2013.

Jasser, M. Zuhdi. "Special Lecture on Syria, the Middle East & the Global Battle for the Soul of Islam," Georgetown University, September 9, 2013.

Jasser, M. Zuhdi. "Religious Minorities in Syria: Caught in the Middle," Testimony to U.S. Congress, House Foreign Affairs Joint Subcommittee, June 25, 2013.

Jasser, M. Zuhdi. "Moderate Islam: The Struggle to be Heard," Friends of Simon Weisenthal, May 8, 2013.

Jasser, M. Zuhdi. "Sharing Words, Changing Worlds Lecture & Humanities Awards," Arizona Humanities Council, April 28, 2013

2013.

Jasser, M. Zuhdi. Speaker, "Public-Private Partnerships--What is being done to encourage Muslim relations?," Security Solutions International, November 6, 2012.

Jasser, M. Zuhdi. Speaker, "Better Elected Islamists than Dictators," Intelligence Squared U.S. Debates, October 4, 2012.

Jasser, M. Zuhdi. Speaker, "Islamic Reform," Council of Muslims Facing Tomorrow, SepT. 30, 2012.

INVITED LECTURES, PUBLIC APPEARANCES, (Cont.)

Jasser, M. Zuhdi. "Anti-Semitism: A Growing Threat to All Faiths," Testimony to the U.S. Congress, February 27, Jasser, M. Zuhdi. Speaker, "Islam vs. Islamism & current events in the Middle East," Deer Valley Tea Party, June 22, 2012.

Jasser, M. Zuhdi. Speaker, "Battle for the Soul of Islam," Changing Hands Bookstore, June 13, 2012.

Jasser, M. Zuhdi. Speaker, "American Islam," Unitarian Universalist Congregation of Phoenix, June 10, 2012.

Jasser, M. Zuhdi. Speaker, "The Worsening Plight of Christians and Minorities in Muslim Majority Nations," Private gathering of community leaders, May 25, 2012

Jasser, M. Zuhdi. Speaker, "Battle for the Soul of Islam," Republican Jewish Coalition, May 20, 2012.

Jasser, M. Zuhdi. Speaker, "What is political Islam and Should We Be Concerned?" Shillman Speaker Series, May 16, 2012.

Jasser, M. Zuhdi. Panelist, "Rescuing Human Rights," University of California San Diego, May 15, 2012.

Jasser, M. Zuhdi. Speaker, "The threat of Radical Islam," Paradise Valley Republican Women's Club, March 17, 2012.

Jasser, M. Zuhdi. Speaker, "Islamic Reform," Council for National Policy, March 9, 2012.

Jasser, M. Zuhdi. Panelist, "Israel-Palestinian Conflict: Obstacles & Opportunities," Progressive Voices for Peace in the Middle East, March 4, 2012.

Jasser, M. Zuhdi. Speaker, "The Muslims' role in preserving the principles of the US Constitution," Dayspring United Methodist, March 3, 2012.

Jasser, M. Zuhdi. Speaker, "The Solution for Defeating Radical Islam from Within the House of Islam: Represented by Moderate Islam," Bureau of Jewish Education, February 26, 2012.

Jasser, M. Zuhdi. Speaker, "Islam in America," Arizona Federation of Republican Women," February 24, 2012

Jasser, M. Zuhdi. Speaker, "Islam vs. Islamism," Our Savior's Lutheran Church, February 17, 2012.

Jasser, M. Zuhdi. Speaker, "Islam in the US," Sons of the American Revolution, February 16, 2012.

Jasser, M. Zuhdi. Speaker, "Islam vs. Islamism," Arizona State Senate Border Security, Federalism, and States Sovereignty Committee, February 16, 2012.

Jasser, M. Zuhdi. Speaker, "Ethiopia Does Have a Legitimate Fear of Violent Religious Extremism," Council on Foreign Relations," February 14, 2013

Jasser, M. Zuhdi. Panelist, "Istanbul Process & OIC," Endowment for Middle East Truth, February 7, 2012.

Jasser, M. Zuhdi. Speaker, "Islam in America," Pebblecreek Community, February 6, 2012.

Jasser, M. Zuhdi. Speaker, "The Right Way Forward for Democracy in the Middle East," Baker Institute, Rice University, February 1, 2012.

Jasser, M. Zuhdi. Speaker, "Islamic Reform," Mid-West Association of Reform Rabbis," January 30, 2012

Jasser, M. Zuhdi. Speaker, "What it means to be an American Muslim in a post 9/11 World," January 14, 2012

Jasser, M. Zuhdi. Speaker, "Being American Muslim," Embry Riddle University, January 13, 2012

Jasser, M. Zuhdi. Speaker, "Separation of Mosque & State," J. Reuben Clark Law Society, November 9, 2011.

Jasser, M. Zuhdi. Speaker, "Overview of the American Islamic Forum for Democracy," Sun City West Republican Club, November 5, 2011

Jasser, M. Zuhdi. Speaker, "Islam in America," C-100 Teleconference Series, October 21, 2011.

Jasser, M. Zuhdi. Speaker, "Separation of Mosque & State," University of Iowa College of Law, October 3, 2011.

Jasser, M. Zuhdi. Speaker, "Perils of Global Intolerance," Perils of Global Intolerance Conference: the UN & Durban III, September 22, 2011

Jasser, M. Zuhdi. Speaker, "Christian/Muslim Relations," Ethics & Religious Liberty Commission Research Fellows, September 21, 2011.

Jasser, M. Zuhdi. Panelist, "The Muslim Fear Industry," Religion Newswriters Association, September 17, 2011.

Jasser, M. Zuhdi. Speaker, "Understanding Islam," Changing Hands Bookstore, September 14, 2011

Jasser, M. Zuhdi. Speaker, "Introduction to AIFD," Phoenix Kiwanis, August 9, 2011

Jasser, M. Zuhdi. Panelist, "What Did the Rest of the World Learn About Deterrence From the Recent Upheavals In the Middle East and Africa?" 2011 US Strategic Command Deterrence Symposium, August 4, 2011

Jasser, M. Zuhdi. Panelist, "The Deteriorating Situation in Syria," Partnership for A Secure America, July 15, 2011

Jasser, M. Zuhdi. Speaker, "See Something, Say Something Act of 2011," US House of Representatives Committee on the Judiciary Subcommittee on the Constitution, June 24, 2011

Jasser, M. Zuhdi. Speaker, "The Voice of Islam - Who's Voice Are We Listening To?"

National Executive Institute Associates and Major Cities Chiefs, June 14, 2011

Jasser, M. Zuhdi. Speaker, "A Perspective on Islam," DPS Chaplains Training Seminar, May 16, 2011

Jasser, M. Zuhdi. Speaker, "Emerging Muslim Leaders," 112th Congress Coffee Cup Club, May 14, 2011

Jasser, M. Zuhdi. Panelist, "Muslim-Americans Speak Out on the Challenge of Radical Islamism," The Washington Institute for Near East Policy Soref Symposium, May 12, 2011

Jasser, M. Zuhdi. Speaker, "Ten Years After 9/11 – Setting an Interfaith Agenda," Simon Wiesenthal Center, April 25, 2011

Jasser, M. Zuhdi. Speaker, "A Counter Terrorism Solution" The Beatitudes, Phoenix, AZ,, April 23, 2011

Jasser, M. Zuhdi. Panelist, "Debate: Does Islam Need Reform and if So, How?" Scottsdale Community College, April 19, 2011

Jasser, M. Zuhdi. Speaker, "Islam, Islamists and the Relationship with America," Military Officers Association of America, April 14, 2011

Jasser, M. Zuhdi. Speaker, "How Our Foreign Policy in the Middle East is Connected to Domestic Policy on Muslim Radicalization," Eckerd College, St. Petersburg FL, April 11, 2011

Jasser, M. Zuhdi. Panelist, "A Conversation about Islam: A debate between Dr. M Zuhdi Jasser and Robert Spencer," David Horowitz Freedom Center, April 3, 2011

Jasser, M. Zuhdi. Panelist, "The Extent of Radicalization in the American Muslim Community and that Community's Response," US House of Representatives Committee on Homeland Security., March 10, 2011

Jasser, M. Zuhdi. Speaker, "Moderates and Radicals in Islam: How to Tell the Difference, And Why it Matters," Denison University Convocation, March 4, 2011

Jasser, M. Zuhdi. Speaker, "Islam, Islamists and America," ASU Retirees Association, February 26, 2011

Jasser, M. Zuhdi. Panelist, "Faith Foundations for Religious Freedom," Pepperdine University, February 25, 2011

Jasser, M. Zuhdi. Speaker, "Current Events in the Middle East," Kiwanis Club of Tempe, AZ, February 24, 2011

Jasser, M. Zuhdi. Speaker, "Muslim Issues in America," Property Owners and Residents Association, Sun City West, February 18, 2011

Jasser, M. Zuhdi. Speaker, "A Perspective on Islam," DPS Volunteer Chaplains, February 3, 2011

Jasser, M. Zuhdi. Speaker, "Islam, Islamists and the Relationship with America," Florida Society for Middle East Studies, January 29, 2011

Jasser, M. Zuhdi. Speaker, "Sharia Law in America," Red Mountain Tea Party, January 18, 2011

Jasser, M. Zuhdi. Speaker, "Promoting Global Understanding," Naples Council on World Affairs, January 10, 2011

Jasser, M. Zuhdi. Speaker, "Understanding the Threat of Radical Islam to the United States," Desert Foothills Library, Phoenix, AZ, December 8, 2010

Jasser, M. Zuhdi. Speaker, "Preserving the Principles of the U.S. Constitution, Liberty, Freedom, and the Separation of Mosque and State," Lifelong Learning at Pebble Creek, Goodyear, AZ, November 29, 2010

Jasser, M. Zuhdi. Panelist, "The Ground Zero Mosque – Should it Be Built?" Phoenix Rotary 100, November 19, 2010

Jasser, M. Zuhdi. Speaker, "Islam in America: The Role of Liberty and Freedom," American Jewish Committee, November 11, 2010

Jasser, M. Zuhdi. Speaker, "What the Muslims in America can do," The New York Board of Rabbis, November 11, 2010

Jasser, M. Zuhdi. Speaker, "Islam, Islamists and the Relationship with America," Mesa Republican Women, November 4, 2010

Jasser, M. Zuhdi. Speaker, "Thoughts on Islam, the Qur'an, and Muslim Practice and Ideology," Bureau of Jewish Education of Greater Phoenix, November 3, 2010

Jasser, M. Zuhdi. Panelist, "What it Means to Be an American Muslim," Drake University, October 7, 2010

Jasser, M. Zuhdi. Speaker, "Islamism and Domestic Policy," The Heritage Foundation, August 27, 2010

Jasser, M. Zuhdi. Panelist, "Domestic Terrorism and the War of Ideas," The Heritage Foundation, April 30, 2010

Jasser, M. Zuhdi. Panelist, "A Deeper Diversity, The Nation's Health: Renewing Social Justice and Human Well-Being in Our Time," The Smithsonian Institution and The Navy Medicine Institute for the Medical Humanities and Research Leadership, April 29, 2010

Jasser, M. Zuhdi. Speaker, "How Islam Works in America," Oslo Freedom Forum, April 27, 2010

Jasser, M. Zuhdi. Panelist, "Modern Islam: Engaging questions of faith, fanatics, democracy, and reform," The Ford Hall Forum, April 22, 2010

Jasser, M. Zuhdi. Panelist, "Book Launch Forum- The Other Muslims: Moderate and Secular,"

The Hudson Institute, March 10, 2010

Jasser, M. Zuhdi. Speaker, "A Strategy to Defeat Radical Islam" District 7 Republican Committee, Scottsdale, AZ: February 16, 2010

Jasser, M. Zuhdi. Speaker, "The Third Jihad," Students for an Open Society, Stanford University, January 28, 2010

Jasser, M. Zuhdi. Speaker, "9/11 Never Forget Coalition Rally," Foley Square, New York City, December 5, 2009

Jasser, M. Zuhdi. Speaker, ": Congressional Briefing on political Islam," Capitol Hill, Washington, DC, October 1, 2009

Jasser, M. Zuhdi. Public Appearance, "Moderate Muslim Summit on Capitol Hill" Capitol Hill, Washington D.C: June 20, 2009: Representing AIFD among other leading NGO's to Congress and government agencies.

Jasser, M. Zuhdi. Speaker, "A Strategy to Defeat Radical Islam" District 8 Republican Committee, Scottsdale, AZ: June 11, 2009

Jasser, M. Zuhdi. Speaker, "The Third Jihad" National Press Club, Washington D.C: May 13, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Temple Israel, Detroit, MI: May 12, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Fort Benning Military Base, Columbus, GA: April 30, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Columbus State University, Columbus, GA: April 30, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Birmingham Rotary, Birmingham Rotary: April 29, 2009

Jasser, M. Zuhdi. Speaker, "Radical Islam: One Muslim's Perspective" Birmingham Jewish Federation, Birmingham, AL: April 29, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" AFIO-AZ, Scottsdale, AZ: April 16, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Arizona Counter Terrorism Information Center, Phoenix, AZ: April 10, 2009

Jasser, M. Zuhdi. Speaker, "Religious Freedom in America's National Security Interest" International Freedom Caucus, Washington D.C: March 19, 2009

Jasser, M. Zuhdi. Speaker, Arizona Historical Society, Tempe, AZ: March 19, 2009

Jasser, M. Zuhdi. Speaker, "Islam in Today's World" Pinnacle Presbyterian Church, Scottsdale, AZ: January 25, 2009

Jasser, M. Zuhdi. Radio Interview, "The Third Jihad" Dennis Prager Show, October 7, 2008.

Jasser, M. Zuhdi. Speaker, "Upholding our Islamic Responsibility: Countering the Ideologies that Fuel Terrorism." Noor Islamic Cultural Center, Dublin, OH: July 26, 2008.

Jasser, M. Zuhdi. Presenter, Aspen Institute Fellows Luncheon: July 18, 2008.

Jasser, M. Zuhdi. Panelist, *10th Anniversary of the International Religious Freedom Act.* "The Continuing Importance of Promoting Religious Freedom in our Post-9/11 World." Congressional Human Rights Caucus Task Force for International Religious Freedom: July 17, 2008.

Jasser, M. Zuhdi. Speaker, "From Sudan to Iran: Ignoring the signs of a Genocide." George Mason University, Fairfax, VA: April 7, 2008.

Jasser, M. Zuhdi. Lecturer, "Spiritual-vs.-Political Islam," Joint Forces Staff College; Norfolk, VA: March 19, 2008.

Jasser, M. Zuhdi. Keynote Speaker, "Islam, Is it Compatible with the Cherished Ideals of America?" The Winter Night Club, Colorado Springs, CO: January 22, 2008.

Jasser, M. Zuhdi. Lecturer, "Islamism in America," Hudson Institute's New York Briefing Council: December 11, 2007.

Jasser, M. Zuhdi. Lecturer, "Americanism versus Islamism: A Personal Perspective," Twelfth Annual Templeton Lecture on Religion and World Affairs. Foreign Policy Research Institute: October 29, 2007

Jasser, M. Zuhdi. Guest speaker, *Multiple Meetings with Dutch political leadership as well as*

Dutch Muslim students and organizations sponsored by the U.S. Embassy, The U.S. Embassy at The Hague, Netherlands: November 2006 and December 2007.

Jasser, M. Zuhdi. Jebsen Center for Counterterrorism Studies: Islam in Democratic Societies, Tufts University, Boston, MA: April 27, 2007.

Jasser, M. Zuhdi. The Ideological Struggle for Muslims Living in the West: "Which Islam and Which Muslims," Hudson Institute, Washington, DC: April 26, 2007.

Jasser, M. Zuhdi. Overcoming Radical Islamic Fundamentalism: A Muslim Perspective. Young Presidents' Organization. Panel Discussion and Lecture. East Central Annual Conference. October 19-20, 2006.

Jasser, M. Zuhdi. Islam and Islamic Fundamentalism in 2006. The Orm School, October 9, 2006.Keynote Address.

Jasser, M. Zuhdi. Arizona Medicine: an Update from the Arizona Medical Association. East Phoenix Rotary Club. Phoenix, Arizona. October 12, 2006.

Jasser, M. Zuhdi. The State of Arizona Medicine: an Update from the Arizona Medical Association. Desert Samaritan Medical Staff Meeting address. Tempe, Arizona. September 26, 2006.

Jasser, M. Zuhdi. Islam vs. Americanism vs. Islamism. Phoenix 100 Rotary Club. Keynote

Address. Phoenix, Arizona. August 25, 2006.

Jasser, M. Zuhdi. Keynote Address. Arizona Medical Association House of Delegates Meeting. June 3, 2006.

Jasser, M. Zuhdi. Islam and the Muslim Community since 9-11. Temple Chai. Phoenix, Arizona. May 4, 2006

Jasser, M. Zuhdi. Muslims in America. Florida Middle East Studies Association. March 11, 2006

Jasser, M. Zuhdi. Guest Lecturer. "The Intersection of Bioethics and Religion in the Practice of Medicine," Masters in Bioethics Class. Midwestern University, Glendale, Arizona. April 12, 2005.

Jasser, M. Zuhdi Keynote Address- Islam in 2005 - Teaching Islam in the Context of the War on Terror. Annual Convention of the Wisconsin Council for the Social Studies (WCSS). March 15, 2005.

Jasser, M. Zuhdi. Invited Keynote Speaker. Jewish Film Festival. Featured Speaker. Sun Lakes Jewish Community. February 21, 2005. After showing of *Double Edge,* Mesa, Arizona.

Jasser, M. Zuhdi. Islam in 2005. Dayspring Methodist Church. Adult Education Course. February 13, 2005

Jasser, M. Zuhdi. Islam in 2005. La Casa de Cristo Lutheran Church. Scottsdale, Arizona. Adult Education Course. January 31, 2005.

Jasser, M. Zuhdi. *Abrahamic Tria-logue: An Abraham Salon Series.* Forum panelist and organizer of four-part tri-congregation Abraham salon series. Jan-April 2005, Scottsdale, Arizona.

Jasser, M. Zuhdi. City of Mesa Diversity Luncheon Speaker. *Arabs and Muslims in America.* December 16, 2004.

Jasser, M. Zuhdi. *The 60th Anniversary of the Koramatsu Case- American Civil Liberties in 2005.* Arizona State University College of Law. November 17, 2005.

Jasser, M. Zuhdi. Guest Panelist. *"Moderate Muslims in America"- On the Line.* Voice of America. Host: Eric Felten. November 14, 2004.

Jasser, M. Zuhdi. Guest Panelist. *"Commemorating the 60th anniversary of the Holocaust"-- On the Line.* Voice of America- Host: Eric Felten.

Jasser, M. Zuhdi. *Panelist, Forum on Moderate Muslim Voices,* Middle East American Convention for Freedom and Democracy. Washington, D.C. October 1, 2004.

Jasser, M. Zuhdi. Guest Speaker, *American Muslim Issues in 2004,* Camelback Kiwanis Club Luncheon, Eric Casper, Esq., President, August 26, 2004.

Jasser, M. Zuhdi. Guest Speaker, Muslim Representative, *Day of Conscience: Sudan,* SaveDarfur.org coalition. American Jewish Committee and Arizona Ecumenical Council, at the Shepherd of the Valley Lutheran Church, August 25, 2004

Jasser, M. Zuhdi. Guest Speaker, *Muslims and the Practice of Islam in America in 2004: An*

overview of the faith and relevant cultural, religious, and security factors contributing to discrimination and prejudice. Office of the Arizona Attorney General, Civil Rights Division, Brown Bag Lunch Series, July 15, 2004.

Jasser, M. Zuhdi. Organizer, Keynote Speaker, *Rally Against Terror: Standing with Muslims against Terror,* Patriot Square, Phoenix, Arizona, April 25, 2004.

Jasser, M. Zuhdi. Guest Lecturer, UCSF Class on World Religions, "Islam and Contemporary Relationships and Dialogue with Christianity, May 10, 2003. Director: Father Vernon Meyer

Jasser, M. Zuhdi. Hate Crimes Press Conference. Paul K. Charlton, United States Attorney, District of Arizona. U.S. Department of Justice. April. 15, 2003.

Jasser, M. Zuhdi. Guest Panelist with Eleanor Eisenberg, Director Arizona ACLU, and Gerald Richard, Esq., City of Phoenix Police Department. *Valley Leadership Forum.* Director: Lou Goodman. Topic: Racial Profiling. April 4, 2003.

Jasser, M. Zuhdi. *Muslim-Jewish Dialogue.* Course Lecturer. Scottsdale Community College. Senior Adult Educational Program. March 13, 2003.

Jasser, M. Zuhdi. A Lecture on Islam. *Arizona Interfaith Movement Forum.* February 18, 2003.

Jasser, M. Zuhdi. Islam and Liberty and the War on Militant Islamists. Invited Speaker. *Sunnyslope Kiwanis Club.* February 13, 2003.

Jasser, M. Zuhdi. Panelist: Peace in the Middle East. How Islam, Christianity, and Judaism view War and Peace. Joined by Eliot Brandt, AIPAC, and Dr. Paul Eppinger, Arizona Interfaith Movement. The Church of the Red Rocks, Sedona, Arizona. January 19, 2003.

Jasser, M. Zuhdi. *Islam: an Overview.* Invited Speaker. Brandeis Womens' Club of Sun City, Arizona, December 10, 2002.

Jasser, M. Zuhdi. Muslims in the US Military. *Muslim Youth of Arizona. Scottsdale, Arizona.* December 12, 2003.

Jasser, M. Zuhdi. *Changes in Medicine in 2002 after 9-11-01.*Invited Speaker. Republican Women's' Club of Palo Verde. November 20, 2002.

Jasser, M. Zuhdi *Islam.* Invited Speaker. World Religions Course. First Presbyterian Church, Sun City, Arizona. Director: Richard Zabreski. November 14, 2002

Jasser, M. Zuhdi. Panelist. *American Foreign Policy in the Middle East.* NAILS. Public Educational Forum. Northwest Trust Bank, Sun Lakes, Arizona, October 22, 2002.

Jasser, M. Zuhdi. *Islam and Democracy.* Invited Speaker. Kiwanis Club of Biltmore, Phoenix, Arizona. Host: Robert Bauer.

Jasser, M. Zuhdi. Discussion Panel Member. *Civil Rights and Racial Profiling.* Horizon. Host: Michael Grant. Joined by Bill Straus, Regional Director, Arizona Chapter of the Anti-defamation League of Phoenix. Channel 8, KAET. January 21, 2002.

Jasser, M. Zuhdi. Primary presenter and representative of Islamic Community of the Northeast Valley. *Scottsdale Development Review Board Hearing.* Scottsdale, Arizona. November

1, 2001 and January 10, 2002.

Jasser, M. Zuhdi. Discussion Panel Member. *Temple Kol Ami Yom Kippur Educational Seminar on Islam.* Host: Rabbi Charles Herring. Scottsdale, Arizona. September 27, 2001

Jasser, M. Zuhdi. Lecturer. *Medical Ethics Curriculum Monthly Lecture Series*, Internal Medicine Residency Program, Good Samaritan Regional Medical Center, Phoenix, Arizona, Monthly since July 2001. Chaplain Residency Program, Good Samaritan Regional Medical Center, Phoenix, Arizona. Quarterly since January 2002.

Jasser, M. Zuhdi. Monthly Discussion Group Speaker. *Children of Abraham. Muslim-Jewish Dialogue Group.* Phoenix, Arizona. November 2000- present.

Jasser, M. Zuhdi. Hospital Orientation Course Lecturer. *Operational Medicine in the United States Navy: Roles and responsibilities of corpsmen afloat.* Staff Education and Training Department. National Naval Medical Center, Bethesda, Maryland. August 1995- May 1997

Jasser, M. Zuhdi. Invited Lecturer. Medical Staff Meeting. *Tort Reform and Mandatory Assignment: the Need for Political Activism of Physicians.* St. Francis Hospital of Milwaukee, March 1990.

Jasser, M. Zuhdi. Invited Lecturer. *Medicine in the Media.* Regional Meeting of the American Medical Student Association, Medical College of Wisconsin, Milwaukee, Wisconsin. January 1989

Jasser, M. Zuhdi. Invited Lecturer. *Value of Animals in Medical Research.* Milwaukee Area High School and Junior High School classes. Community Speakers Bureau, Education Committee, SMAART at the Medical College of Wisconsin, Milwaukee, Wisconsin. 1989-1990

Jasser, M. Zuhdi. Invited Speaker. *Becoming a doctor.* Community Speakers Bureau, Office of Public Affairs, Medical College of Wisconsin, Milwaukee Area High School and Junior High School classes, 1988-1992.

PROFESSIONAL and MILITARY TRAINING COURSES

Nuclear Medicine Qualification Course. Associates in Medical Physics, L.L.C. 200 hours. Cleveland, Ohio. April 2001 and March 2002.

Toxic Agent Training at the Chemical Defense Training Facility at the United States Army Chemical School, United States Army Chemical School, Fort McClellan, Alabama, May 19, 1998

Medical Defense against Biological Warfare Agents Course, United States Army Medical Research Institute of Infectious Diseases, Fort Detrick, Maryland, March 9-11, 1997

Medical Management Chemical Casualties Course, U. S. Army Medical Research Institute of Chemical Defense, Edgewood Area, Aberdeen Proving Ground, Maryland, March 12-

15, '97

American College of Surgeons Committee on Trauma certification in Advanced Trauma Life Support.

PROFESSIONAL and MILITARY TRAINING COURSES CONT.

Advanced Cardiac Life Support Provider, American Heart Association certification, May 2005.

Basic Life Support Provider, American Heart Association certification, May 2005.

Pediatric Advanced Life Support Provider, American Heart Assoc. May 1997.

Surface Warfare Medical Officer Indoctrination Course- Atlantic, Naval School of Health Sciences, Portsmouth, Virginia, July 5, 1993- July 30, 1993.

Combat Casualty Care Course, Joint Medical Readiness Training Center, San Antonio, Texas, December 4, 1992- December 12, 1992

Officer Indoctrination Course, Class 88006, U.S. Navy, Newport, RI, June 1988- August 1988

PROFESSIONAL SOCIETY MEMBERSHIPS

American College of Physicians-American Society of Internal Medicine, Member, 1992 - present

American Society of Nuclear Cardiology- September 2002-present

American Medical Association, Member, 1988 - present

Arizona Medical Association, Member, 1999-present.

Alpha Omega Alpha Medical Honor Society, 1992- present

United States Navy League, 1999-present

RECENT PUBLICATIONS

- **Newsweek Column:** "The DNC's Deepening Embrace of Radical Islamists", August 24, 2020
- **Newsweek Column:** "The World's Red-Green Axis Comes to our Streets", July 24, 2020
- **Spectator:** Why we need the Muslim Reform Movement, March 24, 2019
- **International Forum of Psychoanalysis:** The identity struggle within Islam: Discussion of "Thoughts on the inner conflict within Islamic culture: Their existential anxieties and ours," by Malcolm Owen Slavin, PhD, August 17, 2017
- **Asia Times:** Radical Islam: we must talk about more than ISIS, August 22, 2017
- **Gatestone Institute:** Female Genital Mutilation: American Muslim Physician Says Stop Defending the Abuse of Girls and Women, June 26, 2017
- **Asia Times**: Is Mohammad Tawhidi the Imam we've been waiting for?, May 10, 2017
- **Independent Journal Review:** There's An Emerging 'Alt-Jihad' Movement In The U.S. But It's Not Muslims Who Are Pushing It..., March 15, 2017
- **Asia Times:** The Muslim Reform Movement: Even more necessary a year in, December 6, 2016
- **Independent Journal Review:** The DNC Will Be Betraying Reformist Muslims If They Pick Keith Ellison As Chairman, November 25, 2016
- **Asia Times:** After Qandeel Baloch's murder, is the world finally waking up to 'honor killings'?, August 5, 2016
- **Religious Freedom Project:** The Moral Imperative to Prevent-Not Just Name-Genocide, April 27, 2016
- **National Review Online:** It's Not 'Islamophobic' to Protest a Pro-Hamas Speaker, April 6, 2016
- **The Moscow Times**: Russia Should Embrace Its Religious Diversity, July 26, 2015
- **National Review Online**: Fighting for Victory against Islamism, December 16, 2015
- **Huffington Post:** Nations Must Repeal Blasphemy Laws, February 3, 2015
- **AZ Central:** I was bullied for criticizing Hamas, August 23, 2014
- **Christian Science Monitor:** How to loosen Boko Haram's hold on Nigeria , May 8, 2014
- **Desert News:** The fifth commandment is more than a directive, April 20, 2014
- **The Orange County Register:** Getting Assad regime out serves American interests, August 26, 2013
- **Jewish News:** Threading the needle of democracy in Egypt, August 7, 2013
- **AZ Central:** Uproar over 'Rolling Stone' cover photo missed real story, July 23, 2013

- **The Christian Science Monitor:** Obama must hold Myanmar's Thein Sein accountable for human rights violations, May 20, 2013
- **The Jewish Press:** We Should Have Heeded the Warning Signs of Islamist Antisemitism, May 17, 2013
- **AZ Central:** Muslims need to own how they're portrayed, May 3, 2013
- **National Review Online:** Moderate Muslims Must Oppose Islamism, April 20, 2013
- **Roll Call:** Bahrain's Choice, March 15, 2013
- "Anti-Semitism: A Growing Threat to All Faiths". February 27, 2013, U.S. House of Representatives, Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations. Testimony of M. Zuhdi Jasser, M. D. President, American Islamic Forum for democracy. February 27, 2013
- **Fox News:** Where is the US Government in defense of Pastor Abedini and religious freedom?, January 27, 2013
- **Richmond Times Dispatch:** Government Should Protect Nonbelievers, January 20, 2013
- **Fox News:** America must protect religious freedom abroad, January 20, 2013
- **The Washington Times:** No human rights without religious freedom, September 27, 2012
- **Dallas Morning News:** Why 'tough love' is best answer for Arab world, September 26, 2012
- **The Washington Post:** Sept. 11 terrorist attacks awakened us to a 'battle for the soul of Islam', September 18, 2012
- **The Washington Post:** Ramadan and religious freedom , August 1, 2012
- **The Arizona Republic:** The twin faces of Islam, June 23, 2012
- **The Hill:** Blasphemy bans threaten 'Arab Spring', religious freedom, May 16, 2012
- **Book:** *A Battle for the Soul of Islam: An American Patriot's Fight to Save his Faith.* Simon & Schuster, June 2012.
- **Metro New York:** "We thank God every day for the NYPD", March 5, 2012
- **The Arizona Republic:** Moral relativism poses threat to Muslim women , March 4, 2012
- **The New York Post:** Of films and fear The Times buys Islamist lies, January 29, 2012
- Congressional Testimony of M. Zuhdi Jasser, MD – House Homeland Security Committee – The Extent of Radicalization in the American Muslim Community and the Community Response. March 11, 2011.

RECENT CONGRESSIONAL AND COURT TESTIMONY

1. Court testimony: Hearing on Probation termination of minor (Name withheld) in Terrorism Case. American Islamic Forum for Democracy (AIFD) and Dr. Zuhdi Jasser engaged from 2015 to present by state and federal authorities to provide ideological rehabilitation and de-radicalization to defendant. June 8, 2021.
2. Deposition: Expert testimony on behalf of defendant. *Gething v Hoag. CV2018-054406. Arizona.* September 2020
3. Deposition: Expert testimony on behalf of defendant. *Boyce v Affiliated Colon and Rectal Surgeons et.al.* No. CV2016-005190. Arizona. January 2020
4. Congressional testimony before: The House Committee on Oversight and Government Reform, Subcommittee on National Security "*The Muslim Brotherhood's Global Threat*". July 2018
5. Testimony for Hearing before the Canadian House of Commons Standing Committee on Canadian Heritage. *"Unintended Consequences. M103 Harms all Canadians, Especially Muslims".* October 30, 2017
6. U.S. Senate Testimony: "*Willful blindness: Consequences of Agency Efforts to De-emphasize Radical Islam in Combating Terrorism.*" Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts Of the United States Senate Committee on the Judiciary, June 28, 2016.
7. U.S. House of Representatives Testimony: *"Identifying the Enemy: Radical Islamist Terror".* House Committee on Homeland Security's Subcommittee on Oversight and Management Efficiency, September 22, 2016

EXHIBIT
W-14

In the name of Allah, the Beneficent, the Merciful

Islamic Association of North Texas, Inc.

P.O. Box 833010
Richardson, TX 75083

840 Abrams Road
Richardson, Texas 75081

Tel: (972) 231-5698
Fax: (972) 231-6707

www.iant.com
www.iqa.iant.com

Islamic Pre-Nuptial Agreement

Date 12-26-08 No. 634

To Whom It May Concern

We the undersigned, agree of our own free will, in the presence of witnesses, to follow Islam in its totality and we make vows of commitment to apply Islam in its entirety in all aspects of our personal and family lives by agreeing to the following:

With our belief that Islam is the only acceptable way of living, which is binding on us in all spheres of life, we hereby agree upon and affirm that Islam will be the only basis of our relationship, which includes:

a) Validity, voidability, and dissolution of our marriage contract and all procedural and jurisdictional issues.
b) The rights, duties, liabilities and responsibilities of both husband and wife.
c) The husband will never unilaterally divorce his wife either verbally or in written form.
d) The husband will not have the right to marry a second wife without getting the written consent of the first living wife.
e) Neither of us will engage in extra-marital relationships.
f) Parent – child relations in all aspects including custody, conservatorship possession, support and adoption.
g) Raising the children as Muslims and nurturing them in a healthy Islamic atmosphere.
h) Property rights and liabilities.
i) Inheritance of the estates and assets.
j) The dowry (Mahr/Sadaq) to be given from the husband to the wife will be in the amount of $ 32/- , with $ 32/- to be paid in advance and NONE to be paid at a later date as agreed upon. The other conditions and stipulations being:

_____.

In all cases and matters, whether mentioned explicitly in this document or otherwise, the Qur'an, Sunnah of the Prophet Muhammad (peace and blessings be upon him), and Islamic Law (Fiqh) will be applied.

Any conflict which may arise between the husband and the wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in it's absence by a Fiqh Panel, which will consist of three Faqaihs (Muslim jurists and scholars), two of whom are to be appointed by the spouses (one for each spouse). The third Fiqh is to be appointed by the other two Faqihs and is to head the Panel. The

appointees will not represent the parties in conflict, but rather, serve as impartial arbitrators and judges, guided by Islamic Law and it's principles.
It is understood by both parties that the majority decision of the Fiqh Panel will be binding and final.

In the case where a conflict is to be solved by a court of law in the United States or abroad, the court will solely apply Qur'anic injunctions, the Sunnah of the Prophet (peace and blessings be upon him) and Islamic Law (Fiqh). The law of the land will not be applied in these conflicts, except in cases where public order, safety, and/or health justly demand so. If, however, a Muslim court or a substituting institution is available, the case will be addressed to this court or institution.

Bride's full name SALMA MARIAN AHMED

Social Security # [redacted]

Address [redacted]

[redacted]

Signature [signature]

Groom's full name AYAD HASHIM LATIF

Social Security # [redacted]

Address [redacted]

[redacted] 75082

Signature [signature]

Witness's full name [signature]

Social Security # [redacted]

Address [redacted]

[redacted]

Signature [signature]

Witness's full name RAAD HASHIM LATIF

Social Security # [redacted]

Address [redacted]

[redacted]

Signature [signature]

Wali's full name HABIB AHMED

Social Security # [redacted]

Address [redacted]

Signature [signature]

Imam's Signature [signature] Dr. Yusuf Z. Kavakci

I recieved the original of this form

AYAD LATIF
12/26/08

EXHIBIT
W-15

Mailing Address:
P.O. Box 833010
Richardson, Texas 75083

بسم الله الرحمن الرحيم

In the name of Allah, the Beneficent, the Merciful

Islamic Association of North Texas, Inc.

840 Abrams Rd. • Richardson, Texas 75081
Tel: (214) 231-5698 Fax: (214) 231-6707

DATE: 12/26/00

MARRIAGE CONTRACT

Believing that Islam is our way of life, binding us in all aspects of our lives, WE AGREE AND DECLARE THAT:

(a) All relationships between us;

(b) Validity, voidity, voidability, dissolution of our marriage contract and suit procedures and jurisdictions thereupon;

(c) Rights, duties powers and liabilities of each one of us;

(d) Property rights and liabilities of each one of us;

(e) Parent-child relations in all aspects including custody, conservatorship possession, support and adoption;

(f) Bringing up the children and raising them up as Muslims only;

(g) Inheritance of our estates and assets, and wills to be made by each one of us;

And in all cases and matters mentioned or not mentioned above, **Qur'an, Sunnah** of the **Prophet Muhammad** (pbuh) and **Islamic Law (Fiqh)** will be applied.

Any conflict which may arise between us will be resolved according to the **Qur'an,** the **Sunnah** and the Islamic law by Fiqh Committee consisting of three Faqihs (Muslim jurists and Scholars); two of them to be appointed by spouses (each one by one of the spouses), the third one being appointed by these two. The last one will head the committee. The appointees will not represent the parties in conflict and the committee will apply solely Islamic Law on the dispute and its decision will be final.

In case of any conflict to be solved by any court in State of Texas or in USA or any country outside the USA, the court will solely apply **Qur'anic** rules, the **Sunnah of the Prophet** (pbuh) and **Islamic Law (Fiqh)** on the case. The law of the land will not be applied in these conflicts at all.

BRIDE [redacted] (SSN)

GROOM [redacted] (SSN)

WITNESS [redacted] (SSN)

WITNESS [redacted] (SSN)

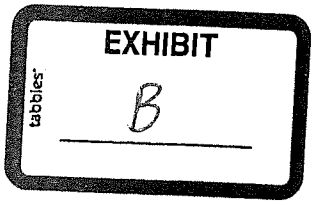
Dr. Yusuf Z. Kavakci

IMAM (Islamic Religious Leader of the Community)

I recieved the original of this form

AYAD LATIF

12/26/08



AFFIDAVIT OF SALMA MARIAM AYAD

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned notary, on this day personally appeared, SALMA MARIAM AYAD, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

"My name is SALMA MARIAM AYAD. I am above the age of eighteen years, and I am fully competent to make this affidavit. I am of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am a citizen of the United States and a resident of the State of Texas.

"On June 11, 2021, I was a witness to the proceedings in the 416th Judicial District Court of Collin County, Texas.

"If my attorney had been given additional time to question me, a summary of my additional testimony would have been as follows:

"Attached is a video of the marriage certificate signing originally taken on December 26, 2008, then provided to me on June 13, 2021. See Exhibit "B-1." I was present when this video was taken at my wedding. It is a true and correct depiction of the incidents that occurred.

"During the marriage ceremony, it became time for my husband and I to sign what I believed to be the marriage contract. The others present included: my father, Habib Ahmed; my aunt, Anisa Ahmed; my uncle, Mushtaq Ahmed; my husband's

brother, Raad Hashim Latif; the imam, Yusuf Z. Kavakci; and various other family and friends. These documents were not read out loud, as my husband testified. These documents were not explained to me. I was directed to sign on the signature lines of a document, which I believed was the marriage contract and marriage certificate. My understanding was I was signing proof that we had been married and that we would raise our children as Muslims. I had no idea I was waiving my rights as an American citizen and that any conflicts would be resolved by Islamic Law and not the law of the United States of America.

"I did not know that I was being presented with a prenuptial agreement. A prenuptial agreement was never discussed with me.

"My Husband and everyone else that I discussed it with said I would sign the marriage contract in the ceremony. When presented with the marriage contract, which was on top of the prenuptial agreement, I believed I was signing just the Certificate of Marriage and the marriage contract. I truly believed that the documents I was signing required multiple signatures, as most contracts do.

"In April of 2018, my husband and I met with Imam Nadim Bashir of East Plano Islamic Center for advice on martial conflict. Anytime I tried to speak, my husband would interrupt me or change the topic, and the imam allowed it. If I interrupted husband, I was instructed by imam to let husband finish. In the end, I did not get much of a say and any concerns I had were minimized and dismissed.

"In September of 2020, my husband and I met with Usman Mughni, a licensed marriage and family therapist who specializes in Islamic marriage counseling. He

cited personal conversations with an internationally renowned Islamic scholar, also a local imam, and his personal understanding of the faith to be that Islam encourages husbands to lie to and manipulate women, speaking about a man's wife and mother, in order to treat them with "hikmah," or wisdom and reason.

FURTHER AFFIANT SAYETH NOT.

SALMA MARIAM AYAD, Affiant

SIGNED under oath before me on June 21, 2021.

Notary Public, State of Texas

LISA GRAY
My Notary ID # 10382917
Expires March 8, 2024

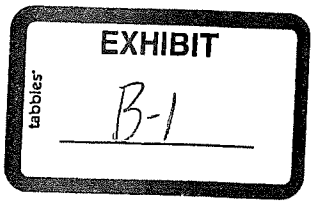
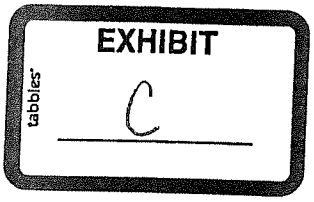


Exhibit 1

Video



DECLARATION OF M. ZUHDI JASSER, MD

STATE OF TEXAS §
§
COUNTY OF DALLAS §

My name is M. ZUHDI JASSER, MD, my date of birth is November 17, 1967. I declare under penalty of perjury that the foregoing is true and correct. Executed in Oak Island, NC on June 21, 2021, 2021.

"I live in the state of Arizona.

"I have no concern with the outcome of this case.

"On June 11, 2021, I was a witness to the proceedings in the 416th Judicial District Court of Collin County, Texas.

"If the attorney had been given more time to question me, a summary of my additional testimony would have been as follows:

"The Islamic Pre-Nuptial Agreement is unconscionable and against public policy. The Islamic Tribunal will not enforce civil rights, U.S. Constitutional law or American law over the provision of Sharia Law. The Islamic Tribunal will apply Sharia Law and will discount the testimony of the wife and thus deny her equal protection under the law. The agreement exceeds the normal and customary marriage agreement which is ceremoniously entered into between the spouses. I believe that Ms. Ayad was unaware of the consequences of the present agreement versus the customary and ceremonious agreement that should have been used during her ceremony. She was clearly coerced by an unfortunate all too common and

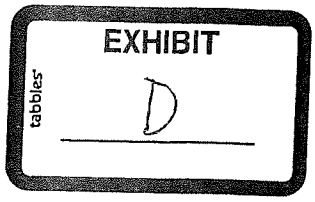
overwhelming tribal inertia experienced too often by women victimized unknowingly by the males in their own family and other local patriarchy. The pre-nuptial agreement will not provide for a fair distribution of the marital assets to the wife in the divorce, will deny her a no-fault divorce, and may deny her custody of her son under the application of Sharia Law."

This Unsworn Declaration is being executed pursuant to 28 U.S.C. § 1746, Texas Civil Practices & Remedies Code §132.001, and any other applicable law authorizing use of an unsworn declaration.

Signed on June 21, 2021, 2021.

DocuSigned by:
72E803C02E734B5

M. ZUHDI JASSER, MD, Declarant



AFFIDAVIT OF HABIB AHMED

STATE OF TEXAS §
§
COUNTY OF DALLAS §

Before me, the undersigned notary, on this day personally appeared, HABIB AHMED, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

"My name is HABIB AHMED. I am above the age of eighteen years, and I am fully competent to make this affidavit. I am of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I live in Missouri.

"I am the Father of Salma Mariam Ayad.

"On June 11, 2021, I was a potential witness to the proceedings in the 416th Judicial District Court of Collin County, Texas.

"If I had been given the opportunity to testify, a summary of my testimony would have been as follows:

"The prenuptial agreement came to my knowledge in January 2021, and I saw this prenuptial agreement in the beginning of March 2021 after a family member retrieved it from the mosque. I was surprised that this paper exists, and that I signed it.

"Prior to the marriage, we had discussed venues of where the marriage ceremony should take place. Ayad insisted for the marriage to take place at the IANT

mosque. I believe he knew the prenuptial agreement was part of the marriage package at IANT, but I didn't. Ayad purposely did not disclose to us that there would be a prenuptial agreement as part of the documents we signed for the marriage ceremony.

"I was not given any time to discuss or read the marriage document papers. They were not provided to me in advance.

"No terms were negotiated prior to the marriage, save and except for the Mahr, which was $32.00. No discussion in regards to a prenuptial agreement was ever conducted.

My understanding was the purpose of the wedding agreement was to declare that both Salma and Ayad should be declared husband and wife and that Ayad could obtain U.S. citizenship. I had no knowledge of any additional provisions.

The marriage would have been stopped if Salma did not sign the documents given by the IANT mosque.

No other mosque that I am familiar with requires the completion of a prenuptial agreement before marriage. We only know the imam because I prayed behind him whenever I visited Dallas and went to the mosque. I do not have a personal relationship or friendship with the imam. My family does not have a personal relationship or friendship with the imam.

"No financial disclosure was made by Ayad before or after the marriage. My understanding was that Ayad was completely financially dependent on his brother at the time of the marriage. During the first five months of the marriage, car insurance,

cell phone bill and renter's insurance for the new couple were paid by me and my wife, as well as the free use and eventual ownership of the car Salma took to college, a 2005 V6 Toyota Camry, which had been purchased by myself and my wife, for which Ayad paid me in installments beginning about two years after the marriage after he began his residency.

All money gifts received from the wedding reception, which was hosted and paid for by myself and my wife in Kansas City, was also given to the new couple, which included several thousand dollars in cash and gift cards. This is my understanding that Ayad can not work because of his visa status, and this gifted money helped the couple to pay for daily expenses, including but not limited to groceries, rent, utilities and travel expenses.

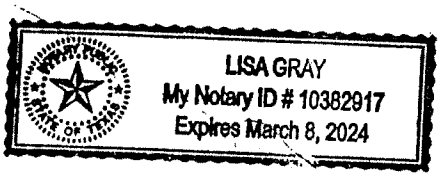
The $32.00 was agreed upon at Ayad's request as a standard, nominal sum. He gave the reasoning that when Prophet Mohammed's daughter got married, the Mahr was $32.00. We accepted his explanation, with the thought that they will be married for rest of the life and all the life savings and property will be shared equally. No father would agree to give his daughter up for this mere amount. This $32.00 was appropriate 1,400 years ago, but not in today's financial conditions. There is no restriction on this amount, therefore, in most of the Muslim marriages, especially in the USA the groom pays/promises thousand of dollars to his wife as gift.

"Other husbands who don't have the money at the time of the wedding, then gift (Mahr) this money later in their life, when money is available. In this case, Ayad chose the $32.00 only to give Mahr (gift) of $32.00 to his wife."

FURTHER AFFIANT SAYETH NOT.

Habib Ahmed, Affiant

SIGNED under oath before me on June 21, 2021.



Notary Public, State of Texas

R. GISTER OF ACTIONS

CASE NO. 416-50435-2021

In the Matter of the Marriage of Salma Mariam Ayad and Ayad Hashim Latif and in the Interest of A[redacted] A[redacted] A[redacted] §§§§§§

Case Type: **Divorce with Children**
Date Filed: **01/25/2021**
Location: **416th District Court**

PARTY INFORMATION

Petitioner	**Ayad, Salma Mariam *Also Known As* Ayad, Mariam**	Female	**Attorneys** **Michelle M O'Neil** *Retained* 972-852-8000(W) ~~Elisse V Woelfel~~ ~~*Retained*~~ ~~469-443-6040(W)~~ ~~Niles Illich~~ ~~*Retained*~~ ~~972-204-5452(W)~~
Respondent	**Latif, Ayad Hashim *Also Known As* Hashim, Ayad**		**Jeffrey O Anderson** *Retained* 972-963-5459(W) ~~Pro Se~~David H. Findley *Retained* 214-273-2400(W)

EVENTS ORDERS OF THE COURT

DISPOSITIONS

03/24/2021 **Order for Enforcement** (Judicial Officer: Thompson, Andrea)
Comment (Order on Motion To Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel)

OTHER EVENTS AND HEARINGS

01/25/2021 **Original Petition for Divorce (OCA) $319.00**
Original Petition for Divorce
01/27/2021 **Notice of Hearing**
Notice of Hearing--Remote Hearing Instructions
01/27/2021 **Notice of Hearing**
Notice of Hearing for Temporary Orders and Order to Appear
01/28/2021 **Letter**
Request for Issuance
01/28/2021 **Request for Notice $8.00**
01/28/2021 **Request for Citation $8.00**
01/28/2021 **Notice**

Latif, Ayad Hashim	Served	01/29/2021
	Returned	02/04/2021

01/28/2021 **Citation**

Latif, Ayad Hashim	Served	01/29/2021
	Returned	02/04/2021

02/04/2021 **Service Return**
Ayad Hashim Latif - Citation - Served
02/04/2021 **Service Return**
Ayad Hashim Latif - Notice - Served
02/05/2021 **Original Answer**
Respondent's Original Answer
02/05/2021 **Counter Petition $65.00**
Original Counterpetition for Divorce
02/08/2021 **Notice of Hearing**
02/10/2021 *CANCELED* **Temporary Orders Hearing** (9:00 AM) (Judicial Officer Thompson, Andrea)
Per Attorney
both sides
03/04/2021 **Motion**
Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel
03/09/2021 **Notice of Hearing**
Notice of Hearing -- Remote Hearing Instructions
03/12/2021 **Notice of Hearing**
Notice of Hearing on Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel

03/17/2021	**Response** *Response to Motion to Enforce Islamic Prenuptial Agreement and to Refer Case to Muslim Court or Fiqh Panel*
03/22/2021	**Motion Hearing** (9:00 AM) (Judicial Officer Thompson, Andrea) *Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel*
03/22/2021	**General Docket Entry** *Parties appeared with counsel, hrg held, parties referred to arbitration per terms of prenuptial agreement. -AST*
03/22/2021	**Original Answer** *Counterrespondent's Original Answer*
03/22/2021	**Notice of Appearance** *Notice of Appearance of Counsel and Findings of Fact and Conclusions of Law*
03/24/2021	*CANCELED* **Dismissal for Want of Prosecution** (8:30 AM) (Judicial Officers Thompson, Andrea, Thompson, Andrea) *Scheduled Trial Setting* *03/19/2021 Reset by Court to 03/24/2021*
03/24/2021	**Discovery Control Plan and Scheduling Order** *Bench Trial Discovery Control Plan and Scheduling Order*
05/05/2021	**Notice of Appearance** *Entry of Appearance and Designation of Lead Counsel in Charge*
05/12/2021	**Amended Answer** *Salma Mariam Ayad's First Amended Answer to Original Counterpetition for Divorce*
05/12/2021	**Motion** *Motion to Vacate or Reconsider Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court for FIQH Panel*
05/12/2021	**Motion** *Motion to Bifurcate and For Separate Trials*
05/13/2021	**Amended Petition** *First Amended Petition for Divorce*
05/13/2021	**Motion for Continuance** *Motion for Continuance*
05/13/2021	**Notice** *Notice of Past-Due Findings of Fact and Conclusions of Law*
05/13/2021	**Notice** *Notice of Intent to Oppose Arbitration Award*
05/14/2021	**Motion to Withdraw** *Motion for Withdrawal of Counsel*
05/17/2021	**Notice of Hearing**
05/21/2021	**Notice of Hearing** *Notice of Hearing -- Remote Hearing Instructions*
05/25/2021	**Amended Motion** *First Amended Motion to Bifurcate and for Separate Trials*
05/25/2021	**Amended** *First Amended Notice of Intent to Oppose Arbitration Award*
05/25/2021	**Amended Motion** *First Amended Motion to Vacate or Reconsider Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel*
05/25/2021	**Amended Answer** *Salma Mariam Ayad's Second Amended Answer to Original Counterpetition for Divorce*
05/25/2021	**Amended Petition** *Second Amended Petition for Divorce*
05/26/2021	**Status** (9:00 AM) (Judicial Officer Thompson, Andrea)
05/26/2021	**Notice of Hearing** *Amended Notice of Hearing*
05/26/2021	**General Docket Entry** *Parties appeared with counsel, conf with court re: ex parte communications. -AST*
05/27/2021	**Letter** *Re: Proposed Order of Stay*
05/27/2021	**Objection** *Salma Mariam Ayad's Objections to Proposed Findings of Fact and Conclusions of Law*
05/27/2021	**Order** *Order of Stay*
05/28/2021	**Letter** *Re: Proposed Order on Motion for Withdrawal of Counsel*
06/01/2021	**Order of Withdrawal of Counsel** *Order on Motion for Withdrawal of Counsel*
06/01/2021	**Motion to Withdraw** *Motion for Withdrawal of Counsel*
06/01/2021	**Order of Withdrawal of Counsel** *Order on Motion for Withdrawal of Counsel*
06/07/2021	**Notice of Hearing** *Notice of Hearing -- Remote Hearing Instructions*
06/08/2021	**Motion for Continuance** *Motion for Continuance of June 11, 2021 Hearing*
06/09/2021	**Notice of Hearing** *Notice of Hearing - Motion for Continuance of June 11, 2021 Hearing*
06/10/2021	**Brief** *Brief in Support of Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel*
06/11/2021	**Motion to Reconsider** (9:00 AM) (Judicial Officer Thompson, Andrea) *Motion to Bifurcate and For Separate Trials and motion for continuance*
06/11/2021	**General Docket Entry** *Parties appeared with counsel, hearing on motion to reconsider referral to arbitration. -AST*
06/14/2021	**Arbitration Ordered (Inactive - Pending)** *Order of Referral to Arbitration*
06/16/2021	**Notice of Hearing** *Notice of Hearing -- Remote Hearing Instructions*
06/17/2021	**Status** (9:00 AM) (Judicial Officer Thompson, Andrea)
06/17/2021	**General Docket Entry** *Counsel for parties appeared, TO reserved until resolution of mandamus. -AST*

06/17/2021	**Order**	
	Order Vacating Order on Motion to Enforce Islamic Prenuptial Agreement and Refer Case to Muslim Court or Fiqh Panel	
06/18/2021	**Jury Fee Paid $40.00**	
	Request for Jury Trial	
06/22/2021	**Petitioner's**	
	Petitioner's Formal Bill of Exception	
06/25/2021	*CANCELED* **Trial Before the Court** (9:00 AM) (Judicial Officer Thompson, Andrea)	
	Orders Signed	

Financial Information

Petitioner Ayad, Salma Mariam

	Total Financial Assessment			375.00
	Total Payments and Credits			375.00
	Balance Due as of 06/22/2021			**0.00**
01/26/2021	Transaction Assessment			319.00
01/26/2021	Payment	Receipt # DC-01742-2021	Ayad, Salma Mariam	(319.00)
01/28/2021	Transaction Assessment			16.00
01/28/2021	Payment	Receipt # DC-01999-2021	Ayad, Salma Mariam	(16.00)
06/18/2021	Transaction Assessment			40.00
06/18/2021	Payment	Receipt # DC-13349-2021	Ayad, Salma Mariam	(40.00)

Respondent Latif, Ayad Hashim

	Total Financial Assessment			65.00
	Total Payments and Credits			65.00
	Balance Due as of 06/22/2021			**0.00**
02/08/2021	Transaction Assessment			65.00
02/08/2021	Payment	Receipt # DC-02696-2021	Latif, Ayad Hashim	(65.00)

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF	§	IN THE DISTRICT COURT OF
SALMA MARIAM AYAD AND AYAD HASHIM LATIF	§	COLLIN COUNTY, TEXAS
[redacted] OF A CHILD,	§	416TH JUDICIAL DISTRICT

MOTION TO ENFORCE

On the 22nd day of March, 2021, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Judge Andrea Thompson, Judge presiding, held via Zoom in accordance with the Supreme Court of Texas' Emergency Orders Regarding the COVID-19 State of Disaster;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

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CHRONOLOGICAL INDEX
VOLUME 1
(MOTION TO ENFORCE)

P R O C E E D I N G S

THE COURT: 416-50435-2021; In the Matter of the Marriage of Salma Ayad and Ayad Latif and in the interest of a child.

State your name for the record and the party you represent. We'll start with the petitioner.

MS. WOELFEL: Good morning, Your Honor. Elisse Woelfel on behalf of Petitioner, Ms. Salma Mariam Ayad.

MR. ANDERSON: I'm Jeff Anderson. I'm here for Ayad Latif.

THE COURT: And we have the respondent's motion to enforce the Islamic prenup this morning which is Mr. Anderson's motion.

MR. ANDERSON: Yes, Your Honor.

THE COURT: You have a witness, I guess, that has a time constraint so if you want to begin with that witness.

MR. ANDERSON: I certainly would, Judge. May I go ahead and call the Imam -- I'm going to do my best to pronounce his name right. Is it Imam Moujahed Bakhach?

THE COURT: I don't know, but you can ask him when he gets in here.

MR. ANDERSON: Oh, I thought he was in

here. I was asking him.

THE WITNESS: Good morning.

THE COURT: Good morning. Okay. Sir, is it, Bakhach?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay. Can you raise your right hand for me, please.

(Witness sworn by the Court)

THE COURT: Okay. Good. Thank you. Go ahead, Mr. Anderson.

IMAM MOUJAHED BAKHACH,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q. Imam, would you please state your name for the record.

A. My name is Moujahed Mohammad Bakhach.

Q. And how are you employed, sir?

THE COURT: Hang on just a second.

Destiny, we're going to go off the record for a second.

(Discussion off the record)

THE COURT: Go ahead, Destiny.

Q. (BY MR. ANDERSON) Imam, would you please go over some of your background so the Judge knows where

you're coming from?

A. Thank you. I'm from Lebanon. We came here in 1982, 10 Imams, to represent the highest religious authority of Lebanon. They request us to come to North America and Canada, and they ask us and assign us different locations. I was lucky to be assigned at Fort Worth, Texas here since 1982 to serve the Muslim community in west Fort Worth located on Fletcher Avenue at that time. Now Diaz Avenue.

Since then until now, I'm still here. Also, I studied mediation. I graduated 2009 at the University of North Texas, and the bio I'm sure I send it to you and the CV. A lot of activities, actually. Imam is the title like Rabbi, like pastor of the church Christian, Jewish as religious leader of the community.

My background of education, I studied Islamic law in Al-Azhar University in Cairo, Egypt. My father used to be a judge. He wanted me to be like the same, so of course, I studied Islamic law there, and then I intend to go to France for the Ph.D., then I changed the direction to come here United States until now, still there.

So the community in North Texas in 1982 used to have only two mosques.

MS. WOELFEL: Objection, nonresponsive at

this point.

THE COURT: Sustained.

Q. (BY MR. ANDERSON) Imam, can you describe for the Court what your understanding of the term Islamic law means in the context of the premarital agreement?

A. In the premarital agreement that we have --

MS. WOELFEL: Objection, calls for speculation.

THE COURT: Overruled.

A. -- that couple, meaning here the husband and wife, that to sit down and discuss and negotiate mutual agreement about specific issues. Their concerns are mostly there to be the girl family concerns to make sure that everything would be helpful to help the couple to live in peace and comforts, stability as well as for respect, to apply the code as God living in the holy book of Muslims called Qur'an, chapter especially this verse will be recited everywhere in the part of the Lord when the Imam --

THE COURT: Hang on one second. So are you familiar with this couple?

THE WITNESS: Myself, no.

THE COURT: Okay. Do you --

THE WITNESS: I've never met with them before.

THE COURT: You said you were from Lebanon. Do you know where they are from?

THE WITNESS: Not really. I intend to ask because I put my question what are the background so can help me better to understand their background of the culture. Because we have seen clearly that the cultural practices some areas dominating the religious teaching.

Religion very simple, but the culture make it one or another different, but I don't know the background of the couple.

THE COURT: Okay. Let's find that out first. So Ms. Woelfel, Mr. Anderson?

MR. ANDERSON: Thank you.

Q. (BY MR. ANDERSON) And so far as Islamic law is concerned, that term, if both of these parties were Sunni --

THE COURT: My question is: Where did -- were they born in America?

MS. WOELFEL: My client's family is from Pakistan.

THE COURT: Okay. That's what I'm trying to find out. Mr. Anderson?

MR. ANDERSON: Thank you.

THE COURT: Where's your client from?

MR. ANDERSON: I think it's less regional

and more of the religious sect that they are dealing with, Your Honor.

THE COURT: Okay. Can we just answer my question to start? Where is he from originally?

MR. ANDERSON: Ayad, where are you from originally?

THE WITNESS: I'm sorry, what?

THE COURT: Hang on just a second.

MR. ANDERSON: Dr. Latif, where are you from?

MR. LATIF: Good morning, everyone. Karachi, Pakistan.

THE COURT: Okay. Good. Thank you. All right.

Go ahead, Mr. Anderson.

Q. (BY MR. ANDERSON) Is it so much between where they're specifically from or from the sect of the Islam that they practice? Imam, I'm asking you.

A. I'm sorry. That's really one count to the marriage. It doesn't make a difference too much from Pakistan mostly to say that to have -- to measure sects in Islam, that Sunni and Shiite.

Majority of Pakistan, to my knowledge, my community very high professional. Most of them from Pakistan and India. That region, I mean, very well

known that they are Sunnis. So that's -- and they follow the school of law that's specific leader, scholar that many people in the Muslim world different, but mainly Pakistan, they follow called Abu Hanifa.

THE COURT: Okay. Hang on. Let's ask that question then. Can I hear from each of your clients whether they are Sunni or Shiite?

MS. WOELFEL: Mariam, please unmute.

MR. ANDERSON: Dr. Latif, would you answer the Judge if you are Sunni or Shiite?

MR. LATIF: I'm a Sunni Muslim follow the Hanafi sect.

THE COURT: All right. Ms. Ayad?

MRS. AYAD: I'm Sunni Muslim.

THE COURT: Okay.

A. That's the same school that my studies actually on -- we are studying at Al-Azhar University. On the second year you have to choose which school of law you follow, and I choose that to be Abu Hanifa, the same that your clients representing here, the same thing.

So the point of the initial agreement that is very common -- I would like maybe to express something that little bit to say different. The immigrant, first generation immigrant to this country, the mutual agreement is not important too much because

don't forget the extended family system that when there is a dispute between husband and wife, the family will interfere and try to solve the problems and so on, so the agreement is not really here effective.

But the second generation that to marry that's absolutely the need, and that's what I encourage long time the couple to have the mutual prenuptial agreement to help them to live in peace and comfort. No doubt about it.

Q. (BY MR. ANDERSON) Imam, given that they're both Sunni, is Islamic law is that an ambiguous term as it applies to a premarital contract?

A. Absolutely not ambiguous.

Q. How is it not ambiguous?

A. Because everything is clear. This is a -- not a human being opinion. This is God verses revealed to the Prophet Mohammad, peace be upon him, and Imam and all of them that -- to do specific things and explain by that practice of the Prophet himself, peace be upon him, and then the scholars derive from that different incidents happened through the practice of the Prophet and the companions --

MS. WOELFEL: Objection, nonresponsive at this point.

THE COURT: Okay. Ms. Woelfel, from your

pleadings, I'm sorry, I was led to believe perhaps the parties were not of the same sect, if you will, and it sounds like they are. So what is --

MS. WOELFEL: Your Honor, I believe there's --

THE COURT: -- the confusion -- hang on.

MS. WOELFEL: I'm sorry.

THE COURT: So what is the confusion, and let's spend some time talking about what your pleadings are referring to is the confusion about which law would be applied? Because it sounds like the parties are from the same area and the same sect.

MS. WOELFEL: Well, I believe that you can further drill down just beyond Sunni. So my client -- and I'm most likely going to mispronounce some of the these words, and I apologize in advance. I'm not trying to be offensive.

My client is actually part of the Hanafi sect of Sunni Muslims. I might have mispronounced that, but so if we drill down even further, it's not just a difference between Sunni and Shiite. There's further distinctions within those two groups.

THE COURT: Okay. And what is Mr. Latif?

MR. ANDERSON: Dr. --

MR. LATIF: I am also Hanafi, Your Honor.

THE COURT: Okay. So we're still the same. What else?

THE WITNESS: Your Honor, if you allow me, I don't think at the time of the marriage that Hanafi or not Hanafi would be discussed never.

THE COURT: I appreciate that, sir.

THE WITNESS: It's the society.

THE COURT: Ms. Woelfel is telling us there's a difference here, and I'm trying to get down to what the difference is so that we're not arguing about something there's no argument about. So is there a further division beyond Hanafi then, Ms. Woelfel, that we're concerned about?

MS. WOELFEL: Well, my client has also told me that at this point in time she doesn't really ascribe to one particular sect, but I think that we have problems with this contract just beyond the -- you know, what is Islamic law? How is this going to be applied?

THE COURT: No, I understand. You have a lot of issues that you've pled. I'm trying to deal with this one issue that doesn't seem to be an issue that there was confusion about which Islamic law would be applied. It would appear it would be the Qur'an for Sunni Hanafi. Is that -- Imam Bakhach, is that correct?

THE WITNESS: There is no difference in

the Qur'an, of the spirit of the Qur'an or the Hanafi or Shafi'i or Shiite or Sunni actually. The point is really here a contract being done by two individuals. They agreed about specific points, and they disclose it in the agreement as I read very clear and strong language.

We agree for -- of our own free will, in the presence of witnesses, to follow Islamic and agreeing of the following and say -- so this was a contract like any other contract, from Islamic law point of view, to be respected and to be followed and to be practiced. So they agreed about specific point.

Both of them, they discuss it before ahead of time because the Imam who signed this, I work with him very back long number, many years, 18 years together. We worked together a lot, and we suggest this idea to come.

So the bride and the groom, they signed it, and they didn't sign before discussing the details among themselves before that and then grant --

MS. WOELFEL: Objection, nonresponsive at this point, Your Honor.

THE COURT: Hang on. He's responding to my question so I'd like to hear the rest of the answer.

Go ahead, sir.

THE WITNESS: So -- I'm sorry. So that really witnessed and the bride's representative also being -- sharing, even if doesn't have to, this contract between two individuals, but also two witnesses who witnessed the wedding, maybe to say they witnessed. So this is a serious contract regardless whatever inside the language now, whatever the agreement about.

But as a contract, two parties agreed about something, signed, and also witnessed as well as celebrated.

THE COURT: Okay. So -- but part of the issue that we're hearing from Ms. Woelfel and for her client is that it's unclear which law would be applied, and what I'm hearing from you and then what I've heard from the parties is I don't think I hear any confusion about which law would be applied.

THE WITNESS: Your Honor, I think --

THE COURT: Go ahead, Ms. Woelfel.

THE WITNESS: -- they agreed -- they agreed strongly. It says to follow -- on the first line of the agreement, as I'm reading here, to follow Islam in its totality, and we make vows for commitment to apply Islam in its entirety in all aspects of our personal and family life by agreeing to the following.

THE COURT: All right. Ms. Woelfel?

MS. WOELFEL: I'd like to apologize, Your Honor. I had gotten my wires crossed. I was going back and forth between screens and reading a text from my client. She is not Hanafi. Her husband is. So she is not a member of that sect.

THE COURT: I'm sorry, hang on. So when we had her unmute earlier and she answered Hanafi --

MS. WOELFEL: She answered Sunni.

THE COURT: Okay. So what then from there -- I'm sorry, I thought we asked her and she said Hanafi.

Ma'am, can you unmute and tell us the right answer?

MRS. AYAD: Your Honor, I'm a Sunni Muslim, and I don't ascribe to one particular sect. Most Muslims, from my understanding, don't ascribe to a particular sect. I practice Islam, and I am a Muslim.

THE COURT: Okay.

THE WITNESS: Your Honor, I agree with that actually. Basically, the Muslim is required to follow what God said or revealed and to follow the Prophet. And after that in the branches, not in the major issues, in the branches that different scholars under the umbrella of Sunnis. All of them, they are Sunnis by the way. When they say Hanafi, this is

different scholars, different type of the history like Abu Hanifa the leader of this school of law that he was in Iraq not in Pakistan, in Iraq.

We have another one Shafi'i or Maliki in Medina and Balthirea (phonetic) and so on. This is to reach the Islamic law and different culture, different understandings throughout the different years of generations. They were not all together the same time. So this is really have nothing to do with the marriage basically because the process of the marriage, the Prophet did -- said clearly and practiced what we should do as an Imam, as a clergy, what should I do or require from the couple to do.

THE COURT: Okay. Hang on. Hang on. Let me clarify.

Ms. Woelfel, I'm getting feedback. I think it seems to be from you.

So sir, let me clarify. Is -- I don't know if you would be one of the people that would -- if the Court grants the request for referral to the -- and I'm sorry, is it a fiqh panel? Then would there be confusion amongst the panel of what law to apply?

THE WITNESS: Not really. Not at all. Because the fiqh means -- it's an arabic word means understanding. So understanding of what? When we have

like couple to say I would like you to arbitrate our dispute. So we don't talk about whether Abu Hanifa or Shafi'i or Maliki, that scholar or this scholar. We don't raise this issue. Especially in marriage, we don't talk that way. And we are wondering -- even in the agreement I read, I didn't see any direction in the agreement to say we disagree to resolve according to Hanafi or other school of law.

THE COURT: I think that's part of --

THE WITNESS: We ascribe to Islamic law. That's it.

THE COURT: Yeah. I think that's part of what Ms. Woelfel is saying the confusion is, is it doesn't say how the dispute would be resolved, but what I've heard you say several times is that's irrelevant to the proceeding?

THE WITNESS: Yes, because the measure condition of solving the issue what God said and what the Prophet practiced. That's very simple.

The Islamic law resources, if they have an issue or any Muslim anywhere, he or she, wherever we are living, we have an issue. So what we say, we say what God said first. Do we have any verse script? Yes? No? So what the Prophet did or said or approve is the three branches of that Prophet rulings.

If not, we go to the next and what that consensus among that companions even after the Prophet death but for example. So we have organized a chair to go step by step to go from -- sometimes the Qur'an have verse general specified by the Prophet behavior or acting or statement or something from Hadith and other.

So the issue of Hanafi or Shafi'i, this is absolutely is not according to what we're talking about agreement here that -- to be even raised to say I'll follow Islamic law according to Abu Hanifa school of law. It's not mentioned there. It is generally as a contract.

What the contract from Islamic law to be recognized as a contract and applies the parties to it by having the agreement absolutely discussed and agreed and signed and witnessed and celebrated.

THE COURT: Okay. Any other questions, Mr. Anderson?

MR. ANDERSON: No, Your Honor.

THE COURT: Ms. Woelfel?

MS. WOELFEL: Not at this time, Your Honor.

THE COURT: Okay. All right. Thank you, sir, for your time.

THE WITNESS: Thank you very much.

THE COURT: All right.

THE WITNESS: Should I stay or should I leave?

THE COURT: No, you're free to leave. Thank you.

THE WITNESS: Thank you, Your Honor. Appreciate it.

THE COURT: Thank you.

All right. We had another witness, but he's disappeared from the waiting room.

MR. ANDERSON: I don't know that we're going to need him, Your Honor. He was the party's counselor, and it was only for a specific subject. It has not come up in the pleadings so I got it in case it did come up.

THE COURT: Okay. The other issue, Ms. Woelfel, it sounds like from the Imam, if they move forward with this, then there really isn't a question about which law will be appointed, but in any event, if that was a still a concern, the way the agreement reads is each party gets to appoint a person of their choosing. So to the extent their particular version wasn't represented, they could make sure they were by their appointment.

MS. WOELFEL: And, Your Honor, I would say

that even if that's true, I think we need to just go back to basic contracts here, and we have to look at the four corners of the document. And here it's saying, oh, well, we're going to apply Sunni law. Well, that's great. Now we know that there's additional sects in Sunni law so which sect are --

THE COURT: Actually, I think that's not what he said. He said all of that was irrelevant.

MS. WOELFEL: Well, I still think he said that they would apply Sunni law, but then the philosophies, as my client will testify to, in the varying sects under Sunni law are all very different.

THE COURT: Okay. So tell me why that can't be handled by her choice of appointment?

MS. WOELFEL: Well, it's a three panel -- it's a three-panel arbitration panel, so, you know, she has her choice of appointment and then from what my understanding is Dr. Latif would have his, and then I guess those two appointees would address the third. So who's to say what -- you know, how the third person is going to apply --

THE COURT: Well, that's the point. The person she picks has input into that.

MS. WOELFEL: I understand, but once again, I mean, I think it's just too unclear and

indefinite. I mean, he said we're going to -- we're going to apply God's law. Well, in the Qur'an it says that women can be stoned to death, so once again, I mean, we go to --

THE COURT: And that wasn't contemplated by your client at the time she signed the contract?

MS. WOELFEL: My client was not represented by counsel when she signed the contract. My client was handed the contract during one of the marriage ceremonies, and she just thought it was part of the marriage ceremony. She didn't have any opportunity to review the contract ahead of signing it. She didn't have any opportunity to review the contract with an attorney ahead of signing it, so she really didn't realize what she was signing.

THE COURT: I mean, the face and the plain language of the contract makes it fairly clear what it is.

MS. WOELFEL: And my guess is that she was --

THE COURT: Well, we don't need to guess.

MS. WOELFEL: Well, that's what I was going to say. I mean, I've talked to her and I can certainly put her on to testify about it. But she was a 22-year-old young lady who was very excited about being

married and was going through various marriage ceremonies and was handed documents to sign. She wasn't -- you know, she wasn't provided these things ahead of schedule to say, hey, why don't you review these and think about these things and talk it over with an attorney like we would typically expect to happen with any type of prenuptial agreement in Texas. She was in the middle of a marriage ceremony, handed the document, and told to sign it.

THE COURT: Okay. None of that is in your response. So your response seems to focus on the things we've been talking about not any of the other issues that we may normally see as a challenge to a premarital agreement.

MS. WOELFEL: I believe that we did touch on the fact that she was 22, and I was planning to get some of that out in testimony this morning, Your Honor, so I apologize.

THE COURT: Okay. The age in and of itself -- I mean, she's certainly of the age to make a contract. If you were saying she wasn't of the age to make a contract that might be relevant, but I don't see from the pleadings any of the other, I guess, affirmative defenses so to speak to the prenuptial agreement.

MS. WOELFEL: And, Your Honor, I did last night file an answer that included affirmative defenses. I don't know if it's been accepted by the District Clerk's Office yet, but it was filed last night.

THE COURT: Yeah, they don't work overnight.

MS. WOELFEL: Shame on them.

THE COURT: All right. Mr. Anderson?

MR. ANDERSON: Ma'am, as I understand it, the -- she was 22. She was in a -- I think she was a grad student at the time, and I believe her father is required to sign off on this as well. To say that she went into this thing and didn't even know it was happening is -- doesn't seem accurate enough to me.

And Ms. Woelfel has said two different things, and I want to make sure I'm clear on what she did say. In one of the things it was a -- she was handed this contract at one of the counseling sessions. Another time she said she was handed this contract during a marriage ceremony. I don't know which one she intended it to be. I just wanted to clear that though.

THE COURT: Okay. So we have as witnesses two witnesses that appear to have the same last name as the parties. So who were the witnesses?

MR. ANDERSON: I'd have to ask my client

specifically which one is which, Your Honor.

Doctor, can you tell me who all signed this agreement.

MR. LATIF: One was Mariam's father, Habib Ahmed. And the other was her uncle, Mushtag Ahmed. And my brother, Raad Latif, was also there. I don't know who was listed as who. I'd have to pull the documents.

THE COURT: I have a witness name -- the last name is Ahmed. I can't read the first name, but under "Wali's" -- I'm sorry, W-a-l-i -- full name, it says Habib Ahmed.

MR. LATIF: That's Mariam's father.

THE COURT: I'm sorry, I don't know the difference between a witness and a Wali.

MR. LATIF: Usually, it's the father who's listed as the Wali.

THE COURT: Okay. So her father and her uncle and your brother?

MR. LATIF: Yes, ma'am.

THE COURT: Okay. So besides the parties, those are the three other signatories it looks like and then the Imam.

MR. LATIF: Yes, Your Honor.

THE COURT: Okay. So, Ms. Woelfel, I don't know, it sounds like she didn't have it reviewed

by counsel, but her father and her uncle were participants in the agreement.

MS. WOELFEL: That's my understanding, Your Honor. Neither of them, to my knowledge, has any legal background, and from what I understand, you know, nobody in her family really realized what was being signed and what the implications of it could be down the road.

THE COURT: I mean, it's pretty much only a page long. It's a relatively simple document.

MR. ANDERSON: May I address that, Your Honor?

THE COURT: Yes.

MR. ANDERSON: It is not just a simple document. It is a form that's used by the Islamic -- forgive me, I'm going to butcher the name. The Islamic --

THE COURT: The title of it is Islamic Association of North Texas is the name on the form.

MR. ANDERSON: And neither of the people are represented by lawyers. They all had the input that everybody else has when they're entering these kinds of contracts. It's still a contract. It's still a marital agreement. It still follows all of the requirements of the Texas Family Code and the Texas Constitution.

THE COURT: Well, that is an issue that we do need to discuss. So the final paragraph says that essentially religious law will be applied by the Court in the United States, and I need to clarify that that is not what our statute say.

So when we're looking at Rule 308(b), the Texas Rules of Civil Procedure, in the definitions of that portion, it defines in (a)(2) foreign law is a law, rule, or code of jurisdiction outside of the states and territories of the United States. So if this was identifying the law of a foreign country that this court would apply, but it doesn't. And this court doesn't apply religious law. So to the extent any part of this dispute makes it to this court, the laws of the State of Texas and the United States will apply not religious law.

But outside of that then, we wouldn't normally treat this any differently in terms of an arbitration clause or mediation requirement that we would find in any other prenuptial agreement.

MR. ANDERSON: Yes, ma'am, exactly.

THE COURT: Ms. Woelfel?

MS. WOELFEL: Your Honor, I think we still have issues with illegality. I mean, the contract contemplates the husband being able to take on

additional wives which is a felony in Texas. Furthermore, it doesn't take into account one of the most important things that we look at here in the United States, or excuse me, in Texas which is in the United States obviously, which is it doesn't -- it contracts as to children issues which is something we do not do. And it doesn't take into account what the best interest of the child is, and for those reasons alone it shouldn't be --

THE COURT: Wait. Help me understand how that's different than what any other prenup that contains an arbitration clause does, in terms of the children issues that you're addressing?

MS. WOELFEL: So typically, if you had a prenuptial agreement that contained an arbitration clause, that arbitration clause would be looking to apply the laws of the State of Texas, and typically, you know, when you go to arbitration, your typical arbitrator is somebody who's board certified in family law in Texas and who will be applying the correct standards, which we all know is, you know, best interest of the child.

That's not -- there's nothing in -- in an Islamic court that even contemplates the best interest of the child as my brief goes into. You know, Mom is --

she's basically set up to not even have due process because it's very clear under Muslim law that, you know, the testimony of one man is equal to the testimony of two women, so she's biased going into it. And then we don't have the correct and appropriate type of law applied when we're looking at how we should handle these children issues.

THE COURT: All right. Mr. Anderson?

MR. ANDERSON: Thank you.

First of all, the issue of one man and two women that is, first, not even practiced in the United States anywhere. Second, if it was practiced, it only applies to the signatures on a contract. One man's signature equals two women's, so if you have one man on there, you're done. If you have two women on there, you're done. That would go if they were signing the contract which is not an issue at all today.

There is nothing about one man equals two women or a woman is half as good as a man in any way, shape, or form in the interpretation or the arbitration of this kind of an issue.

Ms. Woelfel also said that, well, what we typically do is follow Texas law and what we typically do is have board certified people. That's not what the Texas law says.

A contractual proceeding by which the parties to a controversy voluntarily select arbitrators or judges of their own choice and by consent submit to the controversy to such tribunal for the determination in substitution for the tribunals provided by the ordinary process of law.

The written agreement is the written agreement. If it includes a provision that the parties are going to arbitrate their property matters and conservatorship, all that kind of matters as well, you're allowed to do all that by arbitration. They have the right to contract to go and arbitrate things in the method that they choose to go arbitrate. It's simply the law that we've got.

THE COURT: Ms. Woelfel, as to, I guess, him being able to marry a second time, it does say he has to have the written consent of your client. So I guess she would -- that's a little bit different than just saying he unilaterally gets to go break the law which is how I've read your pleading until I reread the actual line in the agreement.

MS. WOELFEL: May I respond, Your Honor?

THE COURT: Yes.

MS. WOELFEL: Whether she consents to him marrying a second wife or not doesn't make that legal.

It's totally and completely illegal in the State of Texas for years.

THE COURT: Which is why then maybe she wouldn't consent, but the way your pleadings read means that can happen and he can go break the law, and there's no way to stop it. It is a little bit of a different argument to say she doesn't have to give consent for that to happen, so she certainly has the final word on whether or not that were to happen, would she not, the way this is written?

MS. WOELFEL: I don't disagree with that, Your Honor. All I'm saying is in my arguments is that this contemplates, you know -- it contemplates basically a felony as part of the contract, not that it has happened or not that it would happen especially since we're now looking at divorce. But I just think there's a lot of things wrong with this contract.

And you know, we haven't even touched on the fact that, you know, he's breached the contract. These people have been married for, you know, over a decade now. They've had multiple -- as any married couple does, they've had multiple disagreements. They've had multiple conflicts, and not once in over a decade of marriage, until this divorce was filed, has the husband come to the wife and said we need to take

this to a Muslim court, and that's part of the agreement. And breach on behalf of the husband, which he's breached it many times over the past decade, alleviates the wife's responsibility to perform under the contract.

MR. ANDERSON: Shall I respond?

THE COURT: Yes.

MR. ANDERSON: Thank you.

First, on the application of public policy, you're correct. She would have to agree if he's going to go want to take a second wife. If we get into evidence on this thing, I think the evidence is going to show that she encouraged him once to take a second wife, and he refused, and that has never been an issue, and it's not an issue now. Even if it was an issue though, there is -- according to public policy, there is a severability of terms like that if they need to get there.

Now, on the minor disputes, the suggestion here is that these people have entered into a contract to go and arbitrate their controversies, and therefore, if they don't arbitrate every time they have a disagreement -- if they disagree about what color to paint the nursery, they've got to each go and take an Imam and then they have to pick an Imam, and they have

to go through this big proceeding. That is not what this is about.

This document leads them to life-changing events being arbitrated, and if he didn't go and do tiny little minute uses of the arbitration panel and she didn't either, she can't come now and say, oh, well, he didn't follow the rule even though I didn't follow the rule either. This is for major life event things. To say otherwise would be a ridiculous interpretation of a document that everybody uses -- well, not everybody -- most people use in the Islamic community, and it would invalidate it for everybody. Thank you, Judge.

THE COURT: Ms. Woelfel, how is that different than people not using the arbitration clause in a Christian context, for instance, for every little dispute?

MS. WOELFEL: I'm sorry, Your Honor, I didn't mean to interrupt. May I proceed?

THE COURT: Uh-huh.

MS. WOELFEL: Your Honor, I would argue that, one, I think that when you're looking at a prenuptial agreement that is typically what we find in a family law situation, it's very definitive. It's very defined. There's not this, well, you know, we're not exactly sure and so we're just going to assume this.

It contemplates that if there's a divorce filed then that divorce shall be submitted to arbitration. It doesn't have these really, you know, wispy, well, it's this or it's that. I mean, look at the contract. Once again, it just goes to the argument that this contract is not definitive enough. It says any conflict. It doesn't say any conflict that results in a divorce.

THE COURT: But to Mr. Anderson's point, your client also didn't arbitrate anything in the last ten years.

MS. WOELFEL: They -- she -- they both not abided by the contract. They both breached the contract so why should it be enforced at this point in time?

THE COURT: I mean, I have to say I think your interpretation of that is rather broad. I think it's fairly obvious from this document what it contemplates and that's divorce or some other significant life change, not whose job it was to do the dishes last night.

MS. WOELFEL: Well, Your Honor, when I put my client on the stand, she'll testify that, you know, just a few months ago Dr. Latif was asking her to enter into a prenuptial -- excuse me -- a postnuptial agreement, a different postnuptial agreement. He --

THE COURT: It's not a different postnuptial. This was a prenuptial, and parties can enter into postnuptial agreements, but I've heard enough argument on this. Do you have any final comments?

MR. ANDERSON: No, Your Honor.

MS. WOELFEL: I'd just like to call my client just to get some testimony laid, Your Honor.

THE COURT: We don't need testimony for a legal question.

So I am going to require the parties to arbitrate under the premarital agreement.

MR. ANDERSON: We'll submit an order to you, Your Honor.

THE COURT: And then we need a -- apparently, you-all couldn't get a trial date so you've got a DWOP in two days.

MR. ANDERSON: I don't know that it makes a difference from our end if they're going to a different process anyway.

THE COURT: At some point they have to enter a decree, don't they?

MR. ANDERSON: You have a really good point, don't you?

May we set this thing -- I don't know how long this process takes but maybe set it off a few

months.

THE COURT: All right. If y'all want to pick the date right now then you won't have to go back and forth on that later. So May? June?

MR. ANDERSON: Set it off as far as you will for us, and June is good.

THE COURT: Okay. June 25th?

MR. ANDERSON: Yes, ma'am. Oh, no, I'm sorry. Yes, that's fine. I'm sorry. Yeah, I'm good.

THE COURT: Ms. Woelfel?

MS. WOELFEL: June 25th works for my calendar, Your Honor.

THE COURT: Okay. That DWOP is going to stay on there for Friday until y'all get your scheduling order in, but at least you have a date to put in it. So please work to get that back to the coordinator, okay?

MR. ANDERSON: Can we have some direction on something? I know we've set this for final trial. If they are still in this process of arbitration, what is your position?

THE COURT: You just need to contact the coordinator and let him know, but if you haven't started, if we haven't tried, at some point you're going to run out of time, so.

MR. ANDERSON: Yes, ma'am.

THE COURT: I don't know how long the process takes, but if you wait until the beginning of June to start the process then you're not going to get much of a reset.

MR. ANDERSON: Of course.

THE COURT: Okay. Any other questions?

MR. ANDERSON: No, ma'am.

THE COURT: All right. Thank you-all.

(Proceedings concluded at 9:56 a.m.)

THE STATE OF TEXAS)

COUNTY OF COLLIN)

I, Destiny M. Moses, Official Court Reporter in and for the 416th District Court of Collin County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all which occurred via Zoom in accordance with the Supreme Court of Texas' Emergency Orders Regarding the COVID-19 State of Disaster and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $481 and was paid by Scott H. Palmer, P.C.

WITNESS MY OFFICIAL HAND this the 31st day of March, 2021.

_/s/ Destiny M. Moses_____
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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF SALMA MARIAM AYAD AND AYAD HASHIM LATIF AND IN THE INTEREST OF [redacted], A CHILD,	§ § § § § § § § §	IN THE DISTRICT COURT OF COLLIN COUNTY, TEXAS 416TH JUDICIAL DISTRICT

MOTION TO RECONSIDER

On the 11th day of June, 2021, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Judge Andrea Thompson, Judge presiding, held via Zoom in accordance with the Supreme Court of Texas' Emergency Orders Regarding the COVID-19 State of Disaster;

Proceedings reported by machine shorthand.

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CHRONOLOGICAL INDEX
VOLUME 1
(MOTION TO RECONSIDER)

ALPHABETICAL INDEX

PETITIONER'S EXHIBIT INDEX

NO.	DESCRIPTION	OFFERED	ADMITTED	VOL
13	Curriculum Vitae of M. Zuhdi Jasser, M.D., F.A.C.P.	42		1
14	Islamic Pre-Nuptial Agreement	32	32	1
15	Marriage Contract	32	32	1

P R O C E E D I N G S

THE COURT: 416-50435-2021; In the Matter of the Marriage of Ayad and Latif and In the Interest of Child.

Okay. So one of the issues we have, this was the rehearing on the referral to arbitration. I had a request that we have an issue with one of the witnesses, but I want to clarify we are not rehearing. The Court has already heard this. I've also read all the supplemental motions and everything else. We're not having a full blown rehearing.

The one issue that is a fact question is about voluntariness. I don't know if your experts that everyone brought are going to be able to speak to that. The only reason I'm allowing testimony on that, which I really expect to just be from the parties, is because we did not take testimony from them.

At the last hearing there was no objection from the attorney that was representing the wife at that hearing to that, but because I now have an objection from her new attorney, I am going to allow at least some testimony as to voluntariness which is the only fact question that the Court has. So I don't know if that changes anybody's issues with their experts and their timing.

MR. FINDLEY: If it's just about the fact issue, Your Honor -- am I on mute? Okay. If it's just about the fact issue of whether or not at the time they executed the premarital agreement it was voluntary then I don't know if either expert is going to have any relevant testimony to offer the Court on that fact issue.

MS. O'NEIL: Well, I appreciate Mr. Findley not speaking for us, but I believe that my expert will, and I assume that --

THE COURT: Okay. Was your expert present?

MS. O'NEIL: He was not present.

THE COURT: Okay. Then he cannot speak to the fact issues surrounding the signing and the voluntariness of the agreement, can he?

MS. O'NEIL: I believe that he can testify about the cultural norms and expectations of these agreements, but beyond that, Your Honor --

THE COURT: The Court has already -- the Court has already received evidence on that at the last hearing so I need to be clear. Your client was represented by counsel at the last hearing. They had the opportunity to bring other witnesses. The only testimony the Court didn't take at the last hearing was

from the parties as it related to the fact question of voluntariness, and as I said, I didn't receive an objection at that time so I am willing to take some testimony today. What I will tell you is that's going to be about 15 minutes per side.

I suppose if you want to spend your 15 minutes talking about things that are not related to the fact question then you can spend your time how you choose to spend your time but that is the sole testimony that the Court's going to be taking today and the time that you're going to have for it.

The remaining issues are matters of law, and I've already received the arguments and additional arguments from everyone so I just want to be clear we're not starting --

MS. O'NEIL: Your Honor --

THE COURT: Hang on, Ms. O'Neil. Ms. O'Neil, let me finish. We are not starting over from scratch. I appreciate that you think and maybe you can do a better job than was done the first go around for your client, but that's not how this works. She was represented by counsel. They had an opportunity to be heard. They put on evidence and testimony with the sole exclusion, as I said, to the parties as to voluntariness. I did not allow that the last time. I

did not receive an objection which means I don't necessarily have to allow it this time, but I'm willing to do that.

What I am not willing to do is have a complete rehearing starting from scratch on the entire matter.

MS. O'NEIL: And, Your Honor, you heard expert testimony from their expert. I am not --

THE COURT: Your client -- your client's prior attorney had an opportunity to bring expert testimony at that time and did not. Again, I'm going to say this again. This is not a complete rehearing. She does not get every other bite at the apple again. I am clearing up the one issue that, again, I did not have an objection to the last time, but I am willing to allow it this time. So we will be taking testimony on voluntariness. Again --

MS. O'NEIL: I'd like to be heard.

THE COURT: Not until I'm done speaking, please. When I'm done, you'll have an opportunity to be heard.

Your client had the opportunity to bring an expert to the last hearing, and they would have been heard. They did not so we are not going to start over from scratch and completely rehear this trial -- the

hearing on this matter. So is that clear?

MS. O'NEIL: May I be heard?

THE COURT: No, I want to make sure you understand what I've said.

MS. O'NEIL: I hear what you've said, Your Honor. May I be heard?

THE COURT: Okay. Go ahead.

MS. O'NEIL: Your Honor, at the last hearing Mr. Anderson was the only lawyer allowed to present evidence. Ms. Woelfel --

THE COURT: Hang on. Let me stop you there. Ms. Woelfel did not have any other evidence or any other witnesses that she had identified the Court outside of her client, which is your client, that I said will be able to bring testimony today.

I've also told you if you want to spend the limited time I'm giving you today on your expert, I suppose you can spend your time that way, but I'm not giving you additional time for an expert that could have been brought at the first hearing that was not.

MS. O'NEIL: May I be heard?

THE COURT: Are you going to tell me that she had an expert at that hearing that was not heard because that's not the case? And having said that, I don't want to keep repeating myself. I understand you

don't like my decision today, but that is my decision and it will not change.

MS. O'NEIL: My question for the Court, when you say you are willing to hear evidence on the fact issue of voluntariness, we have also pled a fact issue on public policy, illegality, and unconscionability.

THE COURT: Those are not fact issues. They're questions of law that will be addressed separately, but those are not fact questions.

MS. O'NEIL: But they are questions that require evidence of disputed facts and so those are questions that I believe I am entitled to present evidence upon.

THE COURT: Okay. You can spend your 15 minutes how you like.

That said, Mr. Findley, I think our issue today was the timing of your expert?

MR. FINDLEY: Correct, and he does not -- he's not going to offer any testimony on voluntariness. He wasn't present.

THE COURT: All right. Then I'm putting you-all back in the waiting room. You can come back in a half hour if you'd like, and we will begin at that time.

MR. FINDLEY: Your Honor, real quickly, am I allowed to excuse my expert with the ruling from the Court that this is solely on the fact issue of voluntariness?

THE COURT: As I said, Ms. O'Neil disagrees. You're welcome to spend the time the Court is giving you how you want, but I wanted to make it clear your time is limited so it's your choice how you use it.

MR. FINDLEY: Okay. All right. Understood.

(Recess taken)

THE COURT: Okay. We're back on the record in Ayad and Latif. There is no one in the courtroom viewing the proceeding so I'm going to minimize that screen so we can make everybody else's boxes bigger.

All right. Do you want to make your arguments first or take the testimony first?

MS. O'NEIL: I'd like to make a brief argument, Your Honor.

THE COURT: Okay. I mean, the arguments in the case, if you want to spend some of your time for the testimony to make an additional opening argument, I suppose you can use your time that way.

MS. O'NEIL: Thank you.

THE COURT: Okay. I have 20 minutes a side for each of you. I think it's Ms. O'Neil's motion so you may proceed.

MS. O'NEIL: Thank you, Your Honor.

Your Honor, you previously heard this matter, and we believe that the hearing was not held on the proper issues. The issue when there's an arbitration agreement is that, first, the arbitration agreement must be found valid and that it is severed from the rest of the agreement.

At the hearing there was no evidence and no testimony as to the validity of the arbitration agreement itself. There was no finding about the validity of the arbitration agreement, and there was much discussion about the agreement as a whole, but nonetheless, Mr. Latif -- Dr. Latif's side of this presented no evidence as to the validity of the arbitration agreement.

We believe that the law says that the validity of the arbitration agreement must be found by this court first before it puts the burden on us to prove our defenses. That being said, presuming that you somehow found that arbitration agreement to be a valid arbitration agreement, which we dispute, then it -- the

burden shifts to us to prove our defenses. Our defenses involve -- points straight to the arbitration agreement.

THE COURT: Hang on. I'm going to pause your time for a second because I have a question. I think the case law in Texas is that the premarital agreements are presumed enforceable so I don't think anyone had to prove that it was enforceable. I think it's presumed enforceable then the burden shifts to proving that it's not.

MR. FINDLEY: That's my understanding, Your Honor.

MS. O'NEIL: May I respond to that, Your Honor?

THE COURT: Yes.

MS. O'NEIL: My understanding, Your Honor, is that there are no cases that interpret this interplay of a arbitration agreement and a premarital agreement so we look to arbitration law as far as how those contracts are determined. It's my --

THE COURT: Incidentally then, courts are required then to refer to arbitration, so the presumption in each of these arguments the presumption favors arbitration and the presumption favors the premarital agreement that was the position the Court started from.

MS. O'NEIL: If I could continue what I was going to say, Your Honor. My position and my belief is that the law is the same, that contracts are presumed valid, that arbitration agreements are presumed valid, but that doesn't change the fact that they had to put in issue whether there was a valid arbitration agreement. They have to make some scintilla of proof of that as to the arbitration agreement itself not just the premarital agreement as a whole.

The hearing that was previously held talked a whole lot about the premarital agreement as a whole but almost nothing about the validity of the arbitration agreement specifically. That being said, if -- once the burden shifts to our side to prove or to put in issue the defenses then we look to -- to me, my opinion, because there's no authority on this specifically, I think you look to both 4.006 of the Family Code as to the defenses as well as the defenses available to an arbitration agreement. They are almost identical that being said. 4.006 says that we look to voluntariness and unconscionability.

THE COURT: Let me stop you. So I want to make sure you're using your time in the way that you intend. I said we were going to have some arguments. You're now down to 17 minutes for the testimony that --

MS. O'NEIL: My understanding was you stopped my clock there for a minute so I want to make sure that I get --

THE COURT: I did, and it restarted when you started talking but -- so I want to be clear, you have 20 minutes to have testimony and then --

MS. O'NEIL: I understand that, Your Honor, but I also think --

THE COURT: Hang on.

MS. O'NEIL: -- that it's important that you understand --

THE COURT: Hang on. You're not listening. Okay. Ms. O'Neil, if I'm talking, you can't talk because the court reporter can't write us down. I know what you're saying is very important, and you'll have a chance to say it. I'm trying to preserve your time. We're going to have time for your witnesses's testimony and we are going to have time for argument.

That's why I asked you at the beginning of this if you want to make a brief opening before any testimony then that's what we're doing, but I want to make sure you're not confused because if this -- this is what I would think we would do during the argument part, but I am going to be running the clock for testimony, so do you want to take testimony for your client?

MR. WYSOCKI: Just call your first witness.

MS. O'NEIL: I will call my first witness, Your Honor.

THE COURT: Okay. I just want to make sure you don't get to the end of your 20 minutes and then tell me you need to call your client because you spent it on argument that I will have time for later.

MS. O'NEIL: I -- I appreciate the Court direction.

THE COURT: All right. Ms. Ayad and Mr. Latif, can you please unmute?

MR. LATIF: Good morning everyone.

THE COURT: Can I get both of you to raise your right hands, please.

I'm sorry, and then we have what appears to be two witnesses here. Do the --

MR. FINDLEY: Yes, Your Honor, the Imam, and unfortunately, I think the Imam's down to about a minute left of his availability, but he is on.

THE COURT: Okay. Let me have all four people that might potentially testify, let's have everybody unmute, so Mr. Bakhach, Mr. Jasser, can you unmute?

DR. JASSER: Yes.

THE COURT: All right. Let's have all four of you raise your right hand.

(Witnesses sworn by the Court)

THE COURT: All right. Thank you.

All right. Ms. O'Neil, now you can call your client.

MS. O'NEIL: Thank you, Your Honor.

MARIAM AYAD,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. O'NEIL:

Q. Would you state your name please for the Court?

A. Mariam Ayad.

Q. And, Ms. Ayad, you are the petitioner in this suit for divorce; is that right?

A. Yes.

Q. And you are aware that we are here to discuss the supposed premarital agreement in this case, right?

A. Yes.

Q. What was the date that you got married?

A. December 26th, 2008.

Q. And what was the first time that you saw -- and I'm going to ask you about both the marriage contract and the premarital contract. What was the first date that you saw either of those documents?

A. The marriage contract I saw on the date of the marriage in 2008, and the prenuptial agreement I saw for the first time on -- in September of last year.

Q. Of 2020?

A. Yes.

Q. Okay. So the day you got married, when did you see the supposed documents that you signed?

A. When we were in the middle of what's called a nikah ceremony, when the Imam asks us both if we agree to marry each other and then we sign the contract that says that we've completed that ceremony.

Q. And so how were these documents presented to you?

A. Once the Imam had done his part of the ceremony then he, you know, slid the document to my husband and then slid it towards me, and I -- that's when I had it to sign.

Q. And who is the Imam that --

THE COURT: Hang on. Can we clarify, is this the document entitled Islamic Prenuptial Agreement?

MS. O'NEIL: Can I clarify that, Your Honor?

THE COURT: Yes, please.

Q. (BY MS. O'NEIL) So Ms. Ayad, what was the document that was on top that you signed?

A. The marriage contract.
Q. All right.
MS. O'NEIL: Can I pull that up, Your Honor?
THE COURT: Yes.
Q. (BY MS. O'NEIL) Ms. Ayad, can you see the document that we pulled up on the screen?
A. Yes, I can.
Q. Is that the document that was on top?
A. Yes.
Q. The --
MS. O'NEIL: And then pull up the premarital agreement, please.
Q. (BY MS. O'NEIL) And this is the prenuptial agreement. Did you ever actually see this document on the day of your marriage?
A. No.
Q. Were there two documents on top -- one behind the other that you signed?
A. I thought it was one document, but yes.
Q. But you signed twice?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. Okay. And who was the Imam that presented

these to you?

A. I don't remember.

Q. Okay. Not the Imam that's the witness in this case though, correct?

A. I don't believe so, no.

Q. And did he just point to where you sign?

A. Yes.

Q. Were you given --

MR. FINDLEY: Objection, leading.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Were you given an opportunity to read the document, either of them, in advance?

A. No.

Q. Were you given an opportunity to consult with an attorney about either of these documents?

A. No.

Q. Were you given an opportunity to --

A. I apologize.

Q. Were you given an opportunity to obtain -- to obtain financial disclosures?

A. No.

MR. FINDLEY: Objection, leading.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Can you state whether or not anybody ever gave you any financial disclosures about

either -- about your husband's marital estate?

MR. FINDLEY: Objection, leading.

A. I never received anything.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Were you given an opportunity to even ask for such disclosures?

MR. FINDLEY: Objection, leading.

A. No.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Did anybody read the document to you?

A. No.

Q. What did you think that you were signing?

A. I thought it was a document that said that we had completed the cultural ceremony to effect the marriage and that now husband and I were married, that we get to start our lives together.

Q. Okay. And did you think that it was an agreement to raise your children Muslim?

MR. FINDLEY: Objection, leading.

THE COURT: Sustained.

A. Yes, to raise our child Muslim and to live --

MR. FINDLEY: Objection, Your Honor, no question for the witness.

Q. (BY MS. O'NEIL) Hold on. Let me ask the next

question.

Did you -- did you have any reason to believe in signing this agreement that you were waiving any substantive legal rights that you might have in the United States?

MR. FINDLEY: Objection, calls for a legal conclusion; speculative.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) What was your understanding in signing this agreement as to the application of U.S. law to the agreement?

A. I didn't think that it had any effect on my rights, all my rights.

Q. I'm going to show you page 2. Do you see -- do you see the paragraph where it says "in the case"?

A. Yes.

Q. At the time that you signed this, did you -- were you able to read this?

A. No.

Q. Did anybody allow you an opportunity to read the document?

A. No.

MR. FINDLEY: Objection, leading. It goes outside the four corners of the document.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Were you aware that you agreed to waive the law of the United States?

A. No.

Q. Were you aware that you agreed to submit everything about your divorce to Islamic law?

A. No.

MR. FINDLEY: Objection, leading.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Were you aware that the U.S. Constitution would no longer apply to you in the event you sought a divorce?

MR. FINDLEY: Objection, misstates the document.

MR. WYSOCKI: It says it right there.

MR. FINDLEY: I didn't realize Mr. Wysocki was answering the witness, Your Honor.

THE COURT: Which one of you will be participating in today's hearing?

MS. O'NEIL: I am handling the witness, Your Honor.

THE COURT: All right. Thank you. Please proceed.

Q. (BY MS. O'NEIL) Were you aware that you were waiving your constitutional rights?

A. No.

MR. FINDLEY: Objection, misstates the document in evidence.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Do you believe that the Constitution of the United States is part of the law of the United States?

MR. FINDLEY: Objection, relevance.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Were you aware that you were waiving any rights that you had to marital property?

A. No.

MR. FINDLEY: Objection, misstates the document in evidence.

THE COURT: Sustained.

MS. O'NEIL: Your Honor, the objections are being made after the answer so they're untimely.

MR. FINDLEY: I'm making them as soon as I hear the question, Your Honor. It might be just the whelms of technology if she --

THE COURT: I agree. So if we need to give Ms. -- tell Ms. Ayad to wait to see if there's an objection, I guess we need to do that based on the limitations of Zoom.

Please proceed.

Q. (BY MS. O'NEIL) So you were not allowed to

talk to an attorney; there was not an attorney at the ceremony for you?

MR. FINDLEY: Objection, leading.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Would you state whether or not there was an attorney provided to you during the marriage ceremony?

A. No, there was not an attorney available.

Q. Would you state whether or not there was an attorney available to discuss with you your rights to Texas marital property law?

A. No, there was not an attorney --

MR. FINDLEY: Objection, relevance.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Was that information withheld from you as far as the rights that you were giving up under this document?

MR. FINDLEY: Objection, calls for speculation; assumes facts not in evidence.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Did you have information available to you that you were waiving any rights that you might have under Texas law or the United States law?

MR. FINDLEY: Objection, leading.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) What did you believe that you were agreeing to as far as Texas law and United States law?

MR. FINDLEY: Objection, relevance, and probably -- I'll just object to relevance.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) How long did you have to look at this document before the Imam told you to sign it?

MR. FINDLEY: Objection, assumes facts not in evidence, particularly with regard to whether or not the Imam told her to sign it.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) How did you come to sign this document?

A. The Imam slid the document toward me and pointed to where I needed to sign.

Q. Okay. And did you feel like he was telling you to sign it?

A. Yes.

MR. FINDLEY: Objection, speculative and hearsay to the extent that it calls for speculation.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) And so how long did you have between him signing it in front of you and when you were signing it?

A. There was no time.

Q. Okay. Not even a few minutes, right?

A. Absolutely not.

Q. All right. And nobody volunteered to you any information about disclosure of assets, correct?

A. Correct.

Q. And nobody volunteered any information to you about the changing of any laws that would apply to you, correct?

MR. FINDLEY: Objection, leading. Objection, speculative.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) What is your understanding in the arbitration -- if there is an arbitration proceeding, what is your understanding of the weight that will be given to your testimony?

MR. FINDLEY: Objection, speculative. Witness -- the witness is not an expert to testify about weight of evidence.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Do you have a general understanding, ma'am, of how the arbitration proceeding will happen?

MR. FINDLEY: Objection, calls for legal conclusions.

THE COURT: Overruled. Ma'am, you can answer that question.

A. Yes.

Q. (BY MS. O'NEIL) And what is your understanding of how that will happen?

A. I would choose a male religious leader, husband would, and then they would choose between them another one, so there'd be a panel of three men that would be making a decision based on my argument, husband argument of how anything would be divided.

Q. And what's your understanding of how your viewpoint would be viewed in that proceeding?

A. I believe that I would not have my voice --

MR. FINDLEY: Objection, speculative.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) Go ahead.

A. I believe I would not have my voice heard as well as husband would.

Q. Okay. What is your understanding of the law regarding -- or what is your understanding of how the proceeding would effect your marital property rights?

A. They would be divided on how the panel would think is best based on both of our testimonies with my testimony not being given as much weight.

MS. O'NEIL: Pass the witness.

MR. FINDLEY: Your Honor, may I share the screen?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. FINDLEY:

Q. Ma'am, I want to show you -- okay. Can you see the premarital agreement, ma'am?

A. I can't on the screen, but I can pull it up here.

Q. Here we go. I've got it. Do you see the premarital agreement now, ma'am?

A. Yes, I can.

Q. And turning to the second page, is that your signature on page 2?

A. Yes, it is.

Q. And nobody put a gun to your head to force you to sign this agreement, did they, ma'am?

A. No.

MS. O'NEIL: Objection, argumentative.

THE COURT: Overruled.

Q. (BY MR. FINDLEY) You signed this document without any -- without anybody, you know, making any threats to you, did they, ma'am?

A. No.

Q. And --

MR. FINDLEY: I'll pass the witness.

MS. O'NEIL: Pull up the marriage -- pull up the premarital agreement, Kim. Go to the first page please.

REDIRECT EXAMINATION

BY MS. O'NEIL:

Q. And, ma'am, did you --

MS. O'NEIL: Well, no, go to the marriage contract.

Q. (BY MS. O'NEIL) So were you given an opportunity to read this document?

A. No.

Q. Were you given an opportunity to -- to read the paragraph that starts with "any conflict which may arise?" Were you given an opportunity to read that -- that part of the document?

A. No.

THE COURT: Can I clarify? Is the date of that also --

MS. O'NEIL: Scroll down.

THE COURT: -- in '08? I think it's at the top.

MS. O'NEIL: Yes, Your Honor.

THE COURT: 12/26/08 is the date of both documents, and that was the date of the marriage

ceremony?

MS. O'NEIL: Yes, Your Honor.

THE COURT: Okay.

Q. (BY MS. O'NEIL) And just to clarify, Ms. Ayad, you signed both of these documents apparently at the same time during the marriage ceremony is that what you --

A. Correct.

Q. And the last paragraph of this document says, "In the case of any conflict to be solved by any court in the State of Texas or the U.S., the Court will solely apply Qur'anic rules, Sunnah of the Prophet, and Islamic law Fiqh on the case." Were you allowed to read that before you signed it?

MR. FINDLEY: Objection, leading.

A. No.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) And where it says, "The law of the land will not be applied in these conflicts at all," were you aware of that sentence when you signed it?

A. No.

Q. And would you have agreed to waive the U.S. Constitution and the laws of the State of Texas had you been given an opportunity?

MR. FINDLEY: Objection, that's not what

the document says.

THE COURT: Sustained.

MR. FINDLEY: Misstates the evidence.

Q. (BY MS. O'NEIL) Did you have any intent to waive the laws of the United States when you signed this document?

A. Absolutely not.

Q. Okay. Did --

MS. O'NEIL: Your Honor, I'd offer Exhibits 14 and 15.

MR. FINDLEY: Which are those?

MS. O'NEIL: The premarital agreement and the marriage contract.

MR. FINDLEY: No objection to the premarital agreement. I can only see part of the marriage agreement.

MS. O'NEIL: We've given you our exhibits in advance.

MR. FINDLEY: No objection to the 15, Your Honor.

THE COURT: Okay. 14 and 15 are admitted.

MS. O'NEIL: Pass the witness.

RECROSS-EXAMINATION

BY MR. FINDLEY:

Q. Ms. Ayad, you were not required to sign this

agreement, were you?

MS. O'NEIL: Asked and answered, Your Honor.

THE COURT: Overruled.

A. I believe I was.

Q. (BY MR. FINDLEY) And how were you required to sign this agreement?

A. It was my understanding that in order to complete the marriage ceremony that I would need to sign the agreement.

Q. Did you want to complete the marriage ceremony?

A. Yes.

Q. Okay. And so you were willing to execute whatever documents were necessary to complete the marriage ceremony?

A. No.

Q. But you wanted to complete the marriage ceremony?

A. Yes.

Q. Okay. And, in fact, the Imam who prepared this agreement was the Imam related to your family, correct?

A. No.

Q. He was the Imam chosen by your family to conduct the ceremony, correct?

MS. O'NEIL: Objection, asked and

answered.

THE COURT: Overruled.

A. No.

Q. (BY MR. FINDLEY) In fact, isn't it true, ma'am, that the Imam and your representatives were there with the paperwork at the time Dr. Latif arrived to begin the ceremony?

A. Not that I recall.

MR. FINDLEY: Pass the witness.

MS. O'NEIL: No further questions.

THE COURT: Ma'am, I think we talked about this the last time. I want to make sure I'm remembering it correctly. The two witnesses on the prenuptial agreement, I think you said were your father and your uncle?

THE WITNESS: Yes.

THE COURT: Okay. And it also has a dowry on here that's to be paid to your family. What do you know about that? How is that -- it's a fill-in-the-blank form and there appears to be some amounts filled in. How was that discussed?

THE WITNESS: Yes, Your Honor, that was the $32 that was discussed -- that specific amount was discussed ahead of time, and husband had given me $32 cash at some point and you know, I -- and that was that.

THE COURT: Okay. So there was some discussion about at least the dowry that's in here in advance. What else was talked about in advance?

THE WITNESS: Nothing else that's in this agreement.

THE COURT: Okay. And then is this a -- this looks like a preprinted form from the Islamic Association of North Texas. Have you ever seen a form like that before?

THE WITNESS: No.

THE COURT: Okay. Do you have any other family members or anybody that got married? Is this an unusual thing to stop the wedding and sign forms in the middle of it?

THE WITNESS: No, it's not unusual.

THE COURT: Okay. When you've seen that in other weddings, what is it you think they're signing?

THE WITNESS: That the marriage is -- it's, in fact, the ceremony is complete and that husband and wife can now live together and start their lives together.

THE COURT: Okay. I think Mr. Findley had asked if anybody had threatened you and you said that they didn't, but that you were given this, didn't really have a chance to read it. Did you ask to stop and

review it during the ceremony then if you were unaware of what the contents were?

THE WITNESS: I thought I knew what the contents were. No, I did not.

THE COURT: Okay. So because you thought you already knew then you didn't ask to read it again at the time?

THE WITNESS: Correct.

THE COURT: Okay. And you thought you knew because you just assumed what was in it or because you had seen other documents and these were traded out; these aren't the documents you had seen previously?

THE WITNESS: I had not seen any other documents.

THE COURT: Okay. So you weren't confused --

THE WITNESS: It was my --

THE COURT: I just want to make sure you weren't confused that you thought you were signing one document and this is different --

THE WITNESS: No, Your Honor, that's not the case.

THE COURT: -- than what you were signing?

THE WITNESS: That's not the case, correct.

THE COURT: Okay. What happened -- what happened -- do you know what happens if in the middle of that you say I don't want to sign that?

THE WITNESS: It's -- I imagine quite similar to a bride refusing to say I do. It's in the middle of a ceremony. That's quite a tense, unusual, stressful, and awkward situation and unpleasant situation.

THE COURT: Okay. All right. Any other questions from either attorney based on what I asked?

MS. O'NEIL: No questions, Your Honor.

MR. FINDLEY: No, Your Honor.

The Imam needs to be excused to go conduct his duties as the Imam for the Friday holy day. May he be excused?

THE COURT: Yes sir, you're free to leave. Thank you.

MS. O'NEIL: May I have a time check, Your Honor?

THE COURT: You have two minutes and 45 seconds, and Mr. Findley has 17-and-a-half.

MS. O'NEIL: Did you say two minutes or ten minutes? I couldn't hear you.

THE COURT: Two -- 2:45 so basically three minutes.

MS. O'NEIL: Your Honor, I would ask for a couple minutes to be able to call Dr. Jasser and to present argument. I don't know that I can get that done in two to three minutes so I would ask --

THE COURT: You're going to have an opportunity off the clock to make your argument so spend your time on Dr. Jasser.

MS. O'NEIL: Thank you. I would call Dr. Jasser then. Unmute yourself, please.

M. ZUHDI JASSER, M.D., F.A.C.P.,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. O'NEIL:

Q. Dr. Jasser, have you testified before Congress and acted in ways that would make you an expert witness in the application of civil rights under the U.S. Constitution to the application of Sharia law in the U.S.?

MR. FINDLEY: Objection, Your Honor, multifarious and failure to lay proper predicate for expert testimony.

THE COURT: Sustained.

MS. O'NEIL: Your Honor, I would ask -- I would ask for the Court's indulgence. For me to prove him up as an expert is going to take more than three

minutes, and I don't have that unless Your Honor gives me additional time.

MR. FINDLEY: Your Honor, she has a CV that she turned over in discovery and we could start with that. I do have objection to him testifying as an expert in this matter.

THE COURT: Let me make clear. I've stopped the clock while we discuss this. All right. Go ahead, Mr. Findley.

MR. FINDLEY: My objection to Mr. Jasser testifying in this matter is that -- well, Ms. O'Neil might be able to get him there, but I doubt she will because he's not going to have firsthand knowledge of the specific culture in North Texas with regard to these premarital agreements. He appears to be a cardiologist by training. He doesn't have any, you know, background in Islamic law or Islamic interpretations.

He may be a practicing Muslim, but I mean, if you use that argument to make him an expert, Your Honor, then it would just be like a lay a parishioner in a Catholic church saying that they're an expert on Cannon law without going to seminary. It's kind of -- that's kind of the position that Dr. Jasser's in. We don't think that Dr. Jasser is going to have the necessary, firsthand experience to testify as to the

specifics with regard to this premarital agreement and how it was executed.

And we would also question, Your Honor, you know, depending on, you know, how Ms. O'Neil proves him up, you know, whether or not they're claiming that there is a monolith when it comes to learned Islam versus, you know, different interpretations or subcultures that happen to practice Islam.

And so on that ground, Your Honor, we would object to Mr. -- to Dr. Jasser testifying as not qualified to give opinion in this case.

MS. O'NEIL: May I respond?

THE COURT: Yes.

MS. O'NEIL: Your Honor, that's like saying that to be an expert in pedophilia you have to be a pedophile first. Dr. Jasser has qualifications and experience and expertise in Sharia law, in the Sharia jurisprudence system, and he doesn't have to have attended whatever their colleges are to be that expert.

He is qualified by his expertise, experience, and knowledge in the Muslim community as a Muslim himself and as a basically world-renowned expert that the U.S. Government has relied upon to be a watchdog in various religious matters overseas in the Middle East, and he can testify in detail about his

immense qualifications in the time period that Your Honor hasn't given me.

I would ask that Your Honor allow me the indulgence of getting his opinions and then you can take them for the weight that you believe they're worth based on his CV.

MR. FINDLEY: Further, Your Honor, we just got Dr. Jasser's disclosure last after -- yesterday afternoon at 5:00, and so in going through his CV, none of the experience in Sharia law or Sharia practice or any of the other, you know, kind of relevant matters to this case are listed on his CV.

He -- and, you know, again, I don't know what Ms. O'Neil's trying to, you know, come at with regard to her opening, you know, response to my argument, but I think, Your Honor, that unless Ms. O'Neil can show the Court the relevant experience that Dr. Jasser has that's not on his CV, he writes a lot of articles opining about Islam, but that's no different than a lay person, lay Christian writing articles about Christianity.

THE COURT: Mr. Findley.

MR. FINDLEY: There's nothing specific about it.

THE COURT: Okay. Like I said, at the

last hearing there was an opportunity to have brought expert witnesses. We had an expert witness for the father present. Mom's attorney did not choose to do that at that time. Ms. O'Neil, I told you you could use your time how you wanted to use your time. You have two minutes left, and again, like I said, I'm not sure, not having been present at the ceremony, what he can tell me as the fact issue as the voluntariness of this particular signature on this agreement. So if you have anything that he can tell me about that then I guess you have a few minutes to do that, but you have two minutes left.

MS. O'NEIL: Your Honor, I would move to admit Wife's Exhibit 13 as a summary of Dr. Jasser's experience and qualifications.

MR. FINDLEY: No objection to W13 as a summary of the -- his experience to the extent listed therein.

THE COURT: All right. Then 13 is admitted.

Q. (BY MS. O'NEIL) Dr. Jasser, have you been found to be -- or do you consider yourself an expert in the matters of which I'm going to ask you about?

MR. FINDLEY: Objection, vague.

A. Yes, I've studied this anomaly my entire life,

but we've studied the importance of it and the dismissal --

MR. FINDLEY: Objection, vague, Your Honor.

A. -- of Constitutional --

THE COURT: Overruled.

A. -- law and these proceedings.

Q. (BY MS. O'NEIL) What is your -- the basis of your opinion about the voluntariness of Ms. Ayad's signature on this document?

MR. FINDLEY: Objection --

A. This is a --

THE COURT: Hang on. Hang on.

MR. FINDLEY: -- conclusory and not based on any facts.

THE WITNESS: The basis is made on my --

THE COURT: Hang on, Mr. Jasser. Please don't answer until we ask you another question. The objection is sustained.

Ms. O'Neil, if you can establish personal knowledge about the facts of this case then I will allow questions related to those.

Q. (BY MS. O'NEIL) Dr. Jasser, have you reviewed the agreements that are the subject of this hearing?

A. Yes, I have.

Q. Have you spoken with Ms. Ayad about the circumstances surrounding the signatories of this?

A. Yes, I have.

Q. Are you also familiar with the cultural customs of the type of ceremony that she had?

A. Very familiar with it, over hundreds --

MR. FINDLEY: Objection -- Your Honor, may I take this witness on voir dire before he answers this question?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. FINDLEY:

Q. Dr. Jasser, where are you from?

A. I was born in the United States, served in the Navy 11 years. My family's from Syria. I'm of the Sunni sect similar to the Hanafi extraction that Mariam is.

Q. Okay. But Mariam is not of Syrian descent, is she, sir?

A. If you're implying in a very uninformed way that somehow Syrian Islam --

MR. FINDLEY: Objection, Your Honor --

A. -- is different than Pakistani --

MR. FINDLEY: -- sidebar comment.

THE COURT: Mr. Jasser, hold on. That

was -- I think that was a yes or no question. Can you please answer the question that was asked?

A. Can you repeat the question, please, Mr. Findley?

Q. (BY MR. FINDLEY) Mariam -- Ms. Ayad is not of Syrian descent, is she, sir?

A. No, she's not.

Q. She's of Pakistani descent, isn't she, sir?

A. I believe so.

Q. And are there cultural distinctions between Syrians and Pakistanis?

A. The Imam himself that she's using is of the --

MR. FINDLEY: Objection, nonresponsive.

A. -- Lebanese extraction.

THE COURT: Again, sir, that was a yes or no question. To the extent you get a yes or no question, I'm going to ask you to answer yes or no.

THE WITNESS: Cultural differences that he's asking about are such a vague question, I'm not sure how to answer that question.

Q. (BY MR. FINDLEY) Are there cultural practices with regard to marriage that differ between Syrians and Pakistanis?

A. My understanding, sir, is the proceedings are about religious issues not cultural issues related to

this document.

Q. So is it your testimony, sir, that there are no distinctions culturally between a Syrian and a Pakistani as far as the culture of the family surrounding the execution of an Islamic premarital agreement concerning to an Islamic marriage?

A. In my contact, many years with many, many mosques, I've had many contacts with the Indo-Pakistani community as I have the Arabic community --

MR. FINDLEY: Objection, Your Honor, nonresponsive.

MS. O'NEIL: Your Honor, he's trying to answer the question.

THE COURT: Okay. Mr. Findley, Ms. O'Neil has one minute left to spend with Mr. Jasser. Can we please just let her have her minute? I don't want to cut off your time. You have 15-and-a-half minutes. I suppose you can spend them how you like.

MR. FINDLEY: I would just object to, you know -- based on -- I just want one more -- just ask this -- answer this one question. Sorry, I can't speak today.

Q. (BY MR. FINDLEY) Is it your testimony, sir, that there is no cultural distinction made as far as religious ceremonies in Islam between Syrians and

Pakistanis?

A. Not of relevance to this case, sir.

Q. Okay.

MR. FINDLEY: I'll -- that's all I have, Your Honor.

THE COURT: Go ahead, Ms. O'Neil.

MS. O'NEIL: Thank you.

DIRECT EXAMINATION CONTINUED

BY MS. O'NEIL:

Q. Dr. Jasser, what do you think is the cultural consequence to Ms. Ayad if she had refused to sign the documents in the middle of her wedding ceremony?

MR. FINDLEY: Objection, Your Honor, he just said there's no cultural difference and that this is a religious -- this is a religious difference, and that's why I had him on voir dire asking him the questions between Syrian and Pakistani.

MS. O'NEIL: I'll ask the question differently, Your Honor.

THE COURT: Thank you.

Q. (BY MS. O'NEIL) Dr. Jasser, what were the consequences to Ms. Ayad if she refused to sign the documents?

A. I think it's very important that the Court understand that in many of these, if not all of the

situations, that the men that sign the document, the men that lead the proceedings --

MR. FINDLEY: Objection, nonresponsive, Your Honor.

A. -- treat a tribal inertia that forces the woman into --

THE COURT: Hang on. Hang on.

A. -- difficult --

THE COURT: Hang on. Hang on. Okay. We asked for anything specific to this case. Ms. Ayad has already said she wasn't threatened. So do you have any other information specific to this case, the fact that harm that would be coming to her that you know from your personal knowledge?

THE WITNESS: Your Honor, the harm is not only physical. It is a psychological sense of honor. The parents tell them that they're going to dishonor the family by asking any questions. They don't see the documents before. It is coercive. They aren't allowed to ask any questions and simply told it's ceremonial, it's traditional. They can't defend the family. The concept of honor, the tribal misogynistic inertia --

MR. FINDLEY: Objection, Your Honor, this is --

THE WITNESS: -- that a woman --

MR. FINDLEY: -- conclusory. This is --
THE WITNESS: -- that is forced by --
(Simultaneous speaking - indiscernible)
THE COURT: Hang on. Stop, stop, stop. One at a time. Mr. Findley's making an objection, Mr. Jasser.
MR. FINDLEY: His answer has now gotten to conclusory and argumentative.
MS. O'NEIL: He's answering the Courts's question.
THE COURT: Okay. The Court's heard enough. We've gone past the time that we had with Mr. Jasser. We did before the Court's question, so Ms. O'Neil, I'll give you one follow-up question.
Q. (BY MS. O'NEIL) Dr. Jasser, do you think that Ms. Ayad had any choice but to sign the documents in the middle of the ceremony?
A. I do not think so at all. The document itself proves --
MR. FINDLEY: Objection --
A. -- that by her signing --
MR. FINDLEY: -- nonresponsive after no.
A. -- it's done --
THE COURT: Hang on. Sustained.
A. -- and refusing to follow the laws of the land.

THE COURT: Dr. Jasser -- sir, please stop talking when other people are talking. Okay. We have -- in our system, when someone objects we have to stop and listen to the objection. The objection is sustained after no.

All right. Ms. O'Neil, that's your time.

Mr. Findley, do you have anymore questions for Mr. Jasser or is he free to leave?

MR. FINDLEY: He's free to leave.

THE COURT: Thank you, sir.

MS. O'NEIL: Your Honor, we're going to ask that he remain on the feed in case there's a need for future expert testimony, to hear any additional evidence that is presented.

THE COURT: All right. Mr. Findley, call your --

MR. FINDLEY: Your Honor, I'm going to move the Court to -- for -- basically, rule now that Ms. Ayad has not met her burden with regard -- involuntarily executing either the premarital agreement or, you know, the arbitration agreement which is the relevant portion of this. And we ask the Court to basically affirm it's prior ruling and order this case to go to arbitration.

THE COURT: Okay. Let me clarify. Do you have any other witnesses you intend to call? I'm not

going to make that determination until I've given the parties an opportunity to make any final argument.

MR. FINDLEY: Well, in that case, Your Honor, I'll call my client.

THE COURT: All right. Thank you, sir. Can you unmute?

THE WITNESS: Hello everyone.

AYAD HASHIM LATIF,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FINDLEY:

Q. Please state your name for the record.

A. Ayad Hashim Latif.

Q. And are you the respondent in this case?

A. Yes, sir.

Q. And you're the husband of Mariam Ayad, correct?

A. Yes, sir.

Q. When -- were you present at the time that the premarital agreement was signed between you and your wife in this case?

A. Yes, sir.

Q. Okay. Tell the Court the circumstances under which the premarital agreement was signed.

A. We were in a room in the mosque and --

THE COURT: Hang on. Hang on. I'm sorry.

Destiny, are you having trouble hearing him or is it just me?

Sir, can you pull your microphone closer, maybe turn up the volume on your computer.

THE WITNESS: Sure, Your Honor.

THE COURT: You might just need to sit closer to the computer itself so the microphone can pick you up.

THE WITNESS: Is it better now, ma'am?

THE COURT: It's a little bit better. Destiny, is that better? Okay. Go ahead.

THE WITNESS: Thank you, Your Honor.

A. What was the question, sir?

Q. (BY MR. FINDLEY) What were the circumstances surrounding the execution of the premarital agreement?

A. So Mariam's family had organized the Imam. I had actually called Imam ahead of time, and they said they were not busy that day. Then Mariam's family -- and they had recommended so they called the same Imam.

MS. O'NEIL: Objection, Your Honor, hearsay.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Dr. Latif, without telling the Court what any third person said, what -- what was -- what were the circumstances, and what I mean by that,

when you signed the premarital agreement, what happened?

A. So I was there in the room in the mosque where the nikah was being conducted and the paperwork was being completed before the nikah ceremony started and --

Q. Who was working on the paperwork?

A. I believe Mariam's aunt along with sharing the paperwork with me and Mariam.

Q. And was Mariam present?

A. Yes, sir.

Q. Okay.

MS. O'NEIL: Your Honor, I'm going to object to that -- the answer to both of those questions based on lack of personal knowledge. He said "I believe," which establishes that he didn't have personal knowledge of the --

THE COURT: Hang on, just a second. Mr. Latif, were you present in the room with the aunt?

THE WITNESS: Yes, ma'am. Yes, Your Honor.

THE COURT: All right. The objection's overruled.

Q. (BY MR. FINDLEY) When you walked into the room, did you and Ms. Ayad discuss the terms of the premarital agreement?

A. Yes, sir.

Q. What terms did you discuss?
A. It's been 12 years, I can't tell you all the details, but we generally discussed the contract.
Q. And what terms of the contract do you remember discussing with her?
A. We talked about the Mahr.
Q. And that's the dowry, correct?
A. Yes.
Q. Okay. Do you remember talking about any other provisions of this agreement before you signed it?
A. As I said, I cannot recall exactly which ones, but yes, we did talk generally about the agreement.
Q. Did Ms. Ayad express to you any reservations about signing the agreement?
A. None at all.
Q. Okay. How many times had you and Ms. Ayad discussed signing the agreement before you signed the agreement?
A. Well, that was a back and forth conversation. I don't remember how many minutes or how many questions or what, but that day we talked, and I don't see any reason why we were being forced.
MS. O'NEIL: Objection, nonresponsive.
THE COURT: Sustained.
Q. (BY MR. FINDLEY) What conversations did --

MR. FINDLEY: Strike that.

Q. (BY MR. FINDLEY) What conversations did you and Ms. Ayad have about finances before you signed this agreement?

A. I cannot recall the details, but she never told me about --

MS. O'NEIL: Objection, nonresponsive after "cannot recall."

THE COURT: Sustained.

Q. (BY MR. FINDLEY) Did Ms. Ayad ever express any reservations about signing the agreement?

A. No, sir.

Q. Did Ms. Ayad -- did you say anything to Ms. Ayad to, you know, demand that she sign this agreement?

A. No, sir.

Q. Okay. Had she not signed the agreement would you have married her?

A. Why not?

Q. So --

MS. O'NEIL: Objection, nonresponsive.

THE COURT: Overruled.

Q. (BY MR. FINDLEY) When you signed the agreement did --

MR. FINDLEY: Strike that.

Q. (BY MR. FINDLEY) When you signed the agreement

with Ms. -- with Ms. Ayad, who else signed the agreement?

A. Her father signed, Mr. Habib Ahmed. Her uncle, Mr. Mushtag Ahmed whose wife was also involved in introducing us to get --

MS. O'NEIL: Objection, nonresponsive.

THE COURT: Overruled.

A. And my brother, Raad Latif.

Q. (BY MR. FINDLEY) And did you witness Ms. Ayad -- did you witness Ms. Ayad express any reservations about signing the agreement?

A. Not at all.

Q. Did the Imam read the agreement out loud?

A. Yes, sir.

Q. When did he do that?

MS. O'NEIL: Objection, hearsay.

THE COURT: Overruled.

A. Before finalizing the signatures.

Q. (BY MR. FINDLEY) Okay. Did Ms. Ayad say anything after the Imam read the agreement out loud?

A. No, sir.

Q. Did Ms. Ayad, you know, show any expression after the Imam read the agreement out loud?

A. No, sir.

Q. And this was before or after you signed the

agreement?

A. Before.

Q. Okay. And she signed the agreement?

A. Yes, sir.

Q. And her family and members of her family signed the agreement?

A. Yes, sir.

Q. And who selected the Imam to perform the ceremony?

A. Her family.

Q. Okay.

A. In fact, they're the ones who --

(Zoom crosstalk - indiscernible)

Q. Wait for the question, Dr. Latif.

THE COURT: Hang on. Hang on. Wait for the next question, please.

Q. (BY MR. FINDLEY) And even though her family selected the Imam, you had no problem with this Imam, you know, doing the ceremony?

A. No, sir.

MR. FINDLEY: I will pass the witness.

MS. O'NEIL: May I have an opportunity for cross, Your Honor?

THE COURT: I'll give you -- your time has expired. I'll give you 60 seconds.

CROSS-EXAMINATION

BY MS. O'NEIL:

Q. Dr. Latif, which document was read out loud to Ms. Ayad?

A. Both the documents.

Q. And she testified that neither document was read out loud to her; do you understand that?

A. I do.

Q. When Mr. Findley asked you how long she was given to consider the documents, you said you didn't know how many minutes; in other words, it was in the middle of the ceremony. She wasn't given these documents ahead of time, correct?

A. I believe we both had access to the documents before the ceremony.

MS. O'NEIL: Objection, nonresponsive.

MR. FINDLEY: He answered the question.

THE COURT: Overruled.

Q. (BY MS. O'NEIL) And did she have opportunity to consult with a lawyer?

MR. FINDLEY: Objection, speculative.

THE COURT: Sustained.

Q. (BY MS. O'NEIL) Was there a lawyer in the room when y'all were signing the documents?

MR. FINDLEY: Objection, relevance, not

required to have a lawyer in the room.

THE COURT: Overruled.

You can answer, sir.

A. Not to my knowledge, but I don't -- I can't say for sure. There were a lot of people from her family's side. I don't know if there were any of them who were attorneys at that time.

THE COURT: All right. Thank you. That's your time, Ms. O'Neil.

MS. O'NEIL: I have one more question, Your Honor. May I --

THE COURT: Your time's expired. I'd already given you additional time. Thank you.

Mr. Findley, any other questions based on Ms. O'Neil's?

MR. FINDLEY: No, Your Honor.

THE COURT: Okay.

MS. O'NEIL: Your Honor, for the record, I don't want to be seen as agreeing that I don't get additional time. I would like additional time to ask at least one more question.

THE COURT: I appreciate that. The Court already gave you additional time that Mr. Findley was not given and isn't using so we're going to stay with the additional time you already received. Thank you.

MR. FINDLEY: No further questions for this witness, Your Honor.

THE COURT: Okay. I have a couple of questions for the attorneys. So probably this goes more for Ms. O'Neil, but I guess Mr. Findley may have an answer as well.

At the last hearing the Court made it very clear that the Court would be applying 308(b) which states that after any award is made, any party can come back and object that whatever award was made violates the constitutional rights or public policy of the Court.

We also talked about Texas Family Code 153.0071 that says if anything is not in the best interest of the child then there's also an opportunity to be heard and have this court, I guess, invalidate any award that's not in the best interest of the child.

So a lot of the discussion at the last hearing was about there are remedies, so to the extent we're making public policy arguments and things, I guess, we don't know presumably what this panel of Imams that the parties chose should the Court choose to enforce the arbitration agreement, at this time we don't know yet what they might determine. So to the extent everything they determine is within the Family Code and constitutional and public policy of the State of Texas

then I'm not sure what we're complaining about.

To the extent they don't then Ms. Ayad has recourse under 308(b) and under 153.0071, and the Court certainly has the opportunity to overturn anything. So having made clear the Court is not going to impose religious law, and there are some -- we don't know yet. So a lot of the arguments are based on they're going to do things that are prejudicial to her, against public policy, but we don't know, and at the time that you do know after arbitration that something does violate constitutional rights and public policy, are not in the best interest of the child, there are remedies for all of that.

So help me understand then how the Court doesn't have the obligations and the presumptions we have for parties to contract, arbitrations, all of that, and then we have a remedy for most of what was complained of in both motions against the enforcement.

So Ms. O'Neil, can you speak to that first then I want to hear from Mr. Findley on the same issue?

MS. O'NEIL: Yes, Your Honor. My answer to that is fairly simple in the first part. The first part is that we are challenging the validity of the arbitration clause as being invalid, illegal, and unconscionable, and an unconscionable arbitration

agreement cannot be enforced.

I think I provided Your Honor with a notebook in advance. There is a Ken Paxton OAG opinion in that that very clearly says that a court may refuse to enforce such agreements when they solely apply the laws -- the Islamic law and not the laws of the land. And this agreement, regardless of any other evidence, this agreement on its own states that the law of the United States will not be applied and only the law of Sharia will be applied. And so the religious law is the only thing that's going to be applied so we do not believe we even get to the point that Your Honor is speaking of because the arbitration agreement itself is invalid as against public policy and unconscionable.

THE COURT: Okay. But if it's not and the Court finds it's a valid arbitration agreement, that's my question.

MS. O'NEIL: Then I think the next evaluation is going to be whether the supposed arbitration panel would consider whether the entire agreement is invalid because if you find the arbitration provision valid then the argument over the validity of the entire agreement will go to the arbitration panel. And only after the arbitration panel will it then go to the Court.

My understanding is that I, as Ms. Ayad's lawyer, will not be permitted to be in the proceeding, that only a jurist educated in Islamic law will be permitted to be in the proceeding and that she will therefore be denied by counsel. Further, it's my understanding that the decision of the panel, the Fiqh panel, will be binding on her unless you decide that it is then unconscionable as an application of Sharia law.

THE COURT: That's not my question so can we get to --

MS. O'NEIL: How are we going to know?

THE COURT: Very simply. At the end of all of that she has a remedy with this court to apply Texas law if anything the Fiqh panel does is not constitutional and is against public policy.

MS. O'NEIL: She has an inadequate remedy, Your Honor, because there's no guarantee of a record. There's no guarantee of representation of counsel. She's already been denied her right to disclosure in the agreement. She's already been denied her right to counsel in executing the agreement. So how are we going to know -- how are you going to know if her rights have been followed in the proceeding and if Texas law has been followed? Your Honor couldn't even attend that proceeding if you wanted to because we are women.

THE COURT: Let me just ask for the sake of argument. Does it matter if the outcome is in the best interest of the child and falls within the guidelines of the Texas Family Code. So let's say they come back with joint managing conservators, something similar to akin to that, mom is primary, a fifty-fifty division of community property, if -- I'm asking the question. If the end result is completely in line with what all of the presumptions in our Texas Family Code are then what is the complaint, that she doesn't get more than that?

MS. O'NEIL: My understanding is that we will not even be entitled to discovery of his assets under Islamic law because they do not consider community property. They consider everything that's in his name is his and everything that she has not been allowed to earn as hers, and she will get $32, and that's it.

THE COURT: In which case that doesn't comply with the just and right division of community property under Texas law, and therefore, your remedy under 308(b) would kick in. That's what I'm having a hard time getting around.

MS. O'NEIL: And the agreement itself doesn't comply with Texas law because it requires that those laws of the religion and the foreign country be

applied, so the agreement itself already says -- already answers that question so there's no need to go through the logistics of that to get to this court and come back here and say, oh, look, they applied Sharia law because the agreement already says they're going to do that. And Sharia law says that everything that he has and everything that he earned is his, and she only gets the stuff in her name and her $32 and go about your business. And she doesn't get custody because the age of discernment, seven for boys, nine for girls is when the father gets the choice of custody. They don't appoint joint managing conservator.

MR. FINDLEY: I'm surprised Ms. O'Neil is an expert on Islamic law.

MS. O'NEIL: I've read the code. I've provided --

(Simultaneous speaking - indiscernible)

THE COURT: One at a time. Stop. The court reporter cannot write down what you're both saying.

Ms. O'Neil, my point is that in that case you have an argument that whatever is decided about the best interest of the child, that's where 153.0071 comes in. This is not the only time the Court will have received arbitration agreements and awards and -- so I

guess, that's my question. So this is a common practice in the Muslim community, then divorces are -- arbitration awards are turned into divorce decrees. This is -- we're acting like this is the first time this has ever been seen and it's not, and in most of the cases that I have seen then, the dooms day outcome that we're attributing to this panel has not come to past.

That's my question. At this point, it's speculation as to what this panel -- assuming the agreement is found to be valid. It may not. I have not made a determination on that yet. But assuming it's found to be valid, our dooms day predictions about what this panel will do we have absolutely -- it doesn't necessarily work out that way, and then there is a remedy.

That's the difficulty I'm having getting around, is if ultimately it comes back to this court where Texas law eventually is applied assuming -- I get it's a lot of hoops to jump through if you have to do that, but that's the way our legislature has written these laws. I certainly find it to be inefficient, but that doesn't mean that's not the way the law goes if we follow it to its natural conclusion.

MS. O'NEIL: And, Your Honor, I don't think there's anything that I've heard that says that

these are -- that this agreement in this case is the common agreement in every case, and if Your Honor's relying on something else, I just don't know it.

My understanding is --

THE COURT: Okay.

MS. O'NEIL: -- agreements get entered --

THE COURT: Hang on. Hang on. Let me tell you. So what I'm looking at is the face of the agreement. It is a preprinted, fill-in-the-blank agreement that seems to come from the Islamic Association of North Texas. I think we discussed it at the last hearing that it seems to be a preprinted, fill-in-the-blank agreement that is handed out to anybody that goes to the Islamic Association. So I think there has been discussion that this is not a unique prenuptial agreement --

MS. O'NEIL: I think we're making --

THE COURT: -- to this case.

MS. O'NEIL: I think we're making an assumption about that, but beyond that --

THE COURT: I don't disagree, but we don't have anything that tells me this applies only to them either and that it's not. So in a vacuum that we don't know if it's unique or not then --

MS. O'NEIL: Can I answer your question --

the underlying question you had? We do have an answer. In my exhibit, I believe it's 21 -- don't pull it up. In my Exhibit 21 I have provided you with what I am told is the Family Code for Muslim communities in North America as provided by the Islamic Tribunal of North Texas as well as the jurist association that they've referenced in that web site.

MR. FINDLEY: It wasn't admitted into evidence, Your Honor.

THE COURT: Yeah, I do not recall it being admitted.

MS. O'NEIL: It was not admitted, Your Honor, but I think -- but you're asking me a specific question about information, and I'm giving it to you in a way that I think you can probably take judicial notice of. On page 25 --

THE COURT: I think what I said a minute ago is we don't have evidence that it is standard, and we don't have evidence that it isn't, so we don't --

MS. O'NEIL: I was answering your other question which is about what law they're going to apply and I believe --

THE COURT: That wasn't my question.

MS. O'NEIL: -- the law they're going to apply --

THE COURT: That wasn't my question. I understand what law their agreement says will apply. My question is, this court will be applying Texas law and that there are multiple avenues to cure the wrongs your arguments are saying will happen to Ms. Ayad.

So Mr. Findley, can you speak to that?

MR. FINDLEY: Your Honor, actually, my understanding is the same as yours with regard to when the challenge to Islamic law takes place. The Attorney General opinion that Ms. O'Neil references was actually written three years before Texas Government Section 22.0041 was ratified by the Texas Legislature which calls for, you know, how you deal with foreign judgments and foreign awards. And that statute led to the promulgation of Rule 308(b) that you discussed at the last hearing.

The legislature's made its decision, and it kind of merges in with how the Supreme Court has traditionally handled arbitration jurisprudence. You go through the process, and if there's a problem with the process, you deal with it afterwards. If the law wasn't applied properly or if it was against public policy.

And by the way, there's a provision in this premarital agreement, second to last sentence, where it says, "The law of the land will not be applied

in these conflicts except in cases where public order, safety, and/or health justly demands so." So there is a consideration in here for public policy of this state.

(Ms. O'Neil Zoom audio distortion - unintelligible)

MR. FINDLEY: So the fact of the matter is, Your Honor, this argument that Ms. O'Neil is making is premature at best. This argument needs to be made after the parties go to arbitration. There's been no evidence, which is Ms. O'Neil's burden to show, how this Fiqh panel would apply whatever law it was going to apply that was going to be unfair to the wife. No evidence was presented to the Court on this point.

So without that evidence, the Court cannot do what Ms. O'Neil is asking the Court to do and stop the arbitration process. I'm with -- I think the Court's absolutely right that the time to complain about this is after the process has been completed, and if Ms. Ayad believes that her rights were violated, she can bring those violations to the Court's attention, pointing out the foreign law as the motion -- you know, not -- you know, or to deny the motion to confirm the arbitration award.

I think the whole point is you go through the process and that the process has the rules that, you

know -- or applies some policy that's against public policy, at that point there's no question as to what law's been applied.

Ms. O'Neil didn't present the Court with evidence before this hearing as to how -- how this law would have been applied so I think -- I think the Court needs to stick with its original ruling.

MS. O'NEIL: May I respond?

THE COURT: Yes.

MS. O'NEIL: Your Honor, I think that the -- the family code of the tribunal that they are seeking to have hear this has specific rules about how custody is determined, about how marital property is determined, and it tells us, it tells us that the age of discernment, seven for boys, nine for girls is the age at which the father gets custody.

Like, we already know the answer to these questions. They are already available for us. We already know that they're not going to apply Texas law. We already know that they're not going to apply community property law. We already know that they're not going to appoint joint managing conservators. We already know that they're going to restrict Ms. Ayad's ability to travel if she is given custody. We already know that they're going to restrict her ability to

remarry if she is given custody.

We already know that their law violates Texas public policy, and Attorney General Paxton set that out in his opinion letter on this issue and the law that has come about since then has set about that. The *Sharif v Moosa* case out of Ben Smith's court set that out as well and found an agreement similar to this to be unconscionable.

What we don't know and what the Court and Counsel is speculating about is whether this agreement is a standard agreement, and I would submit that it is not, but they have provided you no evidence about that. The only question before the Court today is whether this arbitration provision is valid or whether we have proven it against public policy and/or unconscionable and/or involuntary. One of those is a question of fact; one of them's a question of law.

We believe that the face of the agreement shows them to be unconscionable because they already -- we already know that the face of the agreement requires only the application of Sharia law and not the application of the laws of the United States including our Constitution and the Texas Family Code. We already know this. The agreement -- the arbitration agreement already says it is not going to apply U.S. law so the

arbitration agreement is invalid, unconscionable, obtained through fraud, duress, and involuntary execution. We already know this. We don't need to go through the other steps.

MR. FINDLEY: Except we don't, Your Honor.

THE COURT: Hang on. Hang on one second. So people are allowed to contract. They're even allowed to make bad contracts, and the Court has to presume in favor of arbitration agreements and premarital agreements. The only two things that I'm aware of in Family Code 4.002 for premarital agreements is that it's in writing and signed by the parties, so --

MS. O'NEIL: But Your Honor.

THE COURT: -- that's what we appear to have here. So then I move on to was it voluntary or was it unconscionable which are two defenses to a premarital agreement, and unfair, unpleasant, embarrassing the case law has already found does not even -- doesn't rise to the level of unconscionable. We'll take the voluntariness as a separate question, but unfair --

MS. O'NEIL: Your Honor --

THE COURT: -- is not unconscionable.

MS. O'NEIL: The public policy does go to those issues. There is sufficient case law, I think I've provided it to you in the notebook I provided you

that says --

THE COURT: But again --

MS. O'NEIL: -- that the parties don't have the right to contract in an unconscionable agreement, and unconscionable agreement is one that does not apply the law of the United States.

THE COURT: Ms. O'Neil, you're telling me you have never seen a result, an award from a Fiqh panel that was agreed to by the parties that gave a reasonable award anywhere close to what the family court provides?

MS. O'NEIL: I'm not purporting to be an expert on a Fiqh panel because I would have not ever even been allowed to be in one and neither would Your Honor. What I'm saying is that the agreement --

THE COURT: The control issue that your client agreed to and people are allowed to agree to things, so because she agreed, I have to have a reason not to apply something that she agreed to.

MS. O'NEIL: Your Honor, the reason is that it on its face refuses to apply the United States law and the case law and General Paxton's opinion are clear that when you refuse -- and the *Sharif v Moosa* case which is directly on point here. When you contract for something that is a violation of public policy that contract is void regardless of the presumption of the --

THE COURT: But there is an exception that Mr. Findley did read that the law is applied except. So we have --

MS. O'NEIL: That doesn't say --

THE COURT: -- public order, safety, and/or health.

MS. O'NEIL: Because it says safety, safety. It says public safety.

THE COURT: No, it says --

MS. O'NEIL: That's not the same.

(Simultaneous speaking - indiscernible)

MR. FINDLEY: -- public policy of the State of Texas. Okay.

THE COURT: Hang on. Stop. Stop. One at a time.

Let me read it. "The law of the land will not be applied in these conflicts except in cases where public order, safety, and/or health justly demands so."

MS. O'NEIL: None of that says the law of the United States, marital property law, best interest. It doesn't say that. It says public order, public safety. It doesn't say public policy. That is a completely different statement.

THE COURT: I don't think we have a definition of what that does mean, so.

MS. O'NEIL: I think we know what it does not mean.

THE COURT: Mr. Findley, anything else?

MR. FINDLEY: Just, Your Honor, all these arguments about what Ms. O'Neil believes is going to happen, there's no evidence as to what's going to happen. And so with -- and since it's her burden to show that somehow the application of this process is unconscionable, I think the Court should stick with its original ruling and order this case to go to the Fiqh panel.

THE COURT: All right. Thank you-all. I will be e-filing my ruling, hopefully today, but if not Monday. Thank you-all.

(Proceedings concluded at 12:01 p.m.)

THE STATE OF TEXAS)

COUNTY OF COLLIN)

I, Destiny M. Moses, Official Court Reporter in and for the 416th District Court of Collin County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred via Zoom in accordance with the Supreme Court of Texas' Emergency Orders Regarding the COVID-19 State of Disaster and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $1,027 and was paid by O'Neil Wysocki, P.C.

WITNESS MY OFFICIAL HAND this the 15th day of June, 2021.

_/s/ Destiny M. Moses_____
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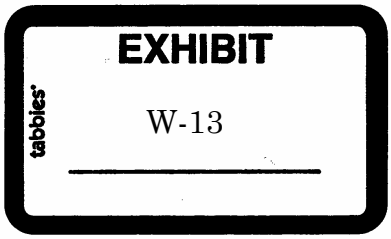

M. ZUHDI JASSER, M.D., F.A.C.P.

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Birthdate/ birthplace:	November 17, 1967, Canton, Ohio
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PROFESSIONAL CERTIFICATION and FELLOWSHIP

Diplomate, American Board of Internal Medicine, November 1, 1996,
Recertification Exp: December 31, 2024 # 170499

Diplomate, Certification Board of Nuclear Cardiology, December 7, 2002
Recertification Exp: March 1, 2024 # 2409

Fellow, American College of Physicians-American Society of Internal Medicine, Jan. 2000.

Diplomate, National Board of Medical Examiners, July 1, 1993, # 410741

EDUCATION

Doctor of Medicine with Honors in Research, May 16, 1992, Medical College of Wisconsin, August 1988- May 1992, Milwaukee, Wisconsin

Bachelor of Science with Honors, *magna cum laude in Zoology with University Honors Program completion*, May 14, 1988, University of Wisconsin-Milwaukee, August 1985- May 1988, Milwaukee Wisconsin

Target MD Program Student, B.Sc. /M.D. joint accelerated program of the University of Wisconsin- Milwaukee and Medical College of Wisconsin, Aug. 1985- May 1992

POSTGRADUATE TRAINING

Residency, Internal Medicine, National Naval Medical Center, Bethesda, Maryland, May 1994- April 1996

Categorical Medicine Internship, National Naval Medical Center, Bethesda, Maryland, July 1992- June 1993.

HOSPITAL STAFF PRIVILEGES

Banner University Medical Center-Phoenix, Active-unsupervised, June 1999-present

LICENSURE

Arizona Board of Medical Examiners, #27073, Phoenix, Arizona, Exp: March 17, 2022

ACADEMIC APPOINTMENTS

Associate Professor, University of Arizona School of Medicine- Phoenix, Department of Internal Medicine. July 2019-present

Clinical Medicine Instructor, Internal Medicine Residency Program, Department of Medicine, Banner Good Samaritan Medical Center, Phoenix, Arizona, August 1999-present

Medical Ethics Curriculum Coordinator, July 2001-present

Clinical Instructor, Cardiology Fellowship, Banner Good Samaritan Medical Center, Phoenix, Arizona, July 1999-present

Nuclear Cardiology Curriculum Coordinator, August 2005-2017

Medical Ethics Curriculum Coordinator, July 1999-present

Past Academic appointments:

Assistant Professor, Department of Medicine, F. Edward Hébert School of Medicine, Uniformed Services University of the Health Sciences, June 1996-April 1999

Teaching fellow, Department of Medicine, F. Edward Hébert School of Medicine Uniformed Services University of the Health Sciences, May 1995- May 1996

MILITARY HONORS

Meritorious Service Medal, for professional achievement as Staff Internist to the Office of the Attending Physician, US Capitol, U.S. Congress, Washington D.C., March 1999

Navy Achievement Medal, for professional achievement as Chief Resident, June 1997

Navy Achievement Medal, for professional achievement as Medical Department Head aboard

the U.S.S. El Paso (LKA-117), April 1994

Meritorious Unit Commendation, National Naval Medical Center, January 1996

Battle Efficiency Ribbon, U.S.S. El Paso (LKA-117), 1994

National Defense Medal

Pistol Expert Medal and Rifle Expert Medal

HOSPITAL COMMITTEE AND HEALTH PLAN APPOINTMENTS

Lead Bioethicist and Consultant, Western Region, Banner Health Network, January 2010 – present

Hospital Bioethics Committee, Chairman, Banner University Medical Center-Phoenix, Phoenix, Arizona, January 2001- present, Member, June 1999-present

Credentialing Committee Member, Banner Health Network, January 2013- present

Hospital Medicine Committee, member, Banner Good Samaritan Medical Center, Phoenix, Arizona, May 2000-December 2007

Professional Consultation Committee, Chaplain Residency Program, Banner Health Systems, Banner Good Samaritan Medical Center, Phoenix, Arizona, January 2002-December 2007

Past appointments

Hospital Ethics Committee, member, National Naval Medical Center, Bethesda, Maryland, July 1996- May 1997, House staff representative Jan. 1995- July 1996

Islamic Chaplain Search committee member, National Naval Medical Center, Bethesda, Maryland, July 1996- May 1997.

Executive Committee of the Medical Staff, Housestaff representative, National Naval Medical Center, Bethesda, Maryland, October 1995- October 1996

Graduate Medical Education Committee, Housestaff representative, National Naval Medical Center, Bethesda, Maryland, January 1996- October 1996.

GRADUATE MEDICAL EDUCATION HONORS

Winner, Podium Presentation, Regional Associates' Meeting, American College of Physicians', Washington, D.C. Chapter, May 11, 1996

Governor's Award, American College of Physicians, U.S. Navy Region, October 7, 1995.

First Place, Poster Competition, Second Annual Regional Associates Meeting, American College of Physicians, Washington D.C. Chapter, May 6, 1995.

Third Place, Poster Presentation, Regional Associates' Meeting, American College of Physicians,

United States Navy Region, October 26, 1994

MEDICAL EDUCATION HONORS

Alpha Omega Alpha Medical Honor Society, September 1991

President, Wisconsin Beta Chapter, 1991-1992

The Research Award, awarded to "graduating senior demonstrating the best potential for contributing to the advancement of medicine through research" May 16, 1992

Honors in Research Program graduate, Medical College of Wisconsin, May 1992

The Roche Laboratories Award for Excellence in Basic Science Research, Medical Student Division, 32nd Annual National Student Research Forum, Galveston, Texas, April 13, 1991

First Place Award in Oral Presentations, Medical Student, Midwest Student Medical Research Forum XXII, Omaha, Nebraska, February 9, 1991

Recognition Award, service to Medical College of Wisconsin Students, May 1991

Medical Student Travel Award, National Meeting of the American College of Rheumatology, Seattle, Washington, October 1990

AMA-Medical Student Section Award for Outstanding Membership Recruitment, Dec. 1989

Research Fellowships (Medical Student Grants)

-M & I Bank, June1990- August 1990, Milwaukee, Wisconsin

-Medical College of Wisconsin, June 1989- August 1989, Milwaukee, Wisconsin

United States Navy Health Professions Scholarship Program, full medical education scholarship at the Medical College of Wisconsin, August 1988- May 1992

PAST MEDICAL EDUCATION LEADERSHIP POSITIONS

Chairman, Executive Committee of the Resident Medical Staff, October 1995- August 1996. Founded Resident Medical Staff structure and drafted bylaws endorsed by privileged staff of National Naval Medical Center enacting Resident Medical Staff, August 1995.

Housestaff Representative, Executive Committee of the Medical Staff, National Naval Medical Center, October 1995- September 1996.

Vice-President, Intern Class, National Naval Medical Center, Bethesda, Maryland, July '92- June '93

President, Alpha Omega Alpha Medical Honor Society, Wisconsin Beta Chapter, 1991-1992

American Medical Association

National Delegate for U.S. Navy Delegation, House of Delegates of the AMA- Resident Physicians' Section. Annual Meeting, June 1996. Interim Meeting, December 1995

Medical Student Representative to State Medical Society of Wisconsin Executive Board of Directors, January 1991- May 1992

National Delegate for Medical College of Wisconsin Delegation, House of Delegates of the AMA-Medical Student Section. Interim Meeting, 1991, Annual Meeting, 1990, Interim Meeting, 1990.

President, AMA-Medical Student Section, Medical College of Wisconsin, 1989-1990

Medical Student Representative, Medical Society of Milwaukee County Executive Board of Directors, August 1989- December 1990

Medical Student Representative, Public Education Committee of the Medical Society of Milwaukee County, September 1990- May 1992

COMMUNITY AND PROFESSIONAL APPOINTMENTS

Commissioner, United States Commission on International Religious Freedom, appointed by Senator Mitch McConnell (R-KY) March 2012 – May 2016

Vice-Chair, June 2013-June 2014, June 2015-May 2016

Member, Maricopa County Board of Health, June 2005-June 2013

Board of Directors, Area Agency on Aging, September 2007-September 2012

Board of Directors, PrimeCare Healthcare Network, Phoenix, Arizona, January 2005-2012

Member, Quality Oversight Committee (QOC), Care1st Healthplan Arizona, Inc., April 2005-2009

Chairman, Board of Directors, ElderFriends, Transitional Housing Program for Elder Victims of Domestic Violence. September 2004-present. (Member 2002-September 2007)

Board of Directors. Arizona Interfaith Movement. Muslim Representative. December 2001-2012

EMT Program Director, Coordinating medical team providing 911 response on Capitol Hill, Office of Attending Physician, U.S. Capitol, May 1997- April 1999

Allergy Program Coordinator, Oversight of allergy immunotherapy program, Office of Attending Physician, U.S. Capitol, May 1997-April 1999

AED Program Coordinator, Oversight of AED Training Program for Capitol Hill Clinics, Office of Attending Physician, U.S. Capitol, May 1997-April 1999

COMMUNITY HONORS

Defender of the Home Front Award, Center for Security Policy, October 2007.

Director's Community Leadership Award, FBI Phoenix Office, January 2007

PROFESSIONAL AND COMMUNITY SERVICE ORGANIZATION LEADERSHIP POSITIONS

Host, Podcast, *"Reform This!"* Blaze Radio Podcast Network. 2017-present. iTunes, Spotify,

Soundcloud.

Co-Founder, Muslim Reform Movement, U.S., Canada, and Europe, December 2015-present. www.muslimreformmovement.org (previously American Islamic Leadership Coalition-AILC)

Board Member, American Conservative Union, 2015-present

Board of Advisors, Gatestone Institute: International Policy Institute. New York, 2012-present

Chair, Private Practice Physicians Section (PPPS) of the American Medical Association, November 2020- present.

Chair, Private Practice Physicians' Congress of the AMA House of Delegates 2010-2020.

Delegate to the AMA House of Delegates, Arizona Medical Association, June 2008- present

Past-President, Member-Executive Committee, Arizona Medical Association, June 2008-present

Chairman, Arizona Disaster Preparedness Task Force. Arizona Medical Assoc., 2007-2011

Immediate, Past-President, Member-Executive Committee, Arizona Medical Association, June 2007-June 2008

President, Arizona Medical Association, June 2006-June 2007

President-elect, Arizona Medical Association, June 2005-June 2006

Vice-President, Arizona Medical Association, June 2004-June 2005

Member, Board of Directors. Direct Member. ArMA. June 2002- June 2004

Board Member, Maricopa County Board of Health, Phoenix, Arizona, June 2005-June 2012.

Chairman, Board of Directors, Elderfriends, Transitional Housing for Victims of Elder Abuse. Area Agency on Aging. September 2004-2011

Member, Board of Directors. Elderfriends. Transitional Housing for Victims of Elder Abuse. Area Agency on Aging. Jan 2002-September 2004.

Advisory Committee. Medical Choice for Arizona, Anthem, Arizona, March 2008- 2012

Advisory Council Member and contributing writer, AZMED. Journal of the Arizona Medical Association. January 2002- present.

Advisory Committee Member, Seeds of Peace Arizona Chapter, January 2003-2006

Founder, Board President, American Islamic Forum for Democracy, Phoenix, Arizona, October 2002- present. www.aifdemocracy.org.

Co-Founder, American Islamic Leadership Coalition (AILC), Washington, D.C., September 2010-2015. www.americanislamicleadership.org.

Co-Founder, Save Syria Now!, Phoenix, Arizona, March 2011-present. www.savesyrianow.com.

Past-President, Arizona Medical Association (ArMA) June 2008-present

Delegate to AMA House of Delegates, Arizona Medical Association, June 2008-present

Chairman, Arizona Disaster Preparedness Task Force. ArMA, June 2007- present

Immediate, Past-President, Member-Executive Committee, ArMA, June 2007-June 2008

President, Arizona Medical Association, June 2006-June 2007

President-elect, Arizona Medical Association, June 2005-June 2006

Vice-President, Arizona Medical Association, June 2004-present

Member, Board of Directors. Direct Member. ArMA. June 2002- June 2004

Board Member, Maricopa County Board of Health, Phoenix, Arizona, June 2005-June 2012

Chairman, Board of Directors, Elderfriends, Transitional Housing for Victims of Elder Abuse. Area Agency on Aging. September 2004-present.

Member, Board of Directors. Elderfriends. Transitional Housing for Victims of Elder Abuse. Area Agency on Aging. Jan 2002-September 2004.

Advisory Committee. Medical Choice for Arizona, Anthem, Arizona, March 2008- present

Advisory Council Member and contributing writer, AZMED. Journal of the Arizona Medical Association. January 2002- present.

Advisory Committee Member, Seeds of Peace Arizona Chapter, January 2003-2006

Board Member, Muslim Representative, Arizona Interfaith Movement, Phoenix, Arizona, October 2001- 2012

Coordinator, Founding Member, Children of Abraham, Muslim-Jewish Dialogue Group, Scottsdale, Arizona, November 2000-2010

Chairman, Interfaith Committee, Islamic Center of the Northeast Valley, Scottsdale, Arizona. January 2006-2007.

Speakers Bureau Member, Arizona Medical Association, Phoenix, Arizona. January 2002-present.

President, Osler Medical Society of Phoenix, Phoenix, Arizona, July 2001-June 2002.

Member, June 2000-June 2001

OCCASIONAL MEDIA APPEARANCES WITH THE FOLLOWING PROGRAMS

Television:

Al Jazeera – July 2010 – present

Al Jazeera English

BBC – March 2011 - present

Newsnight. BBC 2

The World Report

CBS – September 2010 - present

The Early Show. CBS.

CNN October - 2007 - present

American Mornings. CNN.

Anderson Cooper 360. CNN.

The Glenn Beck Show. CNN Headline News.
In the Arena with Eliot Spitzer. CNN.
The Joy Behar Show. CNN Headline News.
The Newsroom. CNN.
The Situation Room with Wolf Blitzer. CNN
World Report. CNN International

Fox News - January 2009 - present
Fox and Friends
America's Newsroom.
Tucker Carlson Tonight
The Ingraham Angle
Life, Liberty, and Levin
Justice with Judge Jeanine
Cavuto Live
Hannity
Fox News Tonight
Follow the Money. Fox Business.
Fox and Friends. Fox.
Happening Now. Fox.
On the Record with Greta Van Sustern. Fox
The O'Reilly Factor. Fox.

Fox Business Network
Varney & Company
After the Bell
The Intelligence Report
Making Money with Charles Payne
Mornings with Maria Bartiromo
The Lou Dobbs Show
Cavuto on Business

MSNBC
The Chris Matthews Show
Jansing & Company.
Morning Joe

Print/Online:

Jasser, M. Zuhdi. Contributing Writer

Arizona Republic. www.azcentral.com. March 2003-present

The Blaze. www.theblaze.com. February 2011 - present

The Daily Caller. www.dailycaller.com. February 2010- present

The Dallas Morning News. www.dallasnews.com. February 2007 - present

FoxNews.com. www.foxnews.com. May 2010 - present

Huffington Post. www.huffingtonpost.com. February 2009- present

Hudson Institute-NY. www.hudsonny.org. November 2008- present

National Review Online. www.nationalreview.com.

New York Post. www.nypost.com. May 2010 - present

Wall St. Journal. www.wsj.com. September 2010 - present

Washington Times. www.washingtontimes.com. March 2006 – present

Center for Security Policy. www.centerforsecuritypolicy.org January 2021-present

Radio:

Podcast Host, *"Reform This!"* Blaze Radio Podcast Network. 2017-present [weekly]. iTunes, Spotify, Soundcloud.

The Glenn Beck Show 2011-present

The Mark Levin Show 2010-present

The Dennis Prager Show. June 2012 – present

The Michael Medved Show. June 2012 – present

The Wall Street Shuffle. June 2012 - present

The Mike Rosen Show. September 2011 – present

America's Radio News Network. March 2011 – present

The Dennis Miller Show. June 2010 - present

Kilmeade & Friends. July 2010 - present

The Mike Broomhead Show. July 2010 – present

The Roy Green Show. November 2009 - present

Secure Freedom Radio. November 2009 – present

The Bill Bennett Show. November 2009 – present

The Laura Ingraham Show. November 2009 - present

The Vicki McKenna Show. November 2009 – present

Religion on the Line. November 2009 – present

National Public Radio. November 2009 - present

Documentaries

Fox News Reporting: A Question of Honor. Produced by Fox News, 2011. (Featured interview)

America at Risk: The War with No Name. Produced by Citizen's United Productions in association with Gingrich Productions and Peace River Company, LLC, 2010. (Featured interview)

Muslim Brotherhood Expands Westward. Produced by the BBC World Service Monday Documentary, August 2010 (featured interview)

The Third Jihad. Produced by Raphael Shore and Wayne Kopping of PublicScope Films, 2009. (narrator and featured interview).

Islam vs. Islamists. Produced by ABG Films, Inc. appeared on PBS, 2007. (Featured in one of five segments)

PUBLISHED BOOKS

Jasser, M. Zuhdi. *A Battle for the Soul of Islam: An American Muslim Patriot's Fight to Save His Faith*; Simon & Schuster, Inc, 2012.

PUBLISHED CHAPTERS

Jasser, M. Zuhdi. Political Islam, Liberalism and Diagnosis of a Problem. *Islamism: Contested Perspectives on Political Islam,* edited by Abbas Barzegar and Richard C. Martin; Stanford University press, 2010; pp 104 - 110

Jasser, M. Zuhdi. Americanism versus Islamism. *The Other Muslims: Moderate and Secular*, edited by Zeyno Baran; Palgrave and MacMillan, 2010; pp 175 – 193

Jasser, M. Zuhdi. The Synergy of Islam and Libertarianism. *Vital Speeches of the Day*, 2006. Vol LXXII. No. 14-15 pp 44-49.

Jasser, M. Zuhdi and Shahid, Sid. A Struggle for the Soul of a Faith: Spiritual Islam versus Political Islam. *The Impact of 9-11 on Religion and Philosophy – The Day that Changed Everything,* Edited by Matthew J. Morgan; Palgrave and MacMillan, 2009; pp 31-51

PUBLISHED ARTICLES

The American Islamic Forum for Democracy Website

Jasser, M. Zuhdi.

"They just don't get it (CAIR)," April 2, 2006

"Can Muslims Separate Religion and State," March 25, 2006.

"Think Globally, Act Locally- Local Muslim Paper prints hate cartoon," December 9, 2005

The Arizona Republic

Jasser, M. Zuhdi.

"Uproar over 'Rolling Stone' cover photo missed real story: Jasser: Normal look defines face of terrorism," Op-Ed July 23, 2013

"Sentence will affect honor-killing message," Op-Ed April 30, 2011

"Voices of moderation face irrational rants," The Issues Section. February 18, 2011

"Divisive Debate on Ground Zero," Op-Ed August 17, 2010

"It's time to root out political Islam," Op-Ed. January 9, 2010.

"D Minus: Proposal by White House a bureaucratic mess," Op-Ed. August 18, 2009

"A forum to oppose Muslim radicals," Letter to the Editor. August 14, 2007.

"From a Muslim Outlook, Imams have missed the point on flight behavior," Viewpoints Section. December 11, 2006.

"Immigrants Raise Voices for Democracy," Op-Ed. October 10, 2004.

"A Disgrace to Islam: Fascists use Allah as an Excuse for Murder," Op-Ed. September 26, 2004.

"Hooded Al Qaeda Thugs real enemies of Islam," Op-Ed. June 23, 2004.

"Why Muslims should rally vs. Terrorism," Op-Ed. April 11, 2004.

"Left out Muslims," Letter to the Editor. July 9, 2002.

"Vast Core of U.S. Muslims Loyal to the Flag," My Turn. November 4, 2001

Jasser, M. Zuhdi and Khalsa, Soul. "American Secularism offers lesson to France," November 28, 2005.

Weblog

Jasser, M. Zuhdi.

"More Liberty in the infirmary than the courtroom," *WeBlog*. March 27, 2006.

"A Moderate Voice of Muslim Pluralism with a Washington Address," *WeBlog.* March 25, 2006.

"All that's fit to print– for the right price," *WeBlog: PluggedIn*. March 24, 2006.

"Death Threats Against a List of Moderate Muslims in the West," *WeBlog.* April 13, 2006

"Murdering the Truth: Revealing Islamo-fascism," *WeBlog.* September 19, 2005.

"Neo-Nazis applaud Islamofascists," *WeBlog.* March 11, 2005.

"Killers stage a rally: A farce written in Blood," *WeBlog.* March 11, 2005.

"Struggle for the soul of Islam," *WeBlog.* March 5, 2005.

"Syria's Historic Blunder," *WeBlog.* February 25, 2005.

"Iraq's Winds of Change: rebirth of a nation," *WeBlog.* January 28, 2005

"Religious Voting Blocs: Shades of Theocracy," *WeBlog.* October 31, 2004.

"Muslims Must Lead the War on Terror: and Rise up soon," *WeBlog.* October 31, 2004.

"Bin Laden's Sleight of Hand: Sign of His Decline," *WeBlog.* October 31, 2004.

AZMED

Jasser, M. Zuhdi.

"Paved with Good Intentions," July/August 2003.

"Ethical and Legal Realities of the Right to Privacy," January/February 2003

"The Fragmentation of Medicine," 2002

"The Disappearing Soul of Medicine," 2002

Big Peace

Jasser, M. Zuhdi.

"Syrian Reform Starts At Home," May 28, 2011

"CAIR Spreads Propaganda for Radical Saudis on Islam's Holiest Day," November 17, 2010

"Muslim Soldier," July 22, 2010

"We Hold These Truths to Be Self-Evident," July 4, 2010

The Blaze

Jasser, M. Zuhdi.

"A Letter to the People of Egypt from an American Muslim," February 16, 2011

"Understanding Egypt: Islamic Socialism and the Left" February 6, 2011

The Daily Caller

Jasser, M. Zuhdi.

"Herman Cain's Muslim comments are misguided," June 10, 2011

"New York Times and CNN miss critical analysis of overhyped Muslim counter-radicalization video," August 27, 2010

"Time to take sides," July 27, 2010

"Taking a stand," May 5, 2010

"American Muslims respond to Al-Awlaki's call for jihad," March 18, 2010

"Failing at force protection: The misguided Pentagon report on the Ft. Hood massacre," February 8, 2010

The Dallas Morning News

Jasser, M. Zuhdi.

"The next step after Bin Laden – Reboot our Middle-East strategy," May 3, 2011

"U.S. wrongly sides with Muslim teacher," December 23, 2010

"This Isn't Prejudice," February 11, 2007.

Family Security Matters

Jasser, M. Zuhdi.

"How can we thwart future Islamist attacks?" May 5, 2010

"When it Comes to Islamist Terror, An Islamic Problem Needs an Islamic Solution," December 14, 2009

"Rifqa Bary, Islam, Muslims, Shari'iah and Apostasy (Part I1 of II)," September 22, 2009

"Rifqa Bary, Islam, Muslims, Shari'iah and Apostasy (Part 1 of II)," September 21, 2009

"What about the 'Jihadi' Nuclear Scientist?" June 18, 2009

"Obama Administration Stacking the Deck with Islamists," April 15, 2009.

"Is Negotiating with an Islamist Entity a Good Idea?" March 12, 2009.

"The Plight of Women Under Islamism: Time for Muslims to Shed the Denial," February 17, 2009.

"Defeating Salafism and Wahhabism, the Right Way," January 20, 2009.

"HLF Terrorism Case Guilty Verdict Signals a Sea Change," November 26, 2008.

"Where Does the Fight Against Islamism Go from Here?" November 11, 2008

"Honor Killings and the Struggle of Moderate Islam," October 7, 2008.

"Action, Not Talk, is the Order of the Day," September 11, 2008

"What it Comes to Islamism, the DNC doesn't get it," September 1, 2008.

"As the West Sleeps, Islamists Work on Establishing a Worldwide Islamic State (2 of 2)," August 25, 2008.

"The Muslim Brotherhood Shows its Cards," August 8, 2008.

"As the West Sleeps, Islamists Work on Establishing a Worldwide Islamic State (1 of 2)," July 25, 2008

"What War of Ideas?" July 25, 2008.

"CAIR Chairman Resignation Needs Careful Analysis," July 9, 2008.

"Islamism and the So-Called 'Muslim Voting Bloc': Shades of Theocracy," July 4, 2008.

"Chicago Tribune Misses the Mark on Radical Islamists-Coming Soon to a Town Near You," June 11, 2008.

"The War of Ideas: Revealing the Moral Weakness and Hypocrisy of the Islamist Imam- Part Two of Two," May 8, 2008.

"The War of Ideas: Finally A Debate-Part One of Two," April 11, 2008

"Lessons for American Muslims from the Conviction of AbuJihaad," March 7, 2008.

"Radical Islamists: A Clear Danger," February 25, 2008.

"Slouching Towards Sharia," February 2, 2008.

"In the War Against Islamism, We Must Listen to the Words of Our Enemies," January 31, 2008.

"Challenge to the American Pakistani Community: Make a Difference for Freedom," January 3, 2008.

"With Friends Like These: CAIR Reaches Out for a Setup," December 7, 2007.

"Begin the Debate: Nine-Point Guide to Discern Islamist from Non-Islamist Schools," November 25, 2007

"What Ramadan is Really About: Atonement and Renewal," October 12, 2007.

"Ideological Standards Needed to Confront Militant Islam: What Are They," October 1, 2007.

"The Muslim World Needs Advocates for Freedom, Not Democracy," September 30, 2007.

"Which Islam? Whose Islam? All Muslims Own the Interpretation of the Koran-Part Four of Four," September 14, 2007.

"Which Islam? Whose Islam? All Muslims Own the Interpretation of the Koran-Part Three of Four," September 12, 2007.

"Which Islam? Whose Islam? All Muslims Own the Interpretation of the Koran- Part Two of Four. September 12, 2007.

"Which Islam? Whose Islam? All Muslims Own the Interpretation of the Koran- Part One of Four," August 24, 2007.

"Fascism Spares No One," August 9, 2007.

"Accommodation as an Islamist Political Instrument," July 27, 2007.

"Congressman Ellison Carries the Islamists' Water," July 19, 2007.

"When Will We Learn?" June 29, 2007.

"CAIR's Islamism Revealed," June 14, 2007.

"Why the Pew Study of American Muslims is Dangerously Incomplete," June 4, 2007.

"Islamism, not Islam is the Problem," May 18, 2007.

"The Mainstream Media: Islamist Facilitators," April 24, 2007.

"The Flying Imams: A Defining Moment in American Values?" April 9, 2007.

"Treason by any other Name. March 23, 2007.

"The Not-So-Moderate Muslim Brotherhood," March 11, 2007.

"Our Government's Dangerous Partnering with the Wrong Muslims," February 23, 2007.

FoxNews.com

Jasser, M. Zuhdi.

"Where is the US Government in defense of Pastor Abedini and religious freedom" January 27, 2013

"America must protect religious freedom abroad" January 20, 2013

"An American Muslim's View- Why Our Community Needs the King Hearings On Radical Islam" March 9, 2011

"Bill of Rights Day – A Muslim's View," December 15, 2010

"My Fellow Muslims, We Must Wake Up!" May 7, 2010

The Hill's Congress Blog

Jasser, M. Zuhdi.

"Eighth Anniversary of 9/11 calls for...," September 10, 2009

"The NYC Bomb Plot: A Teachable Moment for American Security," May 27, 2009

The Hudson Institute

Jasser, M. Zuhdi.

"Wake-up Call: Islamists Insert Themselves into Healthcare Debate," September 9, 2009

"CAIR's Rule of Law," December 23, 2008.

The Huffington Post

Jasser, M. Zuhdi.

"Lesson of Ramadan for Muslims," August 28, 2009

"Getting Real on Shariah," May 11, 2009.

"Pious Muslims are Needed to Defeat Islamists," April 30, 2009.

National Review Online

Jasser, M. Zuhdi.

"The Times and the Muslims," January 27, 2012

"Zuhdi Jasser's Counter-Jihad: the administration refuses to utilize a strong opponent of radical Islam," October 6, 2011

"*Lack of Space Technology Is Not the Muslim World's Problem*," July 7, 2010

"On the Job Training," December 30, 2009

"The Unfought War on Islamism," September 11, 2008

"Suicide Reversal? Polling the Muslim World," July 26, 2007.

"Jihad in Jersey: A Garden State Reminder- We're at War," May 9, 2007.

"Why Do They CAIR About Jack Bauer?" January 29, 2007.

"How It's Looking. Iraq Three Years In," March 21, 2006.

"Dreams and Realities: Cartoon Problems," February 10, 2006.

The New York Post

Jasser, M. Zuhdi.

"Of films and fear," January 29, 2012

"Leaders' who fail the Awlaki test," October 10, 2011

"Why Muslims must look in the mirror," December 30, 2010

"Mosque unbecoming: Not at Ground Zero," May 24, 2010

The Wall Street Journal

Jasser, M. Zuhdi.

"The Islamist Threat Inside Our Military," August 19, 2011

"Questions for Imam Rauf from an American Muslim," September 10, 2010

The Washington Times

Jasser, M. Zuhdi.

"It's Not Over Till It's Over," August 14, 2009

"Overcoming Islamism: Defeat the Ideology and Claim Majority Victory- Part Three of Three," August 4, 2006.

"Muslims in the Crosshairs- Part Two of Three," August 3, 2006.

"Faux 'moderate' Islamists-Part One of Three," August 2, 2006.

"Cancer in its Midst," March 30, 2006

Swett, Katrina Lantos and Jasser, M. Zuhdi. "No human rights without religious freedom," September 27, 2012

Franks, Rep. Trent (R-AZ) and Jasser, M. Zuhdi. "American Muslims disagree: Islamist advocate's message won't resonate here," May 13, 2010

Other Publications

Jasser, M. Zuhdi.

"Asylum seekers deserve better from America: Opinion," *N.J.com*, June 28, 2013

"Obama must hold Myanmar's Thein Sein accountable for human rights violations," *Yahoo News*, May 19, 2013

"We Should Have Heeded the Warning Signs of Islamist Antisemitism," *JewishPress.com*, May 17, 2013

"Ethiopia Does Have a Legitimate Fear of Violent Religious Extremism," *Vital Speeches International*, April 2013

"Moderate Muslims Must Oppose Islamism," *New Age Islam,* April 20, 2013

"Jews face 'volatile synergy of hate' in Europe, Republicans warn," *The Telegraph,* February 28, 2013

"Islamist Censorship Charges On," *National Review Online,* February 11, 2013

"America Must Protect Religious Freedom Abroad," *Arutz Sheva*, January 23, 2013

"Government must protect nonbelievers," *Richmond Times-Dispatch*, January 20, 2013

"Sept. 11 terrorist attacks awakened us to a 'battle for the soul of Islam," *The Washington Post*, September 18, 2012

"American Islamists Find Common Cause with Pamela Geller," *American Thinker*, February 13, 2011

"What the Muslims in America can do," *Des Moines Register*, October 6, 2010

"A Course on Islam," *The Jewish News of Greater Phoenix*, July 30, 2010

"Religious tolerance starts at home," *The Milwaukee Journal Sentinel,* March 27, 2010

"We have a lot of work to do," *The Jewish News of Greater Phoenix*, February 19, 2010

"The HSR Interview," *Jane's Homeland Security Review*, August 4, 2009

"Hizb ut-Tahrir in America," *IsraelNationalNews.com*, August 4, 2009

"What President Obama should say to the Muslim World," *Investigative Project on Terrorism*, January 24, 2009

"What President Obama should say to the Muslim World," *Investigative Project on Terrorism*, January 24, 2009.

"Exposing the "Flying Imams," Middle East Quarterly. December 6, 2007.

"Waking Up to Islamo-fascism," *Beliefnet.com*. July 17, 2005

"A military clerkship can be invaluable to a civilian HPSP medical student," *Journal of the Military Medical Student Association*. 4:3, pp.14-15, Fall, 1991

Glazov, Jamie, Jasser, M. Zuhdi. Furnish, Timothy, Hamid, Tawfik, Spencer, Robert, "Symposium: The World's Most Wanted: A "Moderate Islam"," *Frontpage Magazine*, May 27, 2010

Cheriathundam, E., Doi, S.Q., Knapp, J.R., Jasser, M.Z., Kopchick, J.J., Alvares, A.P. Consequences of Over Expression of Growth Hormone in Transgenic Mice on Liver Cytochrome P450 Enzymes. *Biochemical Pharmacology*. 1998

Clemons, Jeannette, Jasser, M. Zuhdi. Noble, Gary, Monahan, Brian P. Gaucher's Disease Initially Diagnosed as Depression. *The American Journal of Psychiatry.* 154:2, February 1997.

Shakir, K.M.M., Jasser, M. Zuhdi. Yoshihashi, Ann K., Drake, Almond J., and Eisold, John F. Pseudocarcinoid Syndrome Associated with Hypogonadism and Response to Testosterone Therapy. *Mayo Clinic Proceedings*.71:12, pp.1145-1149, December 1996.

Jasser, M. Zuhdi. Mitchell, Peter G., Cheung, Herman S. Induction of Stromelysin-1 and Collagenase Synthesis in Fibrochondrocytes by Tumor Necrosis Factor- Alpha. *Matrix Biology*. 14:3, pp 241-49. April 1994.

Jasser, M. Zuhdi. Mitchell, Peter G., Cheung, Herman S. The Induction of Stromelysin and Collagenase Synthesis in Chondrocytes. *JAMA*. 266:17, pp. 2455, Nov. 6, 1991. (abstract)

Jasser, M. Zuhdi. Mitchell, Peter G., Cheung, Herman S. The Induction of Stromelysin and Collagenase in Chondrocytes. *Clinical Research*. 39:3, pp. 787A, October, 1991. (abstract)

CONGRESSIONAL TESTIMONY

Jasser, M. Zuhdi. "The Muslim Brotherhood's Global Threat". Congressional testimony before: The House Committee on Oversight and Government Reform, Subcommittee on National Security "*The Muslim Brotherhood's Global Threat*". July 2018

Jasser, M. Zuhdi. "Willful Blindness and Radical Islam," Testimony to U.S. Senate Subcommittee on Oversight, Agency Action, Federal Rights and Courts, June 28, 2016

Jasser, M. Zuhdi. "The Global Religious Freedom Crisis and Its Challenge to U.S. Foreign Policy" Testimony to U.S. Congress, House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, June 16, 2016

Jasser, M. Zuhdi. "Human Rights Abuses in Egypt" Testimony to U.S. Congress, House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, December 10, 2013

Jasser, M. Zuhdi. "Religious Minorities in Syria: Caught in the Middle," Testimony to U.S. Congress, House Foreign Affairs Joint Subcommittee, June 25, 2013.

Jasser, M. Zuhdi. "Anti-Semitism: A Growing Threat to All Faiths," Testimony to the U.S. House of Representatives, Foreign Affairs Committee, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations. February 27, 2013.

Jasser, M. Zuhdi. "The American Muslim Response to Hearings on Radicalization within their Community." U.S. House of Representatives Committee on Homeland Security., June 20,2012.

Jasser, M. Zuhdi. "See Something, Say Something Act of 2011," US House of Representatives Committee on the Judiciary Subcommittee on the Constitution, June 24, 2011

Jasser, M. Zuhdi. "The Extent of Radicalization in the American Muslim Community and that Community's Response," US House of Representatives Committee on Homeland Security., March 10, 2011

INVITED LECTURES, PUBLIC APPEARANCES

Jasser, M. Zuhdi. "Human Relations Commission" City of Scottsdale , January 27, 2016

Jasser, M. Zuhdi. "Foreign Policy and Global Security " Steamboat Institute, January 21, 2016

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Sun City Grand Republican Interest Group , January 16, 2016

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Phoenix Country Club, January 06, 2016

Jasser, M. Zuhdi. "Muslim Reform Conference" Heritage Foundation, December 3, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Desert Mountain Golf Club, November 30, 2015

Jasser, M. Zuhdi. "Law Enforcement and the Islamic Community " Maricopa County Attorney's, November 20, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" The Winter Night Club ,November 17, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Republican Women of Clifton and Northern Virginia , October 21, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Foot Hills Community Foundation, October 13, 2015

Jasser, M. Zuhdi. "Violations of Religious Freedom" ICERM, October 9, 2015

Jasser, M. Zuhdi. "Americans For a Safe Israel" Ina Levine Jewish Community Center, September20, 2015

Jasser, M. Zuhdi. "Islamists and Jihadists" UMPAC, September 18, 2015

Jasser, M. Zuhdi. "Constitution Day Program" Oklahoma State University ,September 17, 2015

Jasser, M. Zuhdi. "Islam" Arizona Association of Conflict Resolution, September 12, 2015

Jasser, M. Zuhdi. "How US should approach the Middle East and the threat of ISIS " Heritage Foundation , September 8, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" California Tea Party, July 25, 2015

Jasser, M. Zuhdi. "International Policy Council " Gatestone Institute, June 16, 2015

Jasser, M. Zuhdi. "Coptic Solidarity Annual Conference" Coptic Solidarity , June 11, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Nehemiah Hasak Club, June 7, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Republican Women of Prescott, May 26, 2015

Jasser, M. Zuhdi. "Islam" Gold Canyon Republican Club, March 14, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" All Saints Lutheran Church March 13, 2015

Jasser, M. Zuhdi. "Manning Networking Conference " Manning Center For Building Democracy , March 5, 2015

Jasser, M. Zuhdi. "America's Security in the Age of Jihad" CPAC, February 25, 2015

Jasser, M. Zuhdi. "Islam" The United Methodist Church, February 8, 2015

Jasser, M. Zuhdi. "Religion In America "Federalist Society U of A , February 5, 2015

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Sun Lakes Republican Club, January 13, 2015

Jasser, M. Zuhdi. "Muslim Minorities in the US & Europe" Georgetown University, December 15, 2014

Jasser, M. Zuhdi. "Stopping Radical Islam" Stand With Us, New York, December 10, 2014

Jasser, M. Zuhdi. "Stopping Radical Islam" Stand With Us, Philadelphia, December 9, 2014

Jasser, M. Zuhdi. "Stopping Radical Islam " Stand With Us, San Diego , December 7, 2014

Jasser, M. Zuhdi. "Reforming Islam" Global Faith Institute Omaha, December 6, 2014

Jasser, M. Zuhdi. "Stopping Radical Islam" Stand With Us, Los Angeles, November 5, 2014

Jasser, M. Zuhdi. "Middle East" Arizona Federation of Republican Women , October 24, 2014

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Jewish Community Association , September 11, 2014

Jasser, M. Zuhdi. "Exploring Deterrence Foundations Symposium " United States Strategic Command, August 13, 2014

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Unitarian Universalist Church ,July 6, 2014

Jasser, M. Zuhdi. "Global Challenges & Issues that face the US & the American Military" Air Force Civic Leaders Dallas, June 12, 2014

Jasser, M. Zuhdi. "Islam and Gender Quality Debate" Oxford Union , May 21, 2014

Jasser, M. Zuhdi. "Resolve Conflicts Peacefully " Portland State University , April 8, 2014

Jasser, M. Zuhdi. "What Should Be America's Place in 2017... After Obama " CPAC, March 6, 2014

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" American Lutheran Church, February 23, 2014

Jasser, M. Zuhdi. "Religious Liberties and Law " ASU Symposium, January 24, 2014

Jasser, M. Zuhdi. "Old Religions New Challenges " Temple Beth Shalom, January 23, 2014

Jasser, M. Zuhdi. "Islam, Muslims, and Religious Liberty. " Encore University Valley Presbyterian Church, January 18, 2013

Jasser, M. Zuhdi. "Human Rights Abused in Egypt" Testimony, December 10, 2013

Jasser, M. Zuhdi. "Stand With Us" Chicago IL, December 8, 2013

Jasser, M. Zuhdi. "Threat of terrorism; enemies of democracy in the Middle East; intolerance

for Israel at UN" Tauro Institute , December 3, 2013

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Arizona State University, November 24, 2013

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" Deer Valley Tea Party, November 1, 2013

Jasser, M. Zuhdi. "Torch of Liberty " Anti-Defamation League, October 24, 2013

Jasser, M. Zuhdi. "How to support international religious freedom. Which organizations to support." Philanthropic Roundtable, October 17, 2013

Jasser, M. Zuhdi. "God and Truth Panel" Scottsdale Community College, October 8, 2013

Jasser, M. Zuhdi. "Security Briefing for law enforcement" Houston TX, October 3, 2013

Jasser, M. Zuhdi. "Human Rights Abuse in Egypt" 2172 Rayburn, October 1, 2013

Jasser, M. Zuhdi. Steamboat Institute, August 22, 2013

Jasser, M. Zuhdi. "The Struggle to be Heard" Friends of Simon Weisenthal, May 8, 2013

Jasser, M. Zuhdi. "Syria" UN Meetings, May 7, 2013

Jasser, M. Zuhdi. "Sharing Words, Changing Worlds" Arizona Humanities Council, April 28, 2013

Jasser, M. Zuhdi. "A Battle For The Soul Of Islam" ACT of America, February 9, 2013

Jasser, M. Zuhdi. “Current Events in the Middle East,” American Lutheran Church, February 5, 2013.

Jasser, M. Zuhdi. “Religious Liberties and Law,” Arizona State University, January 24, 2013.

Jasser, M. Zuhdi. “Threat of terrorism, enemies of democracy in the Middle East; intolerance for Israel at UN,” Tauro Institute, December 3, 2013.

Jasser, M. Zuhdi. “Current events in the Middle East,” Mensa, November 30, 2013.

Jasser, M. Zuhdi. “Special Lecture on Syria, the Middle East & the Global Battle for the Soul of Islam,” Georgetown University, September 9, 2013.

Jasser, M. Zuhdi. “Religious Minorities in Syria: Caught in the Middle,” Testimony to U.S. Congress, House Foreign Affairs Joint Subcommittee, June 25, 2013.

Jasser, M. Zuhdi. “Moderate Islam: The Struggle to be Heard,” Friends of Simon Weisenthal, May 8, 2013.

Jasser, M. Zuhdi. “Sharing Words, Changing Worlds Lecture & Humanities Awards,” Arizona Humanities Council, April 28, 2013

2013.

Jasser, M. Zuhdi. Speaker, “Public-Private Partnerships--What is being done to encourage Muslim relations?,” Security Solutions International, November 6, 2012.

Jasser, M. Zuhdi. Speaker, “Better Elected Islamists than Dictators,” Intelligence Squared U.S. Debates, October 4, 2012.

Jasser, M. Zuhdi. Speaker, “Islamic Reform,” Council of Muslims Facing Tomorrow, SepT. 30, 2012.

INVITED LECTURES, PUBLIC APPEARANCES, (Cont.)

Jasser, M. Zuhdi. "Anti-Semitism: A Growing Threat to All Faiths," Testimony to the U.S. Congress, February 27, Jasser, M. Zuhdi. Speaker, "Islam vs. Islamism & current events in the Middle East," Deer Valley Tea Party, June 22, 2012.

Jasser, M. Zuhdi. Speaker, "Battle for the Soul of Islam," Changing Hands Bookstore, June 13, 2012.

Jasser, M. Zuhdi. Speaker, "American Islam," Unitarian Universalist Congregation of Phoenix, June 10, 2012.

Jasser, M. Zuhdi. Speaker, "The Worsening Plight of Christians and Minorities in Muslim Majority Nations," Private gathering of community leaders, May 25, 2012

Jasser, M. Zuhdi. Speaker, "Battle for the Soul of Islam," Republican Jewish Coalition, May 20, 2012.

Jasser, M. Zuhdi. Speaker, "What is political Islam and Should We Be Concerned?" Shillman Speaker Series, May 16, 2012.

Jasser, M. Zuhdi. Panelist, "Rescuing Human Rights," University of California San Diego, May 15, 2012.

Jasser, M. Zuhdi. Speaker, "The threat of Radical Islam," Paradise Valley Republican Women's Club, March 17, 2012.

Jasser, M. Zuhdi. Speaker, "Islamic Reform," Council for National Policy, March 9, 2012.

Jasser, M. Zuhdi. Panelist, "Israel-Palestinian Conflict: Obstacles & Opportunities," Progressive Voices for Peace in the Middle East, March 4, 2012.

Jasser, M. Zuhdi. Speaker, "The Muslims' role in preserving the principles of the US Constitution," Dayspring United Methodist, March 3, 2012.

Jasser, M. Zuhdi. Speaker, "The Solution for Defeating Radical Islam from Within the House of Islam: Represented by Moderate Islam," Bureau of Jewish Education, February 26, 2012.

Jasser, M. Zuhdi. Speaker, "Islam in America," Arizona Federation of Republican Women," February 24, 2012

Jasser, M. Zuhdi. Speaker, "Islam vs. Islamism," Our Savior's Lutheran Church, February 17, 2012.

Jasser, M. Zuhdi. Speaker, "Islam in the US," Sons of the American Revolution, February 16, 2012.

Jasser, M. Zuhdi. Speaker, "Islam vs. Islamism," Arizona State Senate Border Security, Federalism, and States Sovereignty Committee, February 16, 2012.

Jasser, M. Zuhdi. Speaker, "Ethiopia Does Have a Legitimate Fear of Violent Religious Extremism," Council on Foreign Relations," February 14, 2013

Jasser, M. Zuhdi. Panelist, "Istanbul Process & OIC," Endowment for Middle East Truth, February 7, 2012.

Jasser, M. Zuhdi. Speaker, "Islam in America," Pebblecreek Community, February 6, 2012.

Jasser, M. Zuhdi. Speaker, "The Right Way Forward for Democracy in the Middle East," Baker Institute, Rice University, February 1, 2012.

Jasser, M. Zuhdi. Speaker, "Islamic Reform," Mid-West Association of Reform Rabbis," January 30, 2012

Jasser, M. Zuhdi. Speaker, "What it means to be an American Muslim in a post 9/11 World," January 14, 2012

Jasser, M. Zuhdi. Speaker, "Being American Muslim," Embry Riddle University, January 13, 2012

Jasser, M. Zuhdi. Speaker, "Separation of Mosque & State," J. Reuben Clark Law Society, November 9, 2011.

Jasser, M. Zuhdi. Speaker, "Overview of the American Islamic Forum for Democracy," Sun City West Republican Club, November 5, 2011

Jasser, M. Zuhdi. Speaker, "Islam in America," C-100 Teleconference Series, October 21, 2011.

Jasser, M. Zuhdi. Speaker, "Separation of Mosque & State," University of Iowa College of Law, October 3, 2011.

Jasser, M. Zuhdi. Speaker, "Perils of Global Intolerance," Perils of Global Intolerance Conference: the UN & Durban III, September 22, 2011

Jasser, M. Zuhdi. Speaker, "Christian/Muslim Relations," Ethics & Religious Liberty Commission Research Fellows, September 21, 2011.

Jasser, M. Zuhdi. Panelist, "The Muslim Fear Industry," Religion Newswriters Association, September 17, 2011.

Jasser, M. Zuhdi. Speaker, "Understanding Islam," Changing Hands Bookstore, September 14, 2011

Jasser, M. Zuhdi. Speaker, "Introduction to AIFD," Phoenix Kiwanis, August 9, 2011

Jasser, M. Zuhdi. Panelist, "What Did the Rest of the World Learn About Deterrence From the Recent Upheavals In the Middle East and Africa?" 2011 US Strategic Command Deterrence Symposium, August 4, 2011

Jasser, M. Zuhdi. Panelist, "The Deteriorating Situation in Syria," Partnership for A Secure America, July 15, 2011

Jasser, M. Zuhdi. Speaker, "See Something, Say Something Act of 2011," US House of Representatives Committee on the Judiciary Subcommittee on the Constitution, June 24, 2011

Jasser, M. Zuhdi. Speaker, "The Voice of Islam – Who's Voice Are We Listening To?"

National Executive Institute Associates and Major Cities Chiefs, June 14, 2011

Jasser, M. Zuhdi. Speaker, "A Perspective on Islam," DPS Chaplains Training Seminar, May 16, 2011

Jasser, M. Zuhdi. Speaker, "Emerging Muslim Leaders," 112th Congress Coffee Cup Club, May 14, 2011

Jasser, M. Zuhdi. Panelist, "Muslim-Americans Speak Out on the Challenge of Radical Islamism," The Washington Institute for Near East Policy Soref Symposium, May 12, 2011

Jasser, M. Zuhdi. Speaker, "Ten Years After 9/11 – Setting an Interfaith Agenda," Simon Wiesenthal Center, April 25, 2011

Jasser, M. Zuhdi. Speaker, "A Counter Terrorism Solution" The Beatitudes, Phoenix, AZ,, April 23, 2011

Jasser, M. Zuhdi. Panelist, "Debate: Does Islam Need Reform and if So, How?" Scottsdale Community College, April 19, 2011

Jasser, M. Zuhdi. Speaker, "Islam, Islamists and the Relationship with America," Military Officers Association of America, April 14, 2011

Jasser, M. Zuhdi. Speaker, "How Our Foreign Policy in the Middle East is Connected to Domestic Policy on Muslim Radicalization," Eckerd College, St. Petersburg FL, April 11, 2011

Jasser, M. Zuhdi. Panelist, "A Conversation about Islam: A debate between Dr. M Zuhdi Jasser and Robert Spencer," David Horowitz Freedom Center, April 3, 2011

Jasser, M. Zuhdi. Panelist, "The Extent of Radicalization in the American Muslim Community and that Community's Response," US House of Representatives Committee on Homeland Security., March 10, 2011

Jasser, M. Zuhdi. Speaker, "Moderates and Radicals in Islam: How to Tell the Difference, And Why it Matters," Denison University Convocation, March 4, 2011

Jasser, M. Zuhdi. Speaker, "Islam, Islamists and America," ASU Retirees Association, February 26, 2011

Jasser, M. Zuhdi. Panelist, "Faith Foundations for Religious Freedom," Pepperdine University, February 25, 2011

Jasser, M. Zuhdi. Speaker, "Current Events in the Middle East," Kiwanis Club of Tempe, AZ, February 24, 2011

Jasser, M. Zuhdi. Speaker, "Muslim Issues in America," Property Owners and Residents Association, Sun City West, February 18, 2011

Jasser, M. Zuhdi. Speaker, "A Perspective on Islam," DPS Volunteer Chaplains, February 3, 2011

Jasser, M. Zuhdi. Speaker, "Islam, Islamists and the Relationship with America," Florida Society for Middle East Studies, January 29, 2011

Jasser, M. Zuhdi. Speaker, "Sharia Law in America," Red Mountain Tea Party, January 18, 2011

Jasser, M. Zuhdi. Speaker, "Promoting Global Understanding," Naples Council on World Affairs, January 10, 2011

Jasser, M. Zuhdi. Speaker, "Understanding the Threat of Radical Islam to the United States," Desert Foothills Library, Phoenix, AZ, December 8, 2010

Jasser, M. Zuhdi. Speaker, "Preserving the Principles of the U.S. Constitution, Liberty, Freedom, and the Separation of Mosque and State," Lifelong Learning at Pebble Creek, Goodyear, AZ, November 29, 2010

Jasser, M. Zuhdi. Panelist, "The Ground Zero Mosque – Should it Be Built?" Phoenix Rotary 100, November 19, 2010

Jasser, M. Zuhdi. Speaker, "Islam in America: The Role of Liberty and Freedom," American Jewish Committee, November 11, 2010

Jasser, M. Zuhdi. Speaker, "What the Muslims in America can do," The New York Board of Rabbis, November 11, 2010

Jasser, M. Zuhdi. Speaker, "Islam, Islamists and the Relationship with America," Mesa Republican Women, November 4, 2010

Jasser, M. Zuhdi. Speaker, "Thoughts on Islam, the Qur'an, and Muslim Practice and Ideology," Bureau of Jewish Education of Greater Phoenix, November 3, 2010

Jasser, M. Zuhdi. Panelist, "What it Means to Be an American Muslim," Drake University, October 7, 2010

Jasser, M. Zuhdi. Speaker, "Islamism and Domestic Policy," The Heritage Foundation, August 27, 2010

Jasser, M. Zuhdi. Panelist, "Domestic Terrorism and the War of Ideas," The Heritage Foundation, April 30, 2010

Jasser, M. Zuhdi. Panelist, "A Deeper Diversity, The Nation's Health: Renewing Social Justice and Human Well-Being in Our Time," The Smithsonian Institution and The Navy Medicine Institute for the Medical Humanities and Research Leadership, April 29, 2010

Jasser, M. Zuhdi. Speaker, "How Islam Works in America," Oslo Freedom Forum, April 27, 2010

Jasser, M. Zuhdi. Panelist, "Modern Islam: Engaging questions of faith, fanatics, democracy, and reform," The Ford Hall Forum, April 22, 2010

Jasser, M. Zuhdi. Panelist, "Book Launch Forum- The Other Muslims: Moderate and Secular,"

The Hudson Institute, March 10, 2010

Jasser, M. Zuhdi. Speaker, "A Strategy to Defeat Radical Islam" District 7 Republican Committee, Scottsdale, AZ: February 16, 2010

Jasser, M. Zuhdi. Speaker, "The Third Jihad," Students for an Open Society, Stanford University, January 28, 2010

Jasser, M. Zuhdi. Speaker, "9/11 Never Forget Coalition Rally," Foley Square, New York City, December 5, 2009

Jasser, M. Zuhdi. Speaker, ": Congressional Briefing on political Islam," Capitol Hill, Washington, DC, October 1, 2009

Jasser, M. Zuhdi. Public Appearance, "Moderate Muslim Summit on Capitol Hill" Capitol Hill, Washington D.C: June 20, 2009: Representing AIFD among other leading NGO's to Congress and government agencies.

Jasser, M. Zuhdi. Speaker, "A Strategy to Defeat Radical Islam" District 8 Republican Committee, Scottsdale, AZ: June 11, 2009

Jasser, M. Zuhdi. Speaker, "The Third Jihad" National Press Club, Washington D.C: May 13, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Temple Israel, Detroit, MI: May 12, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Fort Benning Military Base, Columbus, GA: April 30, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Columbus State University, Columbus, GA: April 30, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Birmingham Rotary, Birmingham Rotary: April 29, 2009

Jasser, M. Zuhdi. Speaker, "Radical Islam: One Muslim's Perspective" Birmingham Jewish Federation, Birmingham, AL: April 29, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" AFIO-AZ, Scottsdale, AZ: April 16, 2009

Jasser, M. Zuhdi. Speaker, "Battle within the House of Islam" Arizona Counter Terrorism Information Center, Phoenix, AZ: April 10, 2009

Jasser, M. Zuhdi. Speaker, "Religious Freedom in America's National Security Interest" International Freedom Caucus, Washington D.C: March 19, 2009

Jasser, M. Zuhdi. Speaker, Arizona Historical Society, Tempe, AZ: March 19, 2009

Jasser, M. Zuhdi. Speaker, "Islam in Today's World" Pinnacle Presbyterian Church, Scottsdale, AZ: January 25, 2009

Jasser, M. Zuhdi. Radio Interview, "The Third Jihad" Dennis Prager Show, October 7, 2008.

Jasser, M. Zuhdi. Speaker, "Upholding our Islamic Responsibility: Countering the Ideologies that Fuel Terrorism." Noor Islamic Cultural Center, Dublin, OH: July 26, 2008.

Jasser, M. Zuhdi. Presenter, Aspen Institute Fellows Luncheon: July 18, 2008.

Jasser, M. Zuhdi. Panelist, *10th Anniversary of the International Religious Freedom Act*. "The Continuing Importance of Promoting Religious Freedom in our Post-9/11 World." Congressional Human Rights Caucus Task Force for International Religious Freedom: July 17, 2008.

Jasser, M. Zuhdi. Speaker, "From Sudan to Iran: Ignoring the signs of a Genocide." George Mason University, Fairfax, VA: April 7, 2008.

Jasser, M. Zuhdi. Lecturer, "Spiritual-vs.-Political Islam," Joint Forces Staff College; Norfolk, VA: March 19, 2008.

Jasser, M. Zuhdi. Keynote Speaker, "Islam, Is it Compatible with the Cherished Ideals of America?" The Winter Night Club, Colorado Springs, CO: January 22, 2008.

Jasser, M. Zuhdi. Lecturer, "Islamism in America," Hudson Institute's New York Briefing Council: December 11, 2007.

Jasser, M. Zuhdi. Lecturer, "Americanism versus Islamism: A Personal Perspective," Twelfth Annual Templeton Lecture on Religion and World Affairs. Foreign Policy Research Institute: October 29, 2007

Jasser, M. Zuhdi. Guest speaker, *Multiple Meetings with Dutch political leadership as well as*

Dutch Muslim students and organizations sponsored by the U.S. Embassy, The U.S. Embassy at The Hague, Netherlands: November 2006 and December 2007.

Jasser, M. Zuhdi. Jebsen Center for Counterterrorism Studies: Islam in Democratic Societies, Tufts University, Boston, MA: April 27, 2007.

Jasser, M. Zuhdi. The Ideological Struggle for Muslims Living in the West: "Which Islam and Which Muslims," Hudson Institute, Washington, DC: April 26, 2007.

Jasser, M. Zuhdi. Overcoming Radical Islamic Fundamentalism: A Muslim Perspective. Young Presidents' Organization. Panel Discussion and Lecture. East Central Annual Conference. October 19-20, 2006.

Jasser, M. Zuhdi. Islam and Islamic Fundamentalism in 2006. The Orm School, October 9, 2006.Keynote Address.

Jasser, M. Zuhdi. Arizona Medicine: an Update from the Arizona Medical Association. East Phoenix Rotary Club. Phoenix, Arizona. October 12, 2006.

Jasser, M. Zuhdi. The State of Arizona Medicine: an Update from the Arizona Medical Association. Desert Samaritan Medical Staff Meeting address. Tempe, Arizona. September 26, 2006.

Jasser, M. Zuhdi. Islam vs. Americanism vs. Islamism. Phoenix 100 Rotary Club. Keynote

Address. Phoenix, Arizona. August 25, 2006.

Jasser, M. Zuhdi. Keynote Address. Arizona Medical Association House of Delegates Meeting. June 3, 2006.

Jasser, M. Zuhdi. Islam and the Muslim Community since 9-11. Temple Chai. Phoenix, Arizona. May 4, 2006

Jasser, M. Zuhdi. Muslims in America. Florida Middle East Studies Association. March 11, 2006

Jasser, M. Zuhdi. Guest Lecturer. "The Intersection of Bioethics and Religion in the Practice of Medicine," Masters in Bioethics Class. Midwestern University, Glendale, Arizona. April 12, 2005.

Jasser, M. Zuhdi Keynote Address- Islam in 2005 - Teaching Islam in the Context of the War on Terror. Annual Convention of the Wisconsin Council for the Social Studies (WCSS). March 15, 2005.

Jasser, M. Zuhdi. Invited Keynote Speaker. Jewish Film Festival. Featured Speaker. Sun Lakes Jewish Community. February 21, 2005. After showing of *Double Edge,* Mesa, Arizona.

Jasser, M. Zuhdi. Islam in 2005. Dayspring Methodist Church. Adult Education Course. February 13, 2005

Jasser, M. Zuhdi. Islam in 2005. La Casa de Cristo Lutheran Church. Scottsdale, Arizona. Adult Education Course. January 31, 2005.

Jasser, M. Zuhdi. *Abrahamic Tria-logue: An Abraham Salon Series*. Forum panelist and organizer of four-part tri-congregation Abraham salon series. Jan-April 2005, Scottsdale, Arizona.

Jasser, M. Zuhdi. City of Mesa Diversity Luncheon Speaker. *Arabs and Muslims in America.* December 16, 2004.

Jasser, M. Zuhdi. *The 60th Anniversary of the Koramatsu Case– American Civil Liberties in 2005.* Arizona State University College of Law. November 17, 2005.

Jasser, M. Zuhdi. Guest Panelist. *"Moderate Muslims in America"- On the Line*. Voice of America. Host: Eric Felten. November 14, 2004.

Jasser, M. Zuhdi. Guest Panelist. *"Commemorating the 60th anniversary of the Holocaust"-- On the Line*. Voice of America- Host: Eric Felten.

Jasser, M. Zuhdi. *Panelist, Forum on Moderate Muslim Voices*, Middle East American Convention for Freedom and Democracy. Washington, D.C. October 1, 2004.

Jasser, M. Zuhdi. Guest Speaker, *American Muslim Issues in 2004,* Camelback Kiwanis Club Luncheon, Eric Casper, Esq., President, August 26, 2004.

Jasser, M. Zuhdi. Guest Speaker, Muslim Representative, *Day of Conscience: Sudan*, SaveDarfur.org coalition. American Jewish Committee and Arizona Ecumenical Council, at the Shepherd of the Valley Lutheran Church, August 25, 2004

Jasser, M. Zuhdi. Guest Speaker, *Muslims and the Practice of Islam in America in 2004: An*

overview of the faith and relevant cultural, religious, and security factors contributing to discrimination and prejudice. Office of the Arizona Attorney General, Civil Rights Division, Brown Bag Lunch Series, July 15, 2004.

Jasser, M. Zuhdi. Organizer, Keynote Speaker, *Rally Against Terror: Standing with Muslims against Terror,* Patriot Square, Phoenix, Arizona, April 25, 2004.

Jasser, M. Zuhdi. Guest Lecturer, UCSF Class on World Religions, "Islam and Contemporary Relationships and Dialogue with Christianity, May 10, 2003. Director: Father Vernon Meyer

Jasser, M. Zuhdi. Hate Crimes Press Conference. Paul K. Charlton, United States Attorney, District of Arizona. U.S. Department of Justice. April. 15, 2003.

Jasser, M. Zuhdi. Guest Panelist with Eleanor Eisenberg, Director Arizona ACLU, and Gerald Richard, Esq., City of Phoenix Police Department. *Valley Leadership Forum.* Director: Lou Goodman. Topic: Racial Profiling. April 4, 2003.

Jasser, M. Zuhdi. *Muslim-Jewish Dialogue.* Course Lecturer. Scottsdale Community College. Senior Adult Educational Program. March 13, 2003.

Jasser, M. Zuhdi. A Lecture on Islam. *Arizona Interfaith Movement Forum.* February 18, 2003.

Jasser, M. Zuhdi. Islam and Liberty and the War on Militant Islamists. Invited Speaker. *Sunnyslope Kiwanis Club*. February 13, 2003.

Jasser, M. Zuhdi. Panelist: Peace in the Middle East. How Islam, Christianity, and Judaism view War and Peace. Joined by Eliot Brandt, AIPAC, and Dr. Paul Eppinger, Arizona Interfaith Movement. The Church of the Red Rocks, Sedona, Arizona. January 19, 2003.

Jasser, M. Zuhdi. *Islam: an Overview.* Invited Speaker. Brandeis Womens' Club of Sun City, Arizona, December 10, 2002.

Jasser, M. Zuhdi. Muslims in the US Military. *Muslim Youth of Arizona. Scottsdale, Arizona.* December 12, 2003.

Jasser, M. Zuhdi. *Changes in Medicine in 2002 after 9-11-01.*Invited Speaker. Republican Women's' Club of Palo Verde. November 20, 2002.

Jasser, M. Zuhdi *Islam.* Invited Speaker. World Religions Course. First Presbyterian Church, Sun City, Arizona. Director: Richard Zabreski. November 14, 2002

Jasser, M. Zuhdi. Panelist. *American Foreign Policy in the Middle East.* NAILS. Public Educational Forum. Northwest Trust Bank, Sun Lakes, Arizona, October 22, 2002.

Jasser, M. Zuhdi. *Islam and Democracy.* Invited Speaker. Kiwanis Club of Biltmore, Phoenix, Arizona. Host: Robert Bauer.

Jasser, M. Zuhdi. Discussion Panel Member. *Civil Rights and Racial Profiling*. Horizon. Host: Michael Grant. Joined by Bill Straus, Regional Director, Arizona Chapter of the Anti-defamation League of Phoenix. Channel 8, KAET. January 21, 2002.

Jasser, M. Zuhdi. Primary presenter and representative of Islamic Community of the Northeast Valley. *Scottsdale Development Review Board Hearing.* Scottsdale, Arizona. November

1, 2001 and January 10, 2002.

Jasser, M. Zuhdi. Discussion Panel Member. *Temple Kol Ami Yom Kippur Educational Seminar on Islam*. Host: Rabbi Charles Herring. Scottsdale, Arizona. September 27, 2001

Jasser, M. Zuhdi. Lecturer. *Medical Ethics Curriculum Monthly Lecture Series*, Internal Medicine Residency Program, Good Samaritan Regional Medical Center, Phoenix, Arizona, Monthly since July 2001. Chaplain Residency Program, Good Samaritan Regional Medical Center, Phoenix, Arizona. Quarterly since January 2002.

Jasser, M. Zuhdi. Monthly Discussion Group Speaker. *Children of Abraham. Muslim-Jewish Dialogue Group*. Phoenix, Arizona. November 2000- present.

Jasser, M. Zuhdi. Hospital Orientation Course Lecturer. *Operational Medicine in the United States Navy: Roles and responsibilities of corpsmen afloat*. Staff Education and Training Department. National Naval Medical Center, Bethesda, Maryland. August 1995- May 1997

Jasser, M. Zuhdi. Invited Lecturer. Medical Staff Meeting. *Tort Reform and Mandatory Assignment: the Need for Political Activism of Physicians*. St. Francis Hospital of Milwaukee, March 1990.

Jasser, M. Zuhdi. Invited Lecturer. *Medicine in the Media*. Regional Meeting of the American Medical Student Association, Medical College of Wisconsin, Milwaukee, Wisconsin. January 1989

Jasser, M. Zuhdi. Invited Lecturer. *Value of Animals in Medical Research*. Milwaukee Area High School and Junior High School classes. Community Speakers Bureau, Education Committee, SMAART at the Medical College of Wisconsin, Milwaukee, Wisconsin. 1989-1990

Jasser, M. Zuhdi. Invited Speaker. *Becoming a doctor*. Community Speakers Bureau, Office of Public Affairs, Medical College of Wisconsin, Milwaukee Area High School and Junior High School classes, 1988-1992.

PROFESSIONAL and MILITARY TRAINING COURSES

Nuclear Medicine Qualification Course. Associates in Medical Physics, L.L.C. 200 hours. Cleveland, Ohio. April 2001 and March 2002.

Toxic Agent Training at the Chemical Defense Training Facility at the United States Army Chemical School, United States Army Chemical School, Fort McClellan, Alabama, May 19, 1998

Medical Defense against Biological Warfare Agents Course, United States Army Medical Research Institute of Infectious Diseases, Fort Detrick, Maryland, March 9-11, 1997

Medical Management Chemical Casualties Course, U. S. Army Medical Research Institute of Chemical Defense, Edgewood Area, Aberdeen Proving Ground, Maryland, March 12-

15, '97

American College of Surgeons Committee on Trauma certification in Advanced Trauma Life Support.

PROFESSIONAL and MILITARY TRAINING COURSES CONT.

Advanced Cardiac Life Support Provider, American Heart Association certification, May 2005.

Basic Life Support Provider, American Heart Association certification, May 2005.

Pediatric Advanced Life Support Provider, American Heart Assoc. May 1997.

Surface Warfare Medical Officer Indoctrination Course- Atlantic, Naval School of Health Sciences, Portsmouth, Virginia, July 5, 1993- July 30, 1993.

Combat Casualty Care Course, Joint Medical Readiness Training Center, San Antonio, Texas, December 4, 1992- December 12, 1992

Officer Indoctrination Course, Class 88006, U.S. Navy, Newport, RI, June 1988- August 1988

PROFESSIONAL SOCIETY MEMBERSHIPS

American College of Physicians-American Society of Internal Medicine, Member, 1992 - present

American Society of Nuclear Cardiology- September 2002-present

American Medical Association, Member, 1988 - present

Arizona Medical Association, Member, 1999-present.

Alpha Omega Alpha Medical Honor Society, 1992- present

United States Navy League, 1999-present

RECENT PUBLICATIONS

- **Newsweek Column:** "The DNC's Deepening Embrace of Radical Islamists", August 24, 2020
- **Newsweek Column:** "The World's Red-Green Axis Comes to our Streets", July 24, 2020
- **Spectator:** Why we need the Muslim Reform Movement, March 24, 2019
- **International Forum of Psychoanalysis:** The identity struggle within Islam: Discussion of "Thoughts on the inner conflict within Islamic culture: Their existential anxieties and ours," by Malcolm Owen Slavin, PhD, August 17, 2017
- **Asia Times:** Radical Islam: we must talk about more than ISIS, August 22, 2017
- **Gatestone Institute:** Female Genital Mutilation: American Muslim Physician Says Stop Defending the Abuse of Girls and Women**,** June 26, 2017
- **Asia Times**: Is Mohammad Tawhidi the Imam we've been waiting for?, May 10, 2017
- **Independent Journal Review:** There's An Emerging 'Alt-Jihad' Movement In The U.S. But It's Not Muslims Who Are Pushing It..., March 15, 2017
- **Asia Times:** The Muslim Reform Movement: Even more necessary a year in, December 6, 2016
- **Independent Journal Review:** The DNC Will Be Betraying Reformist Muslims If They Pick Keith Ellison As Chairman, November 25, 2016
- **Asia Times:** After Qandeel Baloch's murder, is the world finally waking up to 'honor killings'?, August 5, 2016
- **Religious Freedom Project:** The Moral Imperative to Prevent-Not Just Name-Genocide, April 27, 2016
- **National Review Online:** It's Not 'Islamophobic' to Protest a Pro-Hamas Speaker, April 6, 2016
- **The Moscow Times**: Russia Should Embrace Its Religious Diversity**,** July 26, 2015
- **National Review Online**: Fighting for Victory against Islamism, December 16, 2015
- **Huffington Post:** Nations Must Repeal Blasphemy Laws**,** February 3, 2015
- **AZ Central:** I was bullied for criticizing Hamas**,** August 23, 2014
- **Christian Science Monitor:** How to loosen Boko Haram's hold on Nigeria **,** May 8, 2014
- **Desert News:** The fifth commandment is more than a directive**,** April 20, 2014
- **The Orange County Register:** Getting Assad regime out serves American interests, August 26, 2013
- **Jewish News:** Threading the needle of democracy in Egypt**,** August 7, 2013
- **AZ Central:** Uproar over 'Rolling Stone' cover photo missed real story**,** July 23, 2013

- **The Christian Science Monitor:** Obama must hold Myanmar's Thein Sein accountable for human rights violations**,** May 20, 2013
- **The Jewish Press:** We Should Have Heeded the Warning Signs of Islamist Antisemitism**,** May 17, 2013
- **AZ Central:** Muslims need to own how they're portrayed**,** May 3, 2013
- **National Review Online:** Moderate Muslims Must Oppose Islamism**,** April 20, 2013
- **Roll Call:** Bahrain's Choice**,** March 15, 2013
- "Anti-Semitism: A Growing Threat to All Faiths". February 27, 2013, U.S. House of Representatives, Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations. Testimony of M. Zuhdi Jasser, M. D. President, American Islamic Forum for democracy. February 27, 2013
- **Fox News:** Where is the US Government in defense of Pastor Abedini and religious freedom?**,** January 27, 2013
- **Richmond Times Dispatch:** Government Should Protect Nonbelievers**,** January 20, 2013
- **Fox News:** America must protect religious freedom abroad**,** January 20, 2013
- **The Washington Times:** No human rights without religious freedom**,** September 27, 2012
- **Dallas Morning News:** Why 'tough love' is best answer for Arab world, September 26, 2012
- **The Washington Post:** Sept. 11 terrorist attacks awakened us to a 'battle for the soul of Islam'**,** September 18, 2012
- **The Washington Post:** Ramadan and religious freedom **,** August 1, 2012
- **The Arizona Republic:** The twin faces of Islam**,** June 23, 2012
- **The Hill:** Blasphemy bans threaten 'Arab Spring', religious freedom**,** May 16, 2012
- **Book:** *A Battle for the Soul of Islam: An American Patriot's Fight to Save his Faith.* Simon & Schuster, June 2012.
- **Metro New York:** "We thank God every day for the NYPD"**,** March 5, 2012
- **The Arizona Republic:** Moral relativism poses threat to Muslim women **,** March 4, 2012
- **The New York Post:** Of films and fear The Times buys Islamist lies**,** January 29, 2012
- Congressional Testimony of M. Zuhdi Jasser, MD – House Homeland Security Committee – The Extent of Radicalization in the American Muslim Community and the Community Response. March 11, 2011.

RECENT CONGRESSIONAL AND COURT TESTIMONY

1. Court testimony: Hearing on Probation termination of minor (Name withheld) in Terrorism Case. American Islamic Forum for Democracy (AIFD) and Dr. Zuhdi Jasser engaged from 2015 to present by state and federal authorities to provide ideological rehabilitation and de-radicalization to defendant. June 8, 2021.
2. Deposition: Expert testimony on behalf of defendant. *Gething v Hoag. CV2018-054406. Arizona.* September 2020
3. Deposition: Expert testimony on behalf of defendant. *Boyce v Affiliated Colon and Rectal Surgeons et.al.* No. CV2016-005190. Arizona. January 2020
4. Congressional testimony before: The House Committee on Oversight and Government Reform, Subcommittee on National Security "*The Muslim Brotherhood's Global Threat*". July 2018
5. Testimony for Hearing before the Canadian House of Commons Standing Committee on Canadian Heritage. *"Unintended Consequences. M103 Harms all Canadians, Especially Muslims".* October 30, 2017
6. U.S. Senate Testimony: "*Willful blindness: Consequences of Agency Efforts to De-emphasize Radical Islam in Combating Terrorism*." Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts Of the United States Senate Committee on the Judiciary, June 28, 2016.
7. U.S. House of Representatives Testimony: *"Identifying the Enemy: Radical Islamist Terror".* House Committee on Homeland Security's Subcommittee on Oversight and Management Efficiency, September 22, 2016

EXHIBIT
W-14

In the name of Allah, the Beneficent, the Merciful

Islamic Association of North Texas, Inc.

P.O. Box 833010
Richardson, TX 75083

840 Abrams Road
Richardson, Texas 75081

Tel: (972) 231-5698
Fax: (972) 231-6707

www.iant.com
www.iqa.iant.com

Islamic Pre-Nuptial Agreement

Date 12-26-08 No. 674

To Whom It May Concern

We the undersigned, agree of our own free will, in the presence of witnesses, to follow Islam in its totality and we make vows of commitment to apply Islam in its entirety in all aspects of our personal and family lives by agreeing to the following:

With our belief that Islam is the only acceptable way of living, which is binding on us in all spheres of life, we hereby agree upon and affirm that Islam will be the only basis of our relationship, which includes:

a) Validity, voidability, and dissolution of our marriage contract and all procedural and jurisdictional issues.
b) The rights, duties, liabilities and responsibilities of both husband and wife.
c) The husband will never unilaterally divorce his wife either verbally or in written form.
d) The husband will not have the right to marry a second wife without getting the written consent of the first living wife.
e) Neither of us will engage in extra-marital relationships.
f) Parent – child relations in all aspects including custody, conservatorship possession, support and adoption.
g) Raising the children as Muslims and nurturing them in a healthy Islamic atmosphere.
h) Property rights and liabilities.
i) Inheritance of the estates and assets.
j) The dowry (Mahr/Sadaq) to be given from the husband to the wife will be in the amount of $ 32/- , with $ 32/- to be paid in advance and NONE to be paid at a later date as agreed upon. The other conditions and stipulations being:

_____.

In all cases and matters, whether mentioned explicitly in this document or otherwise, the Qur'an, Sunnah of the Prophet Muhammad (peace and blessings be upon him), and Islamic Law (Fiqh) will be applied.

Any conflict which may arise between the husband and the wife will be resolved according to the Qur'an, Sunnah, and Islamic Law in a Muslim court, or in it's absence by a Fiqh Panel, which will consist of three Faqaihs (Muslim jurists and scholars), two of whom are to be appointed by the spouses (one for each spouse). The third Fiqh is to be appointed by the other two Faqihs and is to head the Panel. The

appointees will not represent the parties in conflict, but rather, serve as impartial arbitrators and judges, guided by Islamic Law and it's principles.
It is understood by both parties that the majority decision of the Fiqh Panel will be binding and final.

In the case where a conflict is to be solved by a court of law in the United States or abroad, the court will solely apply Qur'anic injunctions, the Sunnah of the Prophet (peace and blessings be upon him) and Islamic Law (Fiqh). The law of the land will not be applied in these conflicts, except in cases where public order, safety, and/or health justly demand so. If, however, a Muslim court or a substituting institution is available, the case will be addressed to this court or institution.

Bride's full name SALMA MARIAN AHMED

Social Security # 494-98-8994

Address 2136 SW BRITISH DR
LEE'S SUMMIT, MO 64081

Signature

Groom's full name AYAD HASHIM LATIF

Social Security #

Address 2600 CLEAR SPRING
APT #1 504, RICHARDSON, TX 75082

Signature

NAGHTAG AHMED

Witness's full name

Social Security # 486-52-0460

Address 604 PINE VALLEY
McCORDSVILLE TX 76081

Signature

Witness's full name RAAD HASHIM LATIF

Social Security # 247878923

Address 2600 CLEAR SPRINGS DR
APT # 504, RICHARDSON, TX 75082

Signature

Wali's full name HABIB AHMED

Social Security # 494-84-1451

Address 2136 SW BRITISH DRIVE, LEE'S SUMMIT, MO 64081

Signature

Imam's Signature Dr. YUSUF Z. KAVAKCI

I recieved the original of this form

AYAD LATIF
12/26/08

EXHIBIT
W-15

Mailing Address:
P.O. Box 833010
Richardson, Texas 75083

بسم الله الرحمن الرحيم

In the name of Allah, the Beneficent, the Merciful

Islamic Association of North Texas, Inc.

840 Abrams Rd. • Richardson, Texas 75081
Tel: (214) 231-5698 Fax: (214) 231-6707

DATE: 12/26/00

MARRIAGE CONTRACT

Believing that Islam is our way of life, binding us in all aspects of our lives, WE AGREE AND DECLARE THAT:

(a) All relationships between us;

(b) Validity, voidity, voidability, dissolution of our marriage contract and suit procedures and jurisdictions thereupon;

(c) Rights, duties powers and liabilities of each one of us;

(d) Property rights and liabilities of each one of us;

(e) Parent-child relations in all aspects including custody, conservatorship possession, support and adoption;

(f) Bringing up the children and raising them up as Muslims only;

(g) Inheritance of our estates and assets, and wills to be made by each one of us;

And in all cases and matters mentioned or not mentioned above, **Qur'an, Sunnah** of the **Prophet Muhammad** (pbuh) and **Islamic Law (Fiqh)** will be applied.

Any conflict which may arise between us will be resolved according to the **Qur'an,** the **Sunnah** and the Islamic law by Fiqh Committee consisting of three Faqihs (Muslim jurists and Scholars); two of them to be appointed by spouses (each one by one of the spouses), the third one being appointed by these two. The last one will head the committee. The appointees will not represent the parties in conflict and the committee will apply solely Islamic Law on the dispute and its decision will be final.

In case of any conflict to be solved by any court in State of Texas or in USA or any country outside the USA, the court will solely apply **Qur'anic** rules, the **Sunnah of the Prophet** (pbuh) and **Islamic Law (Fiqh)** on the case. The law of the land will not be applied in these conflicts at all.

[signature] 494-98-8994		[signature]	
BRIDE	(SSN)	GROOM	(SSN)
[signature] 486-72-0460		[signature] 247878923	
WITNESS	(SSN)	WITNESS	(SSN)

[signature]
Dr. Yusuf T. Kavakci
IMAM (Islamic Religious Leader of the Community)

I recieved the original of this form

AYAD LATIF
12/26/08

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 416-50435-2021

IN THE MATTER OF THE MARRIAGE OF SALMA MARIAM AYAD AND AYAD HASHIM LATIF AND IN THE INTEREST OF A[redacted] A[redacted] A[redacted], A CHILD,	§	IN THE DISTRICT COURT OF COLLIN COUNTY, TEXAS 416TH JUDICIAL DISTRICT

STATUS HEARING

On the 17th day of June, 2021, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Judge Andrea Thompson, Judge presiding, held via Zoom in accordance with the Supreme Court of Texas' Emergency Orders Regarding the COVID-19 State of Disaster;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

FOR THE PETITIONER:

Mr. Michael Wysocki
SBOT NO. 24042257
O'NEIL WYSOCKI, P.C.
5323 Spring Valley Road
Suite 150
Dallas, Texas 75254
Phone: (972) 852-8000
Fax: (214) 306-7830
michael@owlawyers.com

FOR THE RESPONDENT:

Mr. David H. Findley
SBOT NO. 24040901
Mr. Jeffrey O. Anderson
SBOT NO. 00790232
ORSINGER, NELSON, DOWNING & ANDERSON, LLP
2600 Network Boulevard
Suite 200
Frisco, Texas 75034
Phone: (214) 273-2400
Fax: (214) 273-2470
david@ondafamilylaw.com

CHRONOLOGICAL INDEX
VOLUME 1
(STATUS HEARING)

P R O C E E D I N G S

THE COURT: 416-50435-2021; In the Matter of the Marriage of Ayad and Latif.

State your name for the record and the party you represent, please.

MR. WYSOCKI: Your Honor, Michael Wysocki for Mariam Ayad.

MR. FINDLEY: Your Honor, David Findley and Jeff Anderson for Respondent, Ayad Latif.

THE COURT: Okay. And the question was about having temporary orders now. The Court asked if there was an emergent issue like family violence that needed to be addressed, and having heard none, then it would appear we have an appeal and an arbitration order that potentially stay any further findings. If there was an emergency reason for the Court to do this then I think we could consider that, but at this point, hearing that the status quo is how the parties have been living for the last few months, we're going to wait until we have an outcome on the appeal and/or the arbitration before moving forward with temporary orders.

Anything else?

MR. WYSOCKI: Yes, Your Honor. We pointed out under Texas Family Code 4.003 that the parties cannot prenup and/or contract for children-related

issues in the present case. Both sides have requested temporary orders in their pleadings, particularly the counterpetition filed on 2/5 of 2021 as well as the second amended petition filed on 5/25 of --

THE COURT: Hang on. And Mr. Wysocki, unless I'm unclear, it says the Court may enter temporary orders. Is there something in the Family Code that says the Court shall, particularly absent a protective order or some other allegation of family violence, which I don't think I've seen in this case.

MR. WYSOCKI: Your Honor, under the standard practice of the courts in Collin County, however, when attorneys request temporary orders, I've never, ever in, I don't know, 10 years, 12 years, 15 years, somewhere in there seen anyone deprived of an opportunity for temporary orders.

THE COURT: I don't disagree with you, Mr. Wysocki. That's the general course of this court; however, I also don't usually have arbitration awards and appeals pending while that happens. So since we have a status quo that I'm not hearing is affecting anyone's personal safety, we're going to maintain the status quo until the arbitration and/or appeal is resolved. Thank you-all.

MR. FINDLEY: Thank you, Your Honor. Are

we excused?

THE COURT: Yes.

(Proceedings concluded at 9:20 a.m.)

THE STATE OF TEXAS)

COUNTY OF COLLIN)

I, Destiny M. Moses, Official Court Reporter in and for the 416th District Court of Collin County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred via Zoom in accordance with the Supreme Court of Texas' Emergency Orders Regarding the COVID-19 State of Disaster and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $91 and was paid by O'Neil Wysocki, P.C.

WITNESS MY OFFICIAL HAND this the 18th day of June, 2021.

_/s/ Destiny M. Moses_____
Destiny M. Moses, CSR, TCRR, TMR
Texas CSR: 8736
Official Court Reporter
416th District Court
Collin County Courthouse
2100 Bloomdale Road
Suite 20030
McKinney, Texas 75071
Expiration: 5/31/2023
(972) 548-4579

26 J. Am. Acad. Matrim. Law. 113

Journal of the American Academy of Matrimonial Lawyers
2013

Comment
Allison Gerli

LIVING HAPPILY EVER AFTER IN A LAND OF SEPARATE CHURCH AND STATE: TREATMENT OF ISLAMIC MARITAL CONTRACTS

> Love is patient and kind; it is not jealous or conceited or proud; love is not ill-mannered or selfish or irritable; love does not keep a record of wrongs; love is not happy with evil, but is happy with the truth. Love never gives up; and its faith, hope, and patience never fail.[1]

Marriage laws in the United States have their origins deeply rooted in England, where common law and Christian ecclesiastical law shaped family law jurisprudence.[2] For the most part, in America, Christian traditions still shape marriage,[3] with the story unfolding in some variation of the following: a girl and boy meet and start to date, they fall in love, he proposes and she accepts, and then a lavish wedding is planned, often with a religious officiator overseeing the ceremony. At some point in the process, the couple does have to obtain a marriage license or certificate, but this only requires the parties' signatures and that of a person licensed to perform a marriage ceremony.[4] After the parties are married, the person performing the marriage ceremony must return the license to the Recorder of Deeds within a specified number of days after the ceremony, and a filing fee is paid.[5] The act of obtaining the marriage certificate or license is not the focus of marriage in America, but an inconvenient legality detached from ***114** the main event--the wedding ceremony. The wedding ceremony itself represents the solidifying union and is viewed by Christians as a holy sacrament,[6] without which the couple would not genuinely be married.

Remnants of Christianity in family laws are particularly evident through the prohibition of polygamy,[7] states' enactments of covenant marriage statutes,[8] and non-recognition of same-sex marriages by the federal government and the majority of states.[9] In the late 1990s and early 2000s, Louisiana,[10] Arkansas,[11] and Arizona[12] enacted covenant marriage statutes encouraging long-term marriage as counter-measures to the enactment of no-fault divorce statutes.[13] Twenty-six other state legislatures also unsuccessfully introduced covenant marriage statutes.[14] Covenant marriage statutes directly stem from the Code of Canon Law, which describes marriage as between a man and woman, "a partnership ***115** of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament."[15]

Despite traces of Christianity, over time, America's secular laws have loosened ties to Christian principles through the recognition of no-fault divorce[16] and the growing usage of birth control.[17] Courts have also increasingly recognized spousal autonomy within marriage, which has spawned significant popularity in intraspousal contracting, primarily antenuptial and prenuptial agreements, hereinafter "premarital agreements."[18] Historically, premarital agreements were barred for public policy reasons and potential encouragement of divorce, but premarital agreements are now legal in every state.[19] What is now

presenting a more pressing issue for courts in the area of family law is how to address family dynamics that are contrary to a one-size-fits-all approach.[20] Families today no longer reflect, nor perhaps have they ever, identical norms.

In 1800, around 5.3 million people lived in the United States.[21] In 1900, 76 million people lived in the United States.[22] Over the course of a century, America's open door policy on immigration ***116** influenced it being known as the "melting pot," expanding its population not only in numbers, but also with divergent cultures. Over the next one hundred years, the population of the United States spiked to 281.5 million, and that number grew another twenty-seven million in 2010.[23] Globalization and increased mobility are allowing people to easily relocate anywhere in the world. As people they do so, immigrants are transporting with them their cultures, belief systems, and religious convictions. Although Thomas Jefferson likely expected America's population to increase exponentially, could he, or anyone for that matter, have foreshadowed the conflicting intersection between religious laws, separate from Christianity, and America's surprisingly Christian-based legal system?

Currently in the United States, only 0.7% of the population is Muslim. Although, at first, this number might seem too trivial to amount to any real legal peril, increased globalization and mobilization highlight changing trends deserving of the law's immediate attention. Over the next twenty years, the world's Muslim population is expected to increase by approximately 35%, rising from 1.6 billion in 2010 to 2.2 billion by 2030.[24] In the United States, the number of Muslims will more than double over the next two decades, rising from 2.6 million in 2010 to 6.2 million in 2030 because of immigration and higher-than-average fertility among Muslims.[25] Such a population growth would make Muslims roughly as numerous as Jews or Episcopalians are in the United States today.[26] It is time for society and the law to recognize ***117** that the current Muslim population is not going anywhere and will inevitably increase substantially over time.

With this recognition lies a demand for reevaluation of society's perceptions of Muslim culture. Society needs to appreciate the differences and acknowledge the similarities to ascertain what necessary steps should be taken moving forward, especially in the area of family law. Family dynamics are so inherently intertwined with religion that it is almost impossible to expect any area of family law to be entirely separate from religion, however hard courts might try to be neutral. Instead, in moving forward, the law must be abreast to shifting ideologies rather than clinging to a belief that the current law is void of religious influence. Perhaps courts have overlooked the influence religion was intended to have on America's laws:

> The community we live in today is vastly different from the community of the late 1700's when our Constitution was drafted by the founding fathers. At that time, our founding fathers were concerned with state sponsored church such as existed in many European community that they had sought to escape when they came to this country. Today's community is not as concerned with issues of a state sponsored church. Rather, the challenge faced by our courts today is in keeping abreast of the evolution of our community from a mostly homogenous group of religiously and ethnically similar members to today's diverse community. The United States has experiences a significant immigration of diverse people . . . Can our constitutional principles keep abreast of these changes in the fabric of our community?[27]

This article will look at the current treatment of religious marital agreements, specifically Islamic, and courts' treatment of these agreements as premarital agreements under the "neutral principles of law" doctrine or approach. In doing so, it aims to reveal that courts are undermining the integrity of Islamic marital traditions and fashioning a patchwork of confusion for lower courts and Muslim couples subject to American courts. Eventually, legislatures and courts will have to acknowledge the close ties religion has played in America's marital traditions and discover how to appreciate new religious marital customs in America while upholding those already in place.

Part I provides an overview of America's relationship with religion, seen through separation of church and state. Part II explains the religious doctrines behind Muslim marital traditions ***118** and the influence mahr agreements have on Muslim couples.

Part III looks at courts' interpretations of these agreements as premarital agreements and under the neutral principles of law approach. In conclusion, Part IV demands resolution from legislatures and courts to cure the lack of uniformity applied to Islamic marital agreements so that the current, and future Muslim populations in the United States are able to preserve their religious traditions while living in the land of the free.

I. Separation of Church and State Through the Establishment Clause and Free Exercise Clause

> [R]eligion is a matter which lies solely between man and his God; that he owes no account to none other for his faith or his worship; that the legislative powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make "make no law respecting an establishment of religion or prohibiting the free exercise thereof," thus building a wall of separation between Church and State.[28]

To understand courts' treatment of religious marital contracts, one must first look at American law's religious origins. At the inception of America's independence from Great Britain, the colonists retained a fierce commitment to freedom from religious persecution. In Colonial America, fledgling legislatures enacted laws requiring religious tolerance, which was a foreign concept at this time. In 1649 the Maryland Toleration Act, also known as the Act Concerning Religion, required religious tolerance in the British North American colonies and created the first legal limitations on hate speech in the world.[29] The Act permitted freedom of worship for all Trinitarian Christians in Maryland, but permitted the persecution of anyone who denied the divinity of Jesus Christ.[30] Over the next century, the dichotomy of religious ideologies and secular law continued to evolve, eventually ***119** reemerging into the doctrine of "separate church and state."[31] Founding Father and the third President of the United States, Thomas Jefferson, is principally credited for the phrase, which he stated in 1802 in a letter written to the Danbury Baptist Association, that there must be a "wall of separation between church and state."[32]

Jefferson's shorthand was eventually codified through the Establishment Clause and the Free Exercise Clause in the First Amendment, which together read, "Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof."[33] The Establishment Clause forbids the government from establishing an official religion or unduly favoring one religion over another. The Free Exercise Clause, in comparison, mandates and safeguards the free exercise of the chosen form of religion. Before the enactment of the Fourteenth Amendment in 1868, the Establishment Clause did not apply to states,[34] which manifest the most power over family law matters. Incorporation of the Establishment Clause was, and still is, a contentious topic among legal scholars because of the presence of one word, "Congress."[35] Regardless, the Establishment Clause is incorporated and applies to all state actions.[36]

***120** Despite the seemingly straightforward bright line of Jefferson's church and state separation, courts are continually grappling with questions intertwined with religion. While the Supreme Court has never actually comprehensively spoken on the framework for analyzing religious contracts under the Establishment Clause, it has provided several cases indicative of what the Court would apply.[37] One of the earliest cases addressing freedom of religion was in 1878, in Reynolds v. United States.[38] In this case, Reynolds, a member of the Church of Jesus Christ of Latter-Day Saints, commonly called the Mormon Church, was accused and convicted of bigamy after marrying a second woman.[39] Reynolds challenged the constitutionality of Utah's anti-polygamy statute to the Supreme Court, arguing that an accepted doctrine of the Mormon Church is the practice of polygamy and:

> [T]hat the practice of polygamy was directly enjoined upon the male members thereof by the Almighty God . . . the failing or refusing to practice polygamy by such male . . . would be punished, and that the penalty for such failure and refusal would be damnation in the life to come.[40]

The Court affirmed the Utah Supreme Court's conviction of Reynolds, which reaffirmed the government's power to regulate social relations, obligations, and duties, regardless of their sacred nature.[41] Furthermore the Court acknowledged that certain practices should never be condoned solely because they are religious practices per se, especially if those practices are contrary to public policy.[42]

***121** Thereafter, in 1979, the Supreme Court heard a dispute over ownership of church property affiliated with a hierarchical church organization.[43] The church congregation had divided into two groups, both of which believed they controlled ownership of the property. One of the groups brought the dispute to Georgia civil court, and the other group objected on the grounds of separation of church and state.[44] The Court affirmed the Georgia Supreme Court's decision to apply the neutral principles of law approach to the property dispute. The neutral principles of law approach is simply a requirement that courts not consider religious influences in determining a property or contract dispute, but instead apply traditional, unbiased legal theories.[45] This approach means that states "may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith," rather than deferring these disputes to an authoritative church tribunal.[46] In favor of the neutral principles of law approach, the Court added, "that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity . . . [and] promises to free civil courts completed from entanglement in questions of religious doctrine polity and practice."[47]

Over the last forty years, the neutral principles of law approach set forth in Jones has been applied to religious marital contracts, including those marital contracts entered into by members of the Islamic and Jewish faith. In interpreting these contracts, courts attempt to detach religious ideologies as the neutral principles of law approach provides. By doing so, courts are incapable of truly understanding the nature of the marital contracts being entered into.

***122** II. Understanding Islamic Law

> Among His proofs is that He created for you spouses from among yourselves, in order to have tranquility and contentment with each other, and He placed in your hearts love and care towards spouse. In this, there are sufficient proofs for people who think.[48]

A. Governance by Shari'a Law

To understand American courts' treatment of Islamic marital contracts, one first has to understand Islamic marriage, which is governed by Shari'a law. Unlike in America, where society tends to understand and expect a fixed set of governing laws, Shari'a law "is a lot more fluid than that, in part because there's no governing authori[ty] in Islam."[49] Shari'a law is the code of law based on the Qur'an.[50] Shari'a generally translates as "path" in Arabic, is intended to guide Muslims to connect with God, and is rooted in mercy and compassion.[51] Historically, and certainly in recent years, this definition has not been embraced or recognized by Western societies at large.[52] Since the terrorist attacks on September 11, 2001, a generalized stigma has been placed on an entire culture based on the actions of a few. Contrary to popular belief, Muslim women do not lose their legal

identity upon marriage and in many countries even keep their surname after ***123** marriage.[53] There is also nothing in Shari'a law analogous to community or marital property or, upon divorce, the equitable distribution of marital assets.[54]

Rather, when a Muslim couple divorces, each walks away with his or her individual property, with the husband typically owing all of the debt.[55] Unfortunately for most Islamic women this means they are left with nothing at divorce as most Muslim women are pressured not to work outside the home before and during the marriage and therefore do not own individual or separate property.[56] Shari'a law, however, protects Muslim women's financial interests through the execution of marital agreements.

B. Execution of Mahr Agreements

When someone enters into an Islamic marriage, the relationship is contractual and governed by law, but it is also simultaneously concomitant with religion.[57] Under Islamic tradition when two people want to get married, they enter into a contract called a nikah agreement.[58] To execute the nikah there are three requirements: mutual agreement by the parties, two male witnesses, and the mahr provision. The agreement, as seen in basic contract law, requires an offer and its acceptance, and the name ***124** of the owner to whom the specific property is vested.[59] More recently, these agreements might additionally include detailed terms regarding what each spouse expects from the marriage, including living arrangements, to requirements that one of the parties learn Arabic or enroll in cooking lessons.[60]

Prior to the marriage, negotiations take place by the parties and their relatives, normally a male who is supposed to represent their interests called a wali. The husband must give something of value to his wife called the mahr or sadaq, which is often referred to by Americans as a bride price, a marriage gift, or a dowry.[61] Interpretations of the mahr provision as equivalent to "bride price" are highly criticized by Islamic scholars because the mahr provision is intended as a financial interest for the wife, and wife alone. The Qur'an's literal objective in requiring the mahr provision is as a gift from the husband to the bride, not as a transaction whereby the family sells off their daughter in exchange for money.[62] The wife may receive the mahr provision at the time of the marriage, at divorce, or at her husband's death.[63] The reasoning behind the mahr provision is to ensure the wife will be protected financially throughout the marriage and afterward.

Divorce in Islamic societies is looked upon as the least desirable or acceptable action but is permitted under the Qur'an.[64] It is debatable by translators whether the wife has the right to initiate divorce and what effect her initiation has on the mahr provision. Some translators argue that without a finding of fault on the part of the husband, the wife will sacrifice her mahr provision. ***125** [65] But again, this is a complex and controversial issue and not consistent among Muslim countries or schools of thought.[66] In contrast, husbands may unilaterally divorce their wives through a device called a talaq.[67] Husbands do not have to show cause for wanting a divorce, but must pay the deferred portion of the mahr provision to their wives. Recently, Muslim feminists have advocated marriage contracts where the husband assigns the power of talaq to his wife, providing both parties access to unilateral divorce.[68]

The complex nature of Muslim marital traditions is concentrated on a contractual arrangement fixed in Shari'a law rather than theology as in Christianity.[69] Courts should be prepared to face serious challenges in their separation of church and state as more Muslims marry in America and divorce after migration.

III. American Courts' Interpretation and Enforcement of Mahr Agreements

Over the last several decades, courts have repeatedly addressed how to resolve mahr agreements, with no unanimous interpretation emerging.[70] Instead, two interpretations have ***126** emerged as the frontrunners--interpretation as either a

premarital agreement or under the neutral principles of law approach. Although application of the neutral principles of law approach provides a closer balance of Muslim martial traditions and American ideals of equitable distribution than interpreting mahr agreements as premarital agreements, neither approach adequately adheres to or respects both. More importantly, the divergence among courts provides no direction or consistency for Muslim couples.

A. Interpreting Mahr Agreements as Premarital Agreements

Interpreting mahr agreements as prenuptial or antenuptial agreements (hereinafter "premarital agreements") applies a specialized body of contract law.[71] While specialized, premarital agreements are still governed by and subject to the principles of contract law.[72] In 1983, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Premarital Agreement Act (hereinafter "UPAA") in an attempt to combat inconsistences of these agreements.[73] Since then, twenty-six states have adopted the Act or have similar statutes in place.[74] Correspondingly, in 2000, the American Law Institute promulgated its Principles of the Law of Family Dissolution, which covers a broader scope than the Uniform Act, including: premarital, postmarital, cohabitation, and separation agreements.[75] Although prenuptial agreements and mahr agreements are similar in the timing of their execution, when courts interpret mahr agreements as premarital agreements, critical disparities are ***127** overlooked, leaving Muslim couples with unintended outcomes: when "specialized bodies of law embed in judges' minds a particular script about transactions, and once this script is entrenched, it may be difficult for judges to recognize and apply the law to fact patterns that diverge from it."[76] This artful critique is all too often a reality for Muslim couples who find themselves in American courts.

Classifying mahr agreements as premarital agreements and subsequent application of the UPAA, means that mahr agreements are held to the same formation standards as premarital agreements. The UPAA provides that premarital agreements must be conscionable, entered into voluntarily, and executed only after both parties fully disclose their financial assets.[77] Most mahr agreements do not meet these requirements and for couples in courtrooms that interpret Muslim marital agreements as such this creates unfortunate consequences.[78] For example, in Ahmad v. Ahmad, the Ohio court would not uphold the couple's mahr agreement because "at the time the agreement was entered into, [the wife] was not represented by counsel, there was no disclosure of [husband's] assets, and the agreement did not take into consideration the assets subsequently acquired in Ohio during the eight-year marriage."[79] When these requirements are applied to mahr agreements, courts are not considering the differences in how Muslim marriages are formed. When a couple in America signs a prenuptial agreement, they are often doing so to protect assets as a protective measure in contemplation of potential divorce. Religion does not come into play. As stated above, for a Muslim couple, entering into a mahr agreement is a cultural ***128** and religious device that honors and protects the wife as she enters into marriage. Ideologically, these two agreements are not as similarly categorized as courts are attempting to interpret them.

An additional, and perhaps more pressing, concern for Muslim women living in the United States,[80] is when courts fail to equitably distribute marital assets when a mahr agreement is in place. In 1978, a New Jersey court dissolved the marriage of an Islamic couple from Pakistan.[81] The parties were married in Pakistan and had subsequently moved to New Jersey where the husband was a successful doctor. At some point, the wife had returned to Pakistan with the children. Prior to marriage, the couple entered into a mahr agreement in which the wife at any time during or after the marriage, on demand could obtain around $1,500 from her husband.[82] The agreement did not speak to any additional rights she might have to her husband's property or whether she would be entitled to alimony or support. In deciding whether to uphold the mahr agreement the court first looked at whether there was a "sufficiently strong nexus between the marriage and this State e.g. where the parties have lived here for a substantial period of time a claim for alimony and equitable distribution may properly be considered."[83] After finding that the parties had lived in New Jersey for a substantial amount of time, the court then examined the mahr agreement. The court concluded that the wife was not entitled to equitable distribution by treating the mahr agreement as a premarital agreement and found no public policy reason that would justify refusing to enforce the mahr agreement in accordance with Shari'a law,

where it was freely negotiated when marriage took place.[84] As a result, the wife was left with $1,500, no maintenance, and no equitable distribution of assets or alimony.[85]

***129** Courts seem to be sideswiping interpretation of Shari'a law and problems with enforcement of religious principles by only applying secular contract laws associated with premarital contracts. The outcome in Chaudry exposes courts' confusion over mahr provisions and premarital agreements in America. The court tried to understand the intentions of the party as framed by their particular culture and religion by assuming the mahr provision was an attempt at bargaining away rights in divorce, as done in premarital agreements.[86] The mahr provision of their nikah agreement was intended for something entirely different--a set of social concerns resting in Shari'a law which does not translate easily into American law, and especially by American courts that do not have any uniform guidance-lending direction.[87] Because of this, parties to mahr provisions are able to use the law of premarital agreements to avoid liability imposed by states with equitable distribution or community property theories of division of marital property.

In a similar case, Akileh v. Elchaheal, the couple were immigrants from Syria and Lebanon, but met and married in the United States.[88] Prior to marriage, the parties executed a nikah agreement with a mahr provision providing the wife around fifty thousand dollars immediately and fifty thousand dollars delayed. After the husband contracted a sexually transmitted disease acquired through an extramarital affair, the marriage deteriorated and the wife filed for divorce. The trial court held that the mahr provision was unenforceable for lack of consideration and no meeting of the minds because the court interpreted the mahr as protection for the wife from an unwanted divorce and she was the one who pursued the divorce.[89] On appeal, the husband argued that the wife's pursuit of divorce disqualified her right to the delayed mahr provision, despite the fact that he was arguably at fault for infidelity. The court did not agree with this argument, and enforced the delayed mahr provision, stating that marriage itself was adequate consideration to amount to a meeting of the minds, despite their differing interpretations of the mahr.[90]

***130** When courts interpret mahr agreements as premarital agreements two outcomes emerge: first, there is a possibility that the couple's mahr agreement will not be upheld because it does not fulfill the necessary requirements controlling premarital agreements, and second, if the couple's mahr agreement is upheld, then equitable distribution of marital assets is not permitted. Neither one of these outcomes are proper solutions for Islamic couples living in America.

B. Enforcement of Mahr Provisions Under a Neutral Principles of Law Approach

As discussed in Part I, the neutral principles of law approach originated as a way of interpreting religious contracts generally. This more general framework was then applied to Jewish marital contracts, otherwise known as ketubah agreements, and then subsequently applied to mahr agreements. In 1985, in Aziz v. Aziz, the couple's nikah consisted of a mahr of $5,032, $5,000 of which was to be a deferred payment and $32 immediate payment.[91] In deciding whether to uphold the mahr, the court applied neutral principles of contract law, which it had previously applied to a ketubah in Avitzar v. Avitzur.[92] The couple in Avitzar, were married in a ceremony conducted in accordance with Jewish tradition, which involves execution of a ketubah that reflects the groom's "intention to cherish and provide for his wife as required by religious law and tradition and the bride's willingness to carry out her obligations to her husband in faithfulness and affection according to Jewish law and tradition."[93] In addition, the couple agreed to recognize and authorize a beth din, a rabbinical tribunal or more specifically arbiter, in the event that the couple divorced. Although the majority upheld the ketubah and applied neutral principles of contract law to the religious agreement, the dissenters were not pleased with the outcome. The three dissenters argued that effectively upholding the ketubah requires "constitutional impermissible interjection of the court into matters of religious and ecclesiastical content."[94] Nonetheless, the New ***131** York Superior Court upheld the ketubah and in turn upheld the mahr in Aziz, under the neutral principles approach.

When applying neutral principles of contract law, courts are not only able to uphold the mahr, but also to distribute marital assets. In 2002, a New Jersey court in Odatalla v. Odatalla was able to do exactly that.[95] The couple married in the state of

New Jersey through a traditional Islamic marriage, which included a mahr agreement giving the wife one golden pound coin and ten thousand dollars delayed.[96] The wife sought enforcement of the mahr agreement, alimony, and equitable distribution of the marital assets and debt. In applying a neutral principles of law approach, the court looks to see whether the contract "is a set of promises for the breach of which the law gives a remedy, or performance of which the law in some way recognizes as a duty."[97] Conveniently, the couple videotaped the marriage proceedings, including the negotiations and signing of the mahr agreement. The court was then able to see evidence that the parties freely and voluntarily entered into the agreement, understanding and accepting its terms. Additionally, the court upheld the delayed portion of the mahr agreement, ten thousand dollars, after admitting the wife's testimony through the parol evidence rule, which under basic contract law can be employed as an interpretative aide to deduce the meaning of the written words of a contract.[98] In concluding, the court went so far as to state that mahr agreements are:

> [N]othing more and nothing less than a simple contract between two consenting adults. It does not contravene any statute or interests of society. Rather, the Mahr Agreement continues a custom and tradition that is unique to a certain segment of our society and is not at war with any public morals.[99]

Although the court did not publish the portion regarding the distribution of alimony and marital assets, the opinion implies that it did not uphold the mahr agreement in substitution for a division of marital assets.[100]

***132** In a more recent New Jersey case, following the reasoning laid out by the court in Odatalla, the appellate court did affirm the trial court's equitable distribution of the marital assets, consisting primarily of jewelry given to the parties as a wedding present, along with upholding, in part, the mahr agreement.[101] Other states have subsequently followed Odatalla and the neutral principles of law approach, but the decisions are convoluted as to whether the mahr agreement is still a premarital agreement and are usually completely silent as to equitable division of marital assets. This is exactly what happened in a case out of Washington, In re Marriage of Obaidi and Qayoum.[102] The couple immigrated to America from Afghanistan, where they resided prior to and during their marriage.[103] Their mahr agreement was executed in Farsi, which the husband did not speak, read, or write, and he was unaware of the mahr agreement until fifteen minutes before signing it.[104] The provision included an immediate payment of $100 and a delayed payment of $20,000.[105] Although the court of appeals applied a neutral principles of law approach to the mahr agreement, throughout the opinion, repeated declarations are made stating that mahr agreements are prenuptial agreements.[106] The approach applied in Odatalla separates mahr agreements from the realm of premarital agreements, where equitable distribution is unlikely. The Washington court seems to have overlooked that essential distinction, or at ***133** the very least, does not go so far as to acknowledge that distinction in its opinion.

Although application of the neutral principles of law approach allows courts to uphold the mahr agreement and still distribute the marital property accordingly, courts are also struggling with mahr agreements' vagueness and close resemblance to boilerplate contracts. The minimalism of mahr agreements often forces courts to admit and depend on parol evidence in interpreting their ambiguity. Admitting testimony from experts in Shari'a law allows the courts to understand religious doctrine inherently intertwined in mahr agreements and so fundamental to Islamic marriage custom.[107] But, courts' unfamiliarity and subsequent overreliance on expert testimony has the propensity to create dangerous precedent for lower courts and overall confusion for Muslim couples.[108] The perplexing nature of mahr agreements, and courts general confusion in interpreting them, will inevitably demand uniform reevaluation by the Supreme Court or legislatures.

IV. Conclusion: Where Should Courts Go From Here?

> We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be: What do the words of the text mean in our time? For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs.[109]

In 2010, Frank Gaffney, president and founder of the right-wing think tank American Center for Security Policy wrote an op-ed piece criticizing President Obama's recent nomination of ***134** Elena Kagan to the Supreme Court.[110] Gaffney's resentment towards Kagan went so far as to demand that the Senate "explore Ms. Kagan's attitude toward Shariah - an anti-constitutional, supremacist legal doctrine that is a threat not only to homosexuals, but also to our civil liberties and society more generally."[111] Even though the article was highly criticized,[112] Gaffney's sentiments towards Sharia law reflect negative perceptions of Shari'a law held by some faction of Americans that require attention and reevaluation.

Within the same year, Oklahoma amended its state constitution to prevent state courts from "look[ing] to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia Law."[113] Alaska, Arizona, Arkansas, Georgia, Indiana, Louisiana, Mississippi, Missouri, Nebraska, South Carolina, South Dakota, Texas, Utah, and Wyoming are among the states that have or are attempting to introduce legislation to ban recognition of Shari'a law by state courts.[114] In January of 2012, the Tenth Circuit Court of Appeals affirmed the U.S. District Court's unanimous decision preventing implementation of the voter-approved Oklahoma constitutional amendment.[115] Despite this, the amendment's initial passage, and subsequent states' attempts at introducing similar amendments, reflect an unhealthy mindset toward America's current Islamic population, especially concerning family law matters where religious traditions are so closely held.

These attitudes prompt the question: is it possible for American law to recognize "the dual nature of marriage for many citizens in society, whereby they are bound not only to civil norms regarding marriage and divorce but also to religious norms[?]"[116] ***135** Or will Muslim couples married in, or immigrating to, America be forced to abandon their religious traditions and conform to American legal norms? Enforcement of mahr agreements as premarital agreements and ignoring equitable distribution principles does exactly that. Application of a specialized body of law intended for Christian-influenced marriages disregards that mahr agreements were not intended to bargain away rights in divorce.[117] Likewise, not upholding mahr agreements because they do not conform to the requirements of premarital agreements and only applying equitable distribution principles does exactly that. Although fairer outcomes are reached under the neutral principles of law approach, courts applying this approach are in effect overlooking the religious significance of mahr agreements.

The solution lies somewhere in the middle. Whether Muslim couples are from America or immigrants to it, they deserve the legal protections during and after marriage that are afforded to all Americans. Shari'a law does not entertain principles of equitable distribution of marital assets because mahr agreements are not intended to provide overall protection in the event of dissolution. The laws governing premarital agreements are ill equipped to grasp the nature of mahr agreements. Similarly, application of the neutral principles of law approach requires admission of parol evidence compelling judges to analyze religious principles that they do not uniformly understand or worse, that they do not introduce at all on grounds of separate church and state. Either of these outcomes disrespects and undermines religious customs that originated long before the United States' inception.

A new framework must be created for interpreting and resolving religious marital contracts. This framework should take into consideration the nature of why religious marital contracts are being entered into and the traditions within. In the end, this framework should effectuate outcomes that respect those traditions while leaving both parties on equal footing as equitable distribution attempts to achieve. Interpreting mahr agreements as prenuptial agreements does not consistently generate that outcome. A uniform framework specific to religious ***136** marital contracts must be created in order to respect Islamic couples living in America.

America no longer consists of one-size-fits-all families, or one-size-fits-all marriages. The Islamic population in the United States is not going anywhere and will only continue to increase. With this increase, more confusing precedent will be formed and Muslim couples will continue to be left without any direction. Legislatures and courts need to address this lack of uniformity, and by doing so, perhaps, acknowledge that courts cannot, and likely have never, dissolved marriages without some recognition of religion. When society talks about the problem of separate "church and state," there is a presupposition of Christianity, rather than a discussion of separate "mosque and state" or "synagogue and state."[118] Christianity is deeply woven in American laws, especially in the area of family law. Through accepting this, courts will be able to better focus on how to address religious marital contracts in a way that respects couples' traditions along the way. Courts can no longer sideswipe the issue and cling to notions of separate church and state, but need to start recognizing the inherent interplay of religion and marital customs, and decide where to go from there.

Footnotes

1 1 Corinthians 13:4-7 (Good News Translation).

2 William Blackstone, Commentaries *433-45, *446-57 (2009); Homer H. Clark, Jr., The Law of Domestic Relations in the United States 21-25 (2d ed. 1998).

3 Nathan B. Oman, Judge Shari'a Contracts: a Guide to Islamic Marriage Agreements in American Courts, 2011 Utah L. Rev. 287, 291-92 ("[The] Christian legacy reveal itself in our law's special concern with matters of religious belief, and the tripartite structure of the act of marriage as consisting of bride, groom, and an officiator performing the marriage") (citing to John Witte, Jr., From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition (1997)).

4 Mo. Rev. Stat. §§ 451.010-.080 (2011) (Missouri's statute is similar to those enacted nationally).

5 Id. §§ 451.130, 451.150.

6 Wael B. Hallaq, Sharia: Theory, Practice, Transformation 271 (2009).

7 See infra notes 39-43.

8 See infra notes 11-15.

9 See Defense of Marriage Act (DOMA), 1 U.S.C. § 7 (1996) ("In determining the meaning of any Act of Congress ... the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife"). On May 31, 2012, the First Circuit Court of Appeals unanimously held that DOMA discriminates against same-sex couples by denying them the benefits given to heterosexual couples. The Supreme Court is expected to hear its appeal in 2013. See Gill et al. v. Office of Personal Management, 682 F.3d (1st Cir. 2012).

10 La. Rev. Stat. Ann. §§ 9:237 to:275.1,:293 to:298,:307 to:309 (2011) (effective 1997).

11 Ark. Code Ann. §§ 9-11-202, -11-215, -11-220, -11-801 to -811, 12-301, -12-324 (2011) (effective 2001).

12 Ariz. Rev. Stat. Ann. §§ 25-111, 25-312 to -314, 25-901 to - 906 (2012) (1998).

13 See generally Joal A. Nichols, Religious and Legal Pluralism in Global Comparative Perspective: Religion, Marriage, and Pluralism, 25 Emory Int'l L. Rev. 967, 985 (2011) (Discussing the future of the institute of marriage as a form of religious expression through civil statute).

14 These states include Alabama, California, Colorado, Georgia, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin. Peter Hay, The American "Covenant Marriage" in the Conflict of Laws, 64 La. L. Rev. 43, 44 n.2 (2003).

15 Katherine Shaw Spaht, Covenant Marriage: An Achievable Legal Response to Inherent Nature of Marriage and Its Various Goods, 4 Ave Maria L. Rev. 467 (2006) (quoting 1983 Code c. 1055, § 1).

16 National Conference of Commissioners on Uniform State Laws, Unif. Marriage and Divorce Act, Prefatory Note (1970) (eliminating fault grounds in determining the dissolution or separation of marriage).

17 Editorial, Birth Control and Teenage Pregnancy, N.Y. Times, Apr. 19, 2012, at A26, available at http://www.nytimes.com/2012/04/19/opinion/birth-control-and-teenage-pregnancy.html; see also Nicholas Bakalar, Well: Teenage Birth Rates Continue to Drop, N.Y. Times, Apr. 16, 2012, available at http:// well.blogs.nytimes.com/2012/04/16/teenage-birth-rates-at-a-low/?ref=opinion.

18 Barbara Stark, Marriage Proposals: From One-Size-Fits-All to Postmodern Marriage Law, 89 Cal. L. Rev. 1479, 1495 (2001).

19 Id. at 1496.

20 Id. at 1482 ("Marriage law has become a bizarre variation on the proverbial sausage factory: rather than all manner of ingredients going in and everything coming out 'sausage,' everything is considered 'sausage' going in but comes out in inexplicably--and unpredictably--different forms.").

21 1800 Census by Census Research for Genealogists, http:// www.1930census.com/1800_census.php (last visited Apr. 19, 2012).

22 1900 Census by Census Research for Genealogists, http:// www.1930census.com/1900_census.php (last visited Apr. 19, 2012).

23 U.S. Dep't of Commerce, Econ. and Statistics Admin., Population Distribution and Change 2000 to 2010 (Mar. 2011), available at http:// www.census.gov/prod/cen2010/briefs/c2010br-01.pdf.

24 Pew Research Center, Forum on Religion & Public Life, Executive Summary, The Future of the Global Muslim Population Projections for 2010-2030 (2011), available at http://pewresearch.org/pubs/1872/muslim-population-projections-worldwide-fast-growth.

25 Id. Although Muslim populations have higher fertility rates than non-Muslim populations because more Muslim children are born per woman, generally the growth rate is declining in Muslim populations because more women in these countries are now obtaining secondary educations, living standards are rising, and people are migrating from rural areas to cities and towns.

26 Id. Despite this projected increase in the United States, Russia and France are expected to see higher percentages of Muslims by 2030 than any other non-Muslim country.

27 See infra note 82.

28 Thomas Jefferson, XVI Writings 281-82, to the Danbury Baptist Association on January 1, 1802.

29 See "Maryland Toleration Act," Yale University Avalon Project, Lillian Goldman Law Library (2008), available at http://avalon.law.yale.edu/18th_century/maryland_toleration.asp.

30 Id.

31 U.S. Const. amend. I.

32 Jefferson, supra note 29. Fellow Founding Father and fourth President of the United Sates, James Madison, also pioneered the establishment of separate church and state. See, e.g., Jefferson & Madison on Separation ofChurch and State: Writings on Religion and Secularism (Lenni Brenner ed., 2004). See also Everson v. Board of Educ., 330 U.S. 1, 16, (1947) (discussing the wall of separation between church and state); C.F. v. Capistrano Unified Sch. Dist., 615 F. Supp. 2 1137, 1144 (C.D. Cal. 2009) ("The Supreme Court has held that the separation of church and state mandated by the First Amendment 'rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere").

33 U.S. Const. amend. I (emphasis added).

34 Everson, 330 U.S. at 51-58 (holding that the Establishment Clause of the First Amendment is binding upon states through the Due Process Clause).

35 Utah Highway Patrol Ass'n v. American Atheists, Inc., 132 S. Ct. 12 (2011) (Thomas, J., dissenting). See also Kathryn Elizabeth Komp, Unincorporated, Unprotected: Religion in an Established State, 58 Vand. L. Rev. 301 (2005).

36 Everson, 330 U.S. at 51-58.

37 Brian Sites, Religious Documents and the Establishment Clause, 42 U. Mem. L. Rev. 1, 10 (2011).

38 98 U.S. 145 (1878). Interestingly, the stars of the TLC show Sister Wives, four wives, recently brought a federal lawsuit challenging Utah's anti-bigamy statute. On February 3, 2012, a U.S. district court judge held that these women have standing to challenge the constitutionality of Utah's law. Brown v. Herbert, No. 2:11-CV-0652-CW, 2012 WL 380110 (D. Utah 2012).

39 Id. at 161.

40 Id.

41 Id. at 166.

42 Id. (“Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship ... could [the government] not interfere to prevent a sacrifice?”)

43 Jones v. Wolf, 443 U.S. 595 (1979).

44 Id. at 602.

45 Id. (citing to Maryland & Virginia Eldership of Churches of God v. Church of God, Inc., 396 U.S. 367, 368 (1970)) (finding that when construing dispute regarding church deeds “neutral principles of law should be applied without engagement in theological or ecclesiastical speculation or determination and, therefore, the First Amendment [will] not [be] violated”).

46 Id.

47 Id. at 606.

48 The Message of the Qur'an at 30:21 (Mohammad Asad trans., The Book Foundation 2004) [hereinafter “Qur'an”].

49 Interview by Terry Gross with Andrea Elliot, National Public Radio-- Fresh Air, Who's Behind the Movement to Ban Shariah Law?, available at http:// www.npr.org/2011/08/09/139168699/whos-behind-the-movement-to-ban-shariah-law (Aug. 9, 2011).

50 Nathan B. Oman, Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization, 45 The Wake Forest L. Rev. 579, 588-89 (2010). Shari'a law incorporates and expands upon the spiritual, civil, and military teachings of Prophet Muhammad, during his pinnacle years circa 622 C.E. Later generations of Muslims added to the initial passages recounting the Prophet's teachings and actions, establishing the current elaborate system of religious law.

51 American Heritage Dictionary (2011), available at http:// ahdictionary.com/word/search.html?q=sharia&submit.x=0&submit.y=0.

52 See, e.g., Lori Peek, Behind the Backlash: Muslim Americans After 9/11 (2011).

53 Public Broadcasting Service, Global Connections the Middle East: WhatFactors Determine the Changing Roles of Women in the Middle East and Islamic Societies? (2002), http:// www.pbs.org/wgbh/globalconnections/mideast/questions/women/. The article debunks common misperceptions regarding treatment of Islamic women by their religion and poignantly states:
It is true that Muslim women, like women all over the world, have struggled against inequality and restrictive practices in education, work force participation, and family roles. Many of these oppressive practices, however, do not come from Islam itself, but are part of local cultural traditions. (To think about the difference between religion and culture, ask yourself if the high rate of domestic violence in the United States is related to Christianity, the predominant religion.)

54 Oman, supra note 51, at 590 (citing to Halaq, supra note 6, at 279).

55 Id. at 591.

56 Id at 590; See also Tracie Rogalin Siddiqui, Interpretation of Islamic Marriage Contracts by American Courts, 41 Fam. L.Q. 639, 643 (2007).

57 Id. at 642.

58 Asisah Y. Al-Hibri, Minaret of Freedom Banquet: The Muslim Marriage Contract in American Courts (May 20, 2000), available at http:// www.minaret.org/azizah.htm.

59 Id.

60 Id.

61 Id.

62 Qur'an, supra note 48, at 4:24 ("And unto those with whom you desire to enjoy marriage, you shall give the dowers due to them.") (emphasis added).

63 Siddiqui, supra note 56, at 644.

64 John L. Esposito, What Everyone Needs to Know About Islam 143 (2002). Conversely, the divorce rate in America has surged over the past twenty years, by more than fifty percent, and more recently, even among the older, baby boomer population. In 1970, only thirteen percent of adults ages forty-six through sixty-four were divorced. In 2010, that number shot to around thirty-three percent. See Rachel L. Swarns, More Americans Rejecting Marriage in 50s and Beyond, N.Y. Times, Mar. 1, 2012, at A12, available at http:// www.nytimes.com/2012/03/02/us/more-americans-rejecting-marriage-in-50s-and-beyond.html?pagewanted=all.

65 Qur'an, supra note 48, at 61 n.218.

66 Siddiqui, supra note 56, at 645.

67 Lindsey E. Blenkhorn, Note, Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women, 76 S. Cal. L. Rev. 189, 201 (2002) ("[B]ecause the typical Muslim woman lives in constant fear of being repudiated at-will by her husband [[through his power in the talaq], the deferred mahr is akin to a security deposit") (citations omitted).

68 See Kathleen A. Portuan Miller, Who Says Muslim Women Don't Have the Right to Divorce?--A Comparison Between Anglo-American Law and Islamic Law, 22 N.Y. Int'l L. Rev. 201, 225-26 (2009) (discussing how marriage contracts may enhance a woman's access to divorce).

69 Oman, supra note 3, at 291-92.

70 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863 (Cal. Ct. App. 2001); In re Marriage of Dajani, 251 Cal. Rptr. 871 (Cal. Ct. App. 1988); Akileh v. Elchahal, 666 So. 2d 246 (Fla. Dist. Ct. App. 1996); Aleem v. Aleem, 931 A.2d 1123 (Md. Ct. Spec. App. 2007); Odatalla v. Odatalla, 810 A.2d 93 (N.J. Super. Ct. Ch. Div. 2002); Chaudry v. Chaudry, 388 A.2d 1000 (N.J. Super. Ct. App. Div. 1978); Habibi-Fahnrich v. Fahnrich, No. 46186/93, 1995 WL 507388, at *1 (N.Y. Sup. Ct. July 10, 1995) Aziz v. Aziz, 488 N.Y.S.2d 123, 124 (N.Y. Sup. Ct. 1985); Zawahiri v. Alwattar, No. 07-AP-925, 2008 WL 2698679 (Ohio Ct. App. July 10, 2008); Mir v. Birjandi, Nos. 2006 CA 63, 2006 CA 71, 2006 CA 72, 2007 WL 4170868 (Ohio Ct. App. Nov. 21, 2007); Ahmad v. Ahmad, No. L-00-1391, 2001 WL 1518116 (Ohio Ct. App. Nov. 30, 2001); Ahmed v. Ahmed, 261 S.W.3d 190 (Tex. App. 2008).

71 Oman, supra note 50, at 580.

72 41 Am. Jur. 2d Husband and Wife § 89 (2012).

73 National Conference of Commissioners on Uniform State Laws, Uniform Premarital Agreements Act, Prefatory Note 1 (1983), available at http:// www.law.upenn.edu/bll/ulc/fnact99/1980s/upaa83.htm [hereinafter UPAA]. See also, e.g., Cal. Fam. Code § 1615 (2012).

74 Margaret F. Brinig, Feminism and Child Custody Under Chapter Two of the America Law Institute's Principles of the Law of Family Dissolution, 8 Duke J. Gender L. & Pol'y 301, 301 n.3 (2001).

75 A.L.I., Principles of the Law of Family Dissolution: Analysis and Recommendations § 7.01-7.12 (2000).

76 Oman, supra note 50, at 586-87 (arguing that new bodies of law controlling certain kinds of transactions--law of sale of goods codified by the Uniform Commercial Code, labor law, law at state and federal level governing employment contracts--has complicated contract law. Instead, courts should divert back to the generality of contract law which "promotes innovation in transactional structure by remaining largely agnostic about how parties should order their contracts").

77 UPAA, supra note 73.

78 Oman, supra note 3, at 334 ("Such requirement insures that the parties to a traditional prenuptial agreement understand the value of what they are bargaining over. Such claims on property, however, simply are not part of what the parties to an Islamic marriage contract are bargaining over.").

79 No. L-00-1391, 2001 WL 1518116, at *4 (Ohio Ct. App. Nov. 30, 2001).

80 See, e.g., Lindsey E. Blenkhorn, Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women, 76 S. Cal. Rev. 189 (2002) (arguing that courts should override mahr agreements and apply ordinary property dissolution rules to Muslim divorces).

81 Chaudry v. Chaudry, 388 A.2d 1000 (N.J. Super. Ct. App. Div. 1978).

82 Id. at 1004.

83 Id. at 1006.

84 Id.

85 Id. at 1008.

86 Oman, supra note 50, at 580.

87 Id. at 581.

88 666 So.2d 246 (Fla. Dist. Ct. App. 1996).

89 Id. at 248.

90 Id.

91 488 N.Y.S.2d 123 (N.Y. Sup. Ct. 1985).

92 459 N.Y.S.2d 572 (N.Y. Sup. Ct. 1983).

93 Id. at 573.

94 Id. at 576.

95 810 A.2d 93 (N.J. Super. Ct. Ch. Div. 2002).

96 Id. at 95.

97 Id. at 97 (citing Reinstatement (Second) of Contracts § 1 (1979)).

98 Id.

99 Id. at 98.

100 Siddiqui, supra note 57, at 649.

101 Rahman v. Hossain, No. FM-20-964008G, 2010 WL 4075316, at *2-3 (N.J. Super. Ct. App. Div. 2010) (analyzing the short-lived, arranged marriage of a Bangladeshi couple married with a mahr provision awarding the wife $12,500 at the time of marriage). The court admitted parol evidence from a New Jersey attorney knowledgeable in Islamic law, who opined that, "under Islamic law and customs, the court would have the authority to order the $12,500 initial payment ... if it made a finding that the ex-wife was "at fault" in precipitating the divorce." Id. at 1. The court awarded the husband repayment of the initial mahr provision because the wife failed to disclose a mental illness, refused to engage in marital relations, and did not adequately attend to her personal hygiene.

102 226 P.3d 787 (Wash. Ct. App. 2010).

103 Id. at 788.

104 Id.

105 Id. at 789.

106 Id. at 788 ("A mahr is a prenuptial agreement based on Islamic law that provides an immediate and long-term dowry to the wife").

107 Id. ("For instance, contracts without mahr provisions are automatically void in some Islamic schools of thought while, according to other schools, Islamic courts must infer a mahr amount into the contract according the a judicial determination of the brides fair worth").

108 Chelsea A. Sizemore, Enforcing Islamic Mahr Agreements: The American Judge's Interpretational Dilemma, 18 Geo. Mason L. Rev. 1085, 1096 (2011).

109 William J. Brennan, Jr., The Constitution of the United States: Contemporary Ratification, 27 S. Tex. L. Rev. 433, 438 (1986).

110 Frank J. Gaffney, Jr., Courting Shariah--Kagan Supported Islam at Harvard but not the U.S. Military, Wash. Post, June 21, 2010, available at http://www.washingtontimes.com/news/2010/jun/21/courting-shariah/.

111 Id.

112 Interview by Terry Gross with Andrea Elliot, supra note 50.

113 Okla. House Joint Resolution No. 1056 § 1(C) (2d Sess. 2010). Oklahoma citizens approved the adopting the "Save Our State Amendment" with a seventy percent approval.

114 http://colorlines.com/archives/2011/02/13_states_introduce_bills_ to_ban_sharia_law.html.

115 Awad v. Ziriax, 670 F.3d 1111 (10th Cir. 2012).

116 Nichols, supra note 14, at 985.

117 Oman, supra note 51, at 580.

118 Oman, supra note 4, at 292.

26 JAMAML 113

11 Liberty U. L. Rev. 525

Liberty University Law Review
Fall, 2016

Symposium Issue

Terrorism's Effect on International Law: Conflict, War Crimes, and the Global Response

Article
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EXAMINING THE FOUNDATIONS: COMPARING ISLAMIC LAW AND THE COMMON LAW OF THE UNITED STATES

Abstract

This article identifies fundamental differences between the common law legal system of the United States and the Islamic legal system. Although both systems have a religious foundation, this article argues that the religious foundations of the two systems contain different views concerning the jurisdiction of the civil government. The article describes the religious heritage of each system. The article then compares the two systems, viewing them through the lenses of two great principles of the common law: uniformity and equality.[1]

I. The Common Law Heritage

The common law is biblically informed. The English common law, from which the common law of the United States grew, was based on the law of nature, which is a biblically-based view of law.[2]

***526** The English jurist, Sir Edward Coke, wrote of a biblically-based concept of the law of nature. In *Calvin's Case,* Coke stated that "the law of nature is part of the law of England," and described the law of nature as "that which God at the time of creation of the nature of man infused into his heart for his preservation and direction ...."[3] Coke taught that the common law grew out of this law of nature. "For Coke ..., the law of God, the law of nature or reason, and the law of the land form a continuous series. For him, the common law is a tree rooted firmly in God and nature, and growing into an evergreen."[4] Coke's writings greatly influenced the American lawyers of the colonial era.[5]

A. Foundations of the Common Law in the United States

The teaching found in Blackstone's COMMENTARIES ON THE LAWS OF ENGLAND, first published in 1765, heavily influenced the lawyers and judges of early America. The COMMENTARIES were the "basic text for lawyers and law students" during the first one hundred years of the American republic.[6] Because American lawyers studied Blackstone during this crucial era, they learned Blackstone's philosophy of law. Blackstone's philosophy looked to God as the ultimate source of law and looked to the Bible as the authoritative record of God's commandments to humankind. Specifically, Blackstone spoke of the "law of nature" and "law of revelation" as the "two foundations" upon which "depend all human laws; that is to say, no human laws should be suffered to contradict these."[7]

Blackstone described the "law of nature" as the "will of [the] Maker" as revealed in nature.[8] He understood the nature of man to be that of a created being who is "subject to the laws of his Creator."[9] Blackstone indicated that the law of nature consists of "the eternal, immutable laws of good and evil, to which the Creator himself, in all His dispensations, conforms; *and which He has enabled human reason to discover* ...."[10] Blackstone further ***527** indicated that human beings can use their human reason "to *discover ... what the law of nature directs in every circumstance of life* ...."[11]

Blackstone described the "law of revelation" as "revealed or divine law," and stated that this law was "found only in the [H]oly [S]criptures."[12] Blackstone indicated that God had provided to humankind this written "law of revelation" because humans are in a state in which their "reason is corrupt" and their "understanding [is] full of ignorance and error" because of the sinful nature of humankind.[13] Thus, Blackstone taught that human beings can use their admittedly flawed reason to discover law, but that they need the guidance of laws given in Scripture to prevent them from misinterpreting the law.

The words of the Declaration of Independence, speaking of "the laws of nature and of nature's God,"[14] correspond to the "law of nature" and the "law of revelation" described in Blackstone's COMMENTARIES. Blackstone's concept of the "law of nature" is expressed in the Declaration as "laws of nature." Blackstone's concept of an explicit "law of revelation" is expressed in the Declaration as "the Laws ... of Nature's God." These two foundations, the laws of nature and the laws of nature's God, thus took root in America through its founding document.[15]

The "common law," as understood in the early years of the American republic, was based on the same two foundations. One writer during those early years asserted that the common law "was derived from the law of nature and of revelation, those rules and maxims of immutable truth and ***528** justice, which arise from the eternal fitness of things ...."[16] That "law of nature and revelation" was thus understood to consist of God's direction to human beings as to how to conduct themselves. It was understood to be "an objective legal order."[17]

B. Two Jurisdictions in the Common Law of the United States

Importantly, the Framers' reliance on the higher law of God did not mean they contemplated creating a state religion.[18] On the contrary, the Framers explicitly incorporated into their new order a strong commitment to the concept of authority vested in two separate jurisdictions: one for duties to one's divine Creator and one for duties to a civil government.[19] The First Amendment to the United States Constitution expressed this commitment to separate jurisdictions: "Congress shall make no law respecting an establishment of religion ...."[20] In other words, the force given to the civil magistrate to carry out its function was not to be used to help the church carry out its function. This commitment to authority vested in two separate jurisdictions of church and state has a biblical foundation: "Render therefore to Caesar the things that are Caesar's, and to God the things that are God's."[21]

This concept of two separate jurisdictions undergirded the development of the western legal tradition long before the birth of the United States. For example, it characterized the legal system of England after the Norman Conquest: "Underlying the competition of ecclesiastical and royal courts from the twelfth to the sixteenth centuries [in England] was the limitation on the jurisdiction of each: neither pope nor king could command the total ***529** allegiance of any subject."[22] Concomitant with the recognition of this concept of two jurisdictions in the development of Western theories of state and the law was the concept that a nation could and should be ruled by law and not by fiat of the rulers. "The two powers [of church and state] could only coexist peacefully through a shared recognition of the rule of law, its supremacy over each."[23]

Rather than viewing the higher law of God as a reason to institute a state church, the jurisprudential writers of America understood the higher law of God as a foundation or a root of the principles of the common law. For example, Justice Joseph Story, referring specifically to the Christian heritage of the common law in an address in 1829, stated that "Christianity is a

part of the common law .... There never has been a period in which the common law did not recognize Christianity as lying at its foundations."[24] Thus, the common law would reflect Christian precepts, but it would vest only limited authority in the civil government.[25]

C. Legal Reasoning in the Common Law: Role of Analogy

The common law's approach to resolving new questions of law has typically been to reason by analogy to earlier cases in light of established principles. Bracton, the "Father of the Common Law,"[26] is credited with being "the first [in the history of the common law] to hit upon the idea of developing the law by the method of analogy."[27] The compelling principle in this method was a simple one: "[s]imilar facts should lead to similar decisions."[28] In the practice of Bracton's time, judges were not expected to adhere strictly to a single precedent; however, a line of earlier similar cases constituted persuasive authority of the "custom of the judges" and thus affected the outcome of a case being decided.[29] The use of analogy both ***530** supported the development of uniform rules of law and provided for equal treatment of individuals under the law.

II. Islamic Law Heritage

Islamic law derives from the Quran and from the life and sayings of Muhammed. *Sharia* is a term for Islamic law. Islamic writers define *"sharia"* as "[t]he [d]ivine [l]aw of Islam."[30]

"Sharia" means in Arabic "'a way to a watering place', and thus a path to be followed."[31] Although the term *sharia* has been used to refer to the Islamic system of jurisprudence as a whole, historically *sharia* has been used to refer specifically to the sources of Islamic law.[32]

A. One Jurisdiction in Islamic Law

Islamic law does not contain a concept of authority vested in two separate jurisdictions, one for duties to one's Creator and one for duties to a civil government. "The Western concept of the 'two kingdoms' of church and state has no counterpart in Islam."[33] Rather, Islam is a "complete code for living, combining the spiritual and the temporal, and seeking to regulate not only the individual's relationship with God, but all human social relationships."[34] As this section describes, Islam contains detailed rules for nearly every aspect of human life. From the time of Muhammed, *sharia* governed all human belief and conduct. "[Muhammed] founded a Moslem state of which he was the head. He administered all religious, political and social affairs. He never showed his companions any sign of separation of church and state."[35]

***531** In the texts of Islam and in the traditional practice of Islam, one finds an all-encompassing religious, political, and social system. Violations of duties to the Creator are also violations of the civil law. For example, apostasy, which the Quran forbids,[36] is punishable civilly as a crime; apostasy is included in the category of *hudud,* which consists of the most serious crimes, for which transgressors face the harshest penalties.[37]

The coverage of *sharia* is minutely detailed, as described by a scholar discussing the British experience with Islamic law:

> Traditionally, sharia law encompasses the full range of human behaviour, from criminal matters (including activities that would not be considered crimes in the modern West, such as adultery, homosexuality, apostasy or wearing the wrong clothes in public); to worship (including prayer, fasting, and pilgrimage); to details of sexual relations between a husband and wife; to business affairs; to family law (such as marriage, divorce, custody of children, and inheritance); to dietary regulations (mainly in determining whether meat is halal or not ... or in the

> prohibition of pork and alcohol); to clothing (particularly women's garb); to bodily matters (such as urination and defecation, depilation, the use of the toothbrush, purification after menstruation or sex); to international law (which is based on the law of jihad).[38]

This all-encompassing system of Islam is philosophically motivated by the concept of *tawhid,* or "unity."[39] On an individual level, this concept means that everything in an individual's life is to be part of an integrated whole, without compartmentalization.[40] On a societal level, this concept means that everything in a society is to be integrated.[41] On a political level, it means that the "ultimate unit of the body politic" is to be "the totality of the Islamic ***532** community, or the *ummah.*"[42] Thus, all Muslims everywhere are considered united. "The political ideal of a single Muslim government ... is based on the central metaphysical doctrine of unity."[43]

"Islam," in Arabic, means "surrender."[44] As interpreted, *"Islam"* means submission to Allah and thus submission to the law of Allah.[45] Thus, the role of an individual in Islam is to do his duty to serve Allah. Since Muhammed contemplated and established an Islamic state, and since there is no separation of jurisdictions in an Islamic state, the role of an individual in Islam would be to submit to and serve that Islamic state.

One modern Islamic scholar, in a chapter explaining "Why Muslims Need a Secular State," has depicted his struggle with the absence of the concept of separate jurisdictions in Islam. He begins his account with this statement: "In order to be a Muslim by conviction and free choice ... I need a secular state. By a secular state I mean ... one that does not claim or pretend to enforce Shari'a--the religious law of Islam ...."[46] Without a separation of jurisdictions, the outworking of the religious foundations of Islam grants a government unhampered authority to impose rules and exact penalties in every area of human life. "Nothing can escape the narrow meshes of its net."[47]

B. Sources of Islamic Law

There are four commonly accepted sources of Islamic law: (1) the Quran; (2) the Sunna (described below); (3) the consensus of Muslim juristic scholars *("ijma");* and (4) reasoning by analogy ("*qiyas*").[48] The first two sources, the Quran and the Sunna, are accepted by all schools of Muslim jurisprudence as texts.[49] The last two of these sources are not accepted in the same degree by all schools.[50] The various schools disagree on the weight of ***533** authority to be given to the sources other than the Quran and the Sunna.[51] The schools' areas of disagreement essentially center around how much credence to give to independent human reasoning on matters as to which the Quran and Sunna are silent.[52]

The Quran is the original source of Islamic law.[53] It is considered by Muslim jurists to be divinely given by Allah to Muhammed.[54] A verse in the Quran that is considered to be the self-identification of the Quran as the source of divine law states: "You judge between them by what Allah has made clear ...."[55] The Quran is not primarily a book of law; rather, the Quran provided "general rules and provisions, leaving elucidation and detailed judgments" to Muhammed.[56] A verse in the Quran that is considered a granting of authority and responsibility to Muhammed to interpret the Quran states: "[W]e have sent down to you the Message (the Quran) that you may explain clearly to men what is sent for them ...."[57]

The Sunna ("the trodden path") are the traditions attributed to Muhammed.[58] The Sunna are comprised of the verbal utterances of Muhammed (singular *"hadith,"* meaning "a saying," plural *"ahadith"),* and the acts of Muhammed (the *"Sira"*).[59] A verse in the Quran that is considered the identification of the Sunna as a source of law states: "So take what the Messenger gives to you,

and deny yourselves that which he withholds from you."[60] The *ahadith* have been recorded in a number of *hadith* collections, of which six collections are considered the most authoritative.[61] If there are discrepancies between a hadith and the Quran, the Quran prevails.[62] The *Sira* ("journey" through life, or biography) include stories of military expeditions of Muhammed and his companions, political treaties, assignments of officials, letters to foreign rulers, speeches and ***534** sermons of Muhammed, and verses of poetry commemorating events.[63] Thus, the Sunna constitutes a repository of the sayings attributed to Muhammed and of the life of Muhammed. Some scholars also acknowledge the "tacit assent" of Muhammed as a part of the Sunna.[64] Tacit assent means that a consensus with which Muhammed did not disagree was reached during Muhammed's lifetime.[65]

C. Legal Reasoning in Islamic Law: Role of "Personal Opinion"

The approach to resolving new questions of law in Islamic jurisprudence will vary with different decision-makers. For example, whether a decision-maker will reason by analogy depends upon the approach which that decision-maker adopts in regard to the use of "personal opinion" in interpreting the Quran and the Sunna. A verse in the Quran that has been identified as allowing for the use of personal opinion, at least by Muhammed, in interpreting the Quran states: "We have sent down to you (O Muhammad) the Book in truth that you might judge between men, as guided by Allah ...."[66] Muhammed and his "companions" used *ijtihad,* or "independent and informed opinion" on legal or theological issues, to resolve legal questions.[67] *Ijtihad* has been used by other jurists at times.[68]

Just after the death of Muhammed, certain of his "companions" inherited the responsibility for adjudicating legal questions.[69] The tension between those who recognized only the Quran and Sunna as sources and those who saw the need for independent reasoning produced, initially, two approaches, and later, the various schools, of jurisprudence.[70]

One approach to resolving new questions of law, represented by the Traditionalists, considered only the Quran and the Sunna as legitimate textual sources of law and would not consider "personal opinion" or attempt to resolve hypothetical questions. The other approach, represented by the "School of Personal Opinion," permitted interpretation of the Quran ***535** and the Sunna, including the use of analogy from precedents, to resolve legal questions, including hypothetical ones.[71]

Islamic jurisprudence, that is, legal reasoning and the totality of Islamic law together, are generally known as *fiqh* ("understanding").[72] Some scholars define *fiqh* as the body of legal provisions in Islamic jurisprudence.[73] Other scholars report that *fiqh* is both: (1) deducing and applying the principles of *sharia* and (2) the sum of the deductions made by prior jurists.[74] Yet another view is that *fiqh* refers more to a discussion among jurisprudential thinkers than to a consensus. As reported by one scholar, "books of fiqh do not provide firm rules .... Instead, they showcase a scholarly discussion of multiple, often contradictory, views."[75] Consensus *(ijma)* and analogy *(qiyas)* are two of the methods of *fiqh*.[76] However, the methods of reasoning in Islamic jurisprudence are not fully known, as one writer observes: "legal logic in Islam has not yet been analyzed, and our knowledge of the methods of legal reasoning subsumed under what is commonly known as *qiyas* [analogy] is still rudimentary ...."[77]

In Islamic legal reasoning, interpretation of the Quran *("tafsir")* ordinarily must be done by a qualified individual.[78] The qualifications for practicing *tafsir* are that the individual must (1) be an accomplished classical Arabic linguist, (2) thoroughly understand Islam's message, (3) have the ability to perceive meanings within the Qur'an, along with general principles, and (4) know and take into consideration the traditions of Muhammad, including the *hadith*.[79] In other words, a judge must be trained in the religion of Islam.

*536 *D. The Fatwa*

In a case in which an issue is not covered by the *fiqh* literature, a *fatwa* may be requested.[80] A *fatwa* is "[a] legal ruling or opinion given by a recognized authority on Islamic law."[81] More specifically a *fatwa* is an "[a]uthoritative legal opinion given by a *mufti* (legal scholar) in response to a question posed by an individual or a court of law."[82] A *fatwa* is "nonbinding."[83] However, it may be morally binding if the recipient agrees with the logic used in the opinion.[84] The reasoning in a *fatwa* is based on the Quran, the Sunna, and *ijtihad* (independent reasoning).[85] Because it has characteristics of both law and theology, a *fatwa* can aptly be described as a "legal/theological opinion[]."[86] *Fatawa* may be published in writing.[87] They appear on various websites, and they are available to *sharia* tribunals.[88]

III. Common Law Heritage: Principle of Uniformity

The common law of England, from its earliest stages, was driven by a principle that rules of law should be uniform--that is, consistent across geographic boundaries and cultures, at least within England. Around 893 A.D., Alfred the Great collected the law codes from the three Christian Saxon kingdoms of England, namely Kent, Mercia and Wessex, and ***537** compiled them into the Doom Book.[89] The Doom Book[90] was "a book or code said to have been compiled under the direction of Alfred, *for the general use of the whole kingdom of England* ...."[91]

During the period from the Norman conquest (1066) to the reign of Edward II (1307-1327), "English law for the first time became national--no longer the law of Essex or Mercia or the Danelaw, but the *'law and custom of the realm'* .... "[92] Such a change--a movement from the predominance of local law to the predominance of national law--indicates that the law must have developed some measure of uniformity throughout the "realm" of England.

A. Systematic Compilations Under the Common Law

During this period, English law was compiled in a systematic way. The first systematic compilation was the *Treatise on the Laws and Customs of the Kingdom of England* (c. 1188). This treatise, commonly attributed to Glanville,[93] is based on a collection of eighty writs.[94] The fact that the author understood the importance of collecting judicial materials in a single work demonstrates that, in the development of the law of England during this period, there was a drive toward uniform national laws. Furthermore, the ***538** fact that the treatise focused on the writs, which defined "particular types of remedies for particular types of wrongs,"[95] also demonstrates a concern with consistency in the application of laws.

In 1215, the English barons compelled King John to sign the Magna Carta, clause 39 of which refers to, and presumes the existence of, a law that is extant uniformly, by requiring that no "free man" could be deprived of liberty or property except by the judgment of his peers or by the "law of the land."[96] Evidently, the phrase "law of the land" contemplated a system of uniform standards by which judgments were to be made--as contrasted to incidental judgments made by individuals without reference to uniform standards. The Magna Carta thus encapsulated a recognition that justice could not be had in an abstract sense, but that it had to be guaranteed by "specific principles and rules."[97] This very concept of the rule of law implicit in the Magna Carta's guarantees of liberty rests on an assumption that a degree of uniformity exists in the legal system, so that the rules can be consistently applied.

By 1256, Henry de Bracton had written his treatise *On the Laws and Customs of England*. In Bracton's treatise, five hundred decided cases are referenced,[98] and these were culled from Bracton's collection of about two thousand cases.[99] Bracton summarized the latter cases in digest form in his Note Book.[100] Bracton did not use the term "precedent," and "did not espouse

a doctrine of precedent"[101] in the modern sense of binding precedent. He taught that in deciding individual cases "one must judge not by examples but by reasons."[102] However, the existence of his monumental collection demonstrates a great deal of respect for the value of earlier cases to inform the reasons. Certainly, neither the treatise nor the digests purport to be of mere historical interest; their availability allowed for scholars and practitioners of the law to continue to build a uniform system.

Bracton is famous for his assertion that "the king ... ought not to be under man but under God and the Law," clarified in the same work by his assertion that, "as a vicar of God [the king] ought to be under the ***539** Law ...."[103] These statements show a conviction that no human being was above the law; the statements also tend to show a conviction that the law is not to be changed arbitrarily by one person and thus the statements support the understanding that the common law strove for uniformity in the sense of predictability. Furthermore, the fact that Bracton championed the use of analogy to decide new cases supported the development of uniform rules of law.

During the period between 1628 and 1644, Sir Edward Coke published his *Institutes of the Lawes of England,* which, together with his thirteen volumes of *Reports* of cases, "summed up the legal learning of his time."[104] The continued practice of compiling reports of cases showed continued respect for precedent, a practice which permitted uniformity of rules of law, with fairness of application of those uniform rules in individual cases.

After 1689, significant changes in English law which amounted to "transformation" occurred--among others, judges no longer served at the pleasure of the king, but became independent of the monarch and were given life tenure; "the common law became the constitutional law of England;" and a doctrine of binding precedent, in the modern sense of the word, became prevalent.[105] The continued development of the rule of law as opposed to the rule by the ruler, the recognition of a body of law known as the common law, and the strengthening of the respect for precedent, all contributed to a continued drive toward a uniform system of laws.

B. Respect for Precedent Under the Common Law

The common law, in its pursuit of uniformity, developed a system of written reports of decisions. Through these written reports, recorded precedent became and remains the cornerstone of the stability of the common law. Blackstone, in describing the state of the common law in his time, declared that the decisions "of courts were held in the highest regard;"[106] and that the written decisions of courts were preserved in volumes kept at the courts and "handed out to public view in the numerous volumes of *reports* which furnish the lawyer's library."[107] He stated that a report of a decision included the arguments on both sides and "the reasons the court gave for their judgment" taken in notes by "persons present at the ***540** determination."[108] He stated that these written opinions were searched by the judges when there were "matters of consequence and nicety" to be decided.[109] In summary, Blackstone described the English reporter system as follows: "[these] decisions are preserved among our public records, explained in our reports, and digested for general use in the authoritative writings of the venerable sages of the law."[110]

Blackstone summarized the common law's deep respect for precedent as follows:

> [F]or it is an established rule to abide by former precedents, where the same points come again in litigation; as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion; as also because the law in that case being solemnly and declaredly determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule; which it is not in the breast of any subsequent judge to alter or vary from, according to his private sentiments: he being sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one.[111]

Blackstone acknowledged that local customs that varied from the general rule of law were permitted as lawful after those customs were validated by an act of Parliament.[112] However, he pointed out that those customs had to be "reasonable" and "warranted by authority of law,"[113] a standard which acted as a check on local custom so that it did not violate the law of the land.

***541** The common law system has long recognized the right to appeal trial court decisions to appellate courts. The very existence of appellate courts in a hierarchy of courts supports the view that the common law has a drive toward uniformity. The appellate courts in the common law system adhere to precedent. Each appellate court has responsibility for hearing appeals from a number of trial courts within its jurisdiction. And each appellate court is responsible for maintaining consistency in the rules of law within its jurisdiction.

IV. Islamic Law Examined Under Principle of Uniformity

Because Islamic scholars agree that the Quran is the original authoritative source for sharia law,[114] one might expect in theory that some degree of uniformity would inhere in decisions under *sharia*. However, the Quran contains general rules that must be interpreted for a Muslim to know what is permitted conduct in a particular instance. The Sunna, although voluminous, do not address every case in which there is a question as to what is permitted.

A. Different Schools of Jurisprudence Within Islamic Law

Islamic law developed through a number of different schools of jurisprudence.[115] The major schools of jurisprudence that survive today are the four Sunni schools of Hanafi, Maliki, Shafii, and Hanbali, and the Shia school of Jafari.[116] The Sunni schools have the reputation for being the "mainstream of Islamic theology and jurisprudence."[117] The differences between the two original approaches--Traditionalist and Personal Opinion-- continue to manifest themselves in the juristic schools. Although the Sunni and Shiite schools do not literally line up with the two earlier approaches in every respect, the Shiite branch has tended to adopt the "personal opinion" approach more readily.[118]

***542** The various schools of Islamic jurisprudence have differed in "the value they [have] attached to analogy and in their definition of consensus."[119] The consensus of Muslim scholars *("ijma")* has been particularly well regarded in certain schools of Islamic jurisprudence.[120] Reasoning by analogy *("qiyas"* or "to judge by comparing with a thing") has been more prevalent in certain other schools.[121] Most Islamic jurists of the Sunni schools acknowledge analogy as a source of law, "the champions being the Hanafis, the least enthusiastic being the Hanbalis, who use it as a last resort, while the Malikis and Shafiis steer a middle course."[122] More specifically, the Hanafi school "emphasizes analytical reasoning in legal interpretation, but stresses that the Quran is the highest legal authority, followed by the Hadith ...."[123] The Maliki school agrees "that the Quran is the highest legal authority but argues that the next level of authority is the Sunna, which includes not only the Hadith but also the fatawa[] (legal/theological opinions) of the early Caliphs, and also looks to the practice of the Muslim community of Medina."[124] The Shafii school "agrees that the Quran, the Sunna, and consensus of Muslim scholars, in that order, are the main authorities of law, but in cases in which these authorities are unclear, reasoning by analogy should prevail."[125] The Hanbali school "contends that where the Quran and the Hadith are silent, a consensus of Muslim scholars should govern."[126] The Shiite Jafari school "emphasizes the Quran and the Hadith as the most authoritative sources of law but places greater emphasis on the use of independent reason where the Quran and the Hadith are silent."[127]

Even among schools that recognize consensus as a source of legal authority, Muslim jurists disagree as to what group of people is or was qualified to reach consensus on a question of law. Some jurists accept only the consensus of Imams (community

leaders); others accept consensus of their own community, which must reach unanimity; others define ***543** consensus as the agreement of the "Companions" of Muhammed or the "Followers" of Muhammed during the two generations after his life.[128] The orthodox view apparently is that consensus is "the general agreement of all scholars of the Islamic community living in a certain period after the era of [Muhammed's lifetime], without the requirement that this agreement is unanimous."[129]

Thus, the various schools of Islamic jurisprudence do not agree on the emphasis that should be given to the four accepted sources of law. There does not appear to be a single method to determine what constitutes reliable precedent. Without a comprehensive method for addressing new cases in the light of established precedent, Islam does not strive toward uniformity in the sense that the common law system does.

At first glance, it might seem that the concepts of *ummah* and *fiqh* would drive Islamic law toward a measure of uniformity. However, the concept of *ummah* does not necessarily lead to uniformity in the application of laws. *Ummah* contemplates an all-encompassing religious, social, and legal system. Such a system need not operate by the rule of law which would tend toward consistency of application. Furthermore, the concept of *fiqh* does not refer to a uniform body of law in the sense of the common law tradition. *Fiqh* tolerates a great deal of variance, depending on the decision-maker's views as to the use of analogy and consensus.

B. Absence of Binding Precedent in Islamic Law

A *fatwa* is not a precedent in the sense that a common law court's opinion is a precedent.[130] It is not binding like a common law court's opinion is binding in its jurisdiction. The Islamic system of law does not have a comprehensive collection of *fatawa* in recorded form comparable to the detailed and reputable reporter system of the common law. Furthermore, the collections of Muhammed's sayings, known as *ahadith,* do not constitute in the sense of the common law collections of legal cases which lawyers and judges can use for analogy.[131] Even if an individual hadith gives some measure of guidance as to how to resolve a problem, it does not typically contain a detailed description of facts, a statement of the issue, and reasoning to a conclusion. Thus, the availability of precedent to all legal scholars--which is essential to the common law's consistency--is missing in Islamic jurisprudence. Therefore, aside from the obligation to ***544** adhere to the Quran and Sunna, consistency of application is evidently not contemplated in Islamic jurisprudence.

The different schools of Islamic jurisprudence acknowledge analogy in varying degrees; some schools find analogy to be highly suspect.[132] This is an indicator that analogy, which tends toward adherence to precedent and uniformity, is not nearly as prevalent or respected in Islamic jurisprudence as it is under the common law jurisprudence. "The 'human component' [of *qiyas* (analogy), *igma* (consensus), and *ijtihad* (independent and informed opinion)] is where much of the varying interpretation and disagreement arises amongst Islamic scholars, and what has caused Shari'a law to vary widely among Islamic communities."[133]

Islamic jurisprudence does not recognize a process for appeal of decisions made by Imams or Islamic tribunals. In sum, "there is no supervisory authority in Islamic law."[134] Without oversight by a court with higher authority, imams or tribunals are not bound to decide cases with similar facts in a similar way. The consistency that derives from a system with appellate review is missing in Islamic jurisprudence.

Some of the procedural rules in the application of Islamic law are not clear. For example, one scholar reports that there is "little clarity and even less uniformity in the 'Islamic' rules of criminal procedure that modern states refer to and apply ...."[135] Furthermore, the scholar asserts that "criminal due process from an Islamic perspective" must be "identified and articulated."[136] Without clarity, consistency is not possible.

C. Variance Among Communities in Interpretations of Islamic Law

In practice, interpretations of the principles of Islamic law can vary widely from country to country and from community to community. These differences can be hidden behind the privacy of proceedings in arbitration tribunals. Accordingly, Islamic arbitration tribunals that operate in the United States can produce decisions that differ not only from United States law, but also from the law applied by other Islamic arbitration tribunals. This variance within Islamic jurisprudence could present a virtually insurmountable problem to an American court when a party asks the court to enforce or overrule an Islamic arbitration decision, as is explained below:

> ***545** Even within Muslim communities in Western nations, the differences between interpretations of Islamic law can be quite vast. Because each community is comprised of diverse groups of people from many different countries and backgrounds, *opinions on each given point of law can vary widely. Individuals can choose between "a healthy diversity of ideological perspectives" when seeking the guidance of imams or other community leaders on family law questions. As a result, private arbitration of similar issues can end up with vastly different results.* Western courts, on the other hand, strive for a certain amount of predictability in the law as it is easier and more efficient to enforce a law that is static than one that can change at a moment's notice. This seeming dichotomy between a community diverse in belief and practice and a legal system seeking consistency in its decision-making leads to constant struggles within U.S. and Canadian courts.[137]

Such differences in interpretation tend to drive Islamic law away from uniformity and predictability. Because of these areas of disagreement, "an internal form of legal pluralism exists within Shari'a law."[138] One observation, made during a discussion about normative authority in Islamic law, is that "[u]ltimately, however, *it is for Muslims to decide*--individually and collectively, according to what they find authoritative--what the religion commands, urges, discourages, or prohibits."[139]

D. Abrogation Doctrine Within Islamic Law

Finally, abrogation, a core doctrine of Islam, guarantees a level of internal inconsistency within Islamic law. The doctrine provides that later verses of the Quran "abrogate" earlier verses where the verses are in conflict.[140] "By these means, jurists were able to solve some of the contradictions in the Quranic precepts, the later revelations abrogating the earlier."[141] For example, the Quran contains contradictory instructions as to how Muslims are to relate to people who do not accept Allah. In one verse, it advises toleration: "And have patience with what they say, and leave them ***546** with noble (dignity)."[142] In a later verse, it advises violent acts against them: "I will bring about terror into the hearts of the disbelievers: So you strike above their necks and hit hard over all of their fingertips and toes."[143] The later verses of the Quran, written during the Mecca period of Muhammed's life, tend to be "more legalistic and harsh" than the earlier verses, written during the Medina period.[144]

V. Common Law Heritage: Principle of Equality

The common law, from its earliest development, articulated a principle of equality of individuals under the law. For example, Alfred the Great's command, c. 893, that one "Doom [(Judge)] very evenly! Do not doom one doom to the rich; another to the poor! Nor doom one doom to your friend; another to your foe!"[145] demonstrates that Alfred believed in and required equal treatment of individuals in judgment.

The Magna Carta defined and established "liberties," at least as to all "freemen,"[146] stating that "no freeman shall be taken, or imprisoned, or [dispossessed of property], or outlawed, or banished, or in any way destroyed ... unless by the lawful judgment

of his peers, or by the law of the land."[147] The use of the word "peers," although it referred to the freeman's equals in rank, provided at least the seed of equal treatment of individuals under the law. Further, the Magna Carta contained language that spoke generously of guarantees of rights to a broader group of people, stating "we will not deny to *any* man, either justice or right."[148]

The fact that the rights in the Magna Carta were not enforced on behalf of all persons in the English legal system for significant periods of time does not diminish the fact that the Magna Carta had articulated and recognized ***547** those rights. Once the principle of equality had been recognized, that principle could eventually become the standard for the entire society.

The spirit of equality in the Magna Carta had a profound influence on the history of American law. As one writer noted, "[t]he words of the Magna Carta have inspired democratic movements the world over and formed a basis for countless constitutions - most notably the one crafted by another group of king-defying aristocrats over a long and sweaty Philadelphia summer."[149]

A. Unalienable Rights in American Common Law: Biblical Foundation

In early American jurisprudence, a biblical understanding of human rights undergirded the common law system's commitment to equality of individuals. For example, Jesse Root, writing on "The Common Law of Connecticut," made the following statement:

> [B]y [scripture], we are taught dignity, the character, the rights and duties of man .... [The scripture] is the only solid basis of our civil constitutional privileges .... [T]he decisions of the courts of justice serve to declare and illustrate the principles of [the law of nature].[150]

Root, in referring to the scriptural basis for "the rights and duties of man," likely was aware of the account of Moses giving instruction to the judges of Israel, and summarizing his instructions with this command: "[y]ou shall not show partiality in judgment; you shall hear the small as well as the great; ... for the judgment is God's."[151] Root may also have been aware that, in scripture, the principle of no partiality in judgment applied not only to the citizens of Israel but also to the foreigners who were in Israel, as is seen in this command to the nation of Israel: "You shall have the same law for the stranger and for one from your own country ...."[152]

As the new nation of the United States of America was birthed, the Declaration of Independence made clear that the equality principle articulated in the Magna Carta on behalf of "freemen" truly applied to "all men." The Declaration made a strong statement of the equality principle: ***548** "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator, with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."[153] The Declaration was neither a legal decision in the sense of case law, nor a legal enactment in the sense of statutory law. However, its uncompromising mindset of commitment to individual rights was a seed bed for American law.

As with the Magna Carta, the fact that the rights in the Declaration of Independence were not enforced on behalf of all persons in the United States for significant periods of time does not diminish the fact that the Declaration had articulated and recognized those rights. It was the words of the Declaration, along with those of the Constitution, to which the leaders of the American civil rights movement looked, as they held the conscience of the United States to the fire in their quest for equal treatment under the law. Martin Luther King Jr. spoke of the commitment to equality that was made by the writers of America's founding documents: "[w]hen the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which *every* American was to fall heir."[154]

Scholars demonstrated that the concept of individual rights in the Declaration grew out of a biblical understanding of the nature of God and the nature of human beings.[155] The fact that the Declaration states that the rights of individuals are "endowed by

their Creator" demonstrates that the drafters of the Declaration believed that the source of those rights was the Creator, and that the Creator valued human beings enough to "endow" human beings with "rights." Moreover, the fact that the Declaration describes these rights as "unalienable" shows that its drafters believed that these rights could not be separated from the person.

These two concepts of "endowment" and "unalienable" combine to produce an understanding of humankind that is consistent with the ***549** description in Genesis 1 of human beings made in the "image" of God and entrusted with the task of taking "dominion" over the earth.[156] This understanding of human nature is the source of legal equality in American law: "America was founded on 'unalienable rights'--those rights that a man may not unconditionally sell, trade, barter, or transfer without denying the image of God in himself."[157] It follows that "to deny these rights in a man is to deny that he is a human being."[158]

The biblical understanding of the nature of human beings is that *every* human being bears the image of God. "Men share that image [of God] and [God-given] authority [over the earth] in common."[159] Thus, all men are created equal. And it follows that "no man is higher or better than any other man. No man is lord over any other man."[160] Thus, the biblical view of human beings undergirds the principle of equal rights articulated in the Declaration of Independence.

Daniel Webster--a United States congressman, senator, and secretary of state-- spoke of the connection between biblical thinking and the understanding of equality of individuals in civil society: "it is not to be doubted, that to free and universal reading of the Bible, [at the time of the founding of the United States] men were much indebted for right views of civil liberty .... The Bible is ... a book, which teaches man his own individual responsibility, his own dignity, and his equality with his fellow man."[161]

The mindset of commitment to individual rights found in the Declaration was ingrained into the American Constitution. The requirement for separation of governmental powers in Articles I, II, and III created a structure that would prevent governmental encroachment on individual rights.[162] James Madison explained that the "separate and distinct exercise of the different powers of government" is "to a certain extent ... admitted on all hands to be essential to the preservation of liberty ...."[163] The amendments to the Constitution delineated specific individual rights that were to be accorded to all "persons" under the law. For example, the ***550** language of the 5th Amendment guarantees that "no person shall be deprived of life, liberty, or property without due process of law;"[164] and the language of the 14th Amendment makes this guarantee applicable to the states: "nor shall any State deprive any person of life, liberty, or property, without due process of law."[165]

B. No Special Privileges under Common Law of United States

In the early development of the legal system of the United States, there was a profound distrust of any aspect of the English common law which accorded rights to some, but denied the same rights to others. "The major vices of the English common law were the concessions that it had made to the privileged classes, such as the royalty and the feudal lords."[166] To make the principle of equality a reality, the American legal system could not allow special privileges to classes of people. Jesse Root "found such special privileges inapplicable in America .... [H]e had faith that the common law could be cleansed of [the partiality given to privileged classes] by America's commitment to *its* Magna Carta, the Holy Scriptures."[167]

Root may have had in mind the biblical account of Jehoshaphat's instructions to the judges of the land of Judah: "Take heed to what you are doing, for you do not judge for man but for the Lord, who is with you in the judgment. Now therefore, let the fear of the Lord be upon you: take care and do it, for there is no iniquity with the Lord our God, *no partiality,* nor taking of bribes."[168]

One of the prominent features of American constitutional law was the enactment of clauses forbidding titles of nobility and special privileges.[169] The United States Constitution provides: "no title of nobility shall be granted by the United States."[170] A number of early state constitutions contained similar provisions.[171] The prohibition of such special privileges ***551** has been an

essential part of the principle of equality in the American common law system.[172] "The antithesis of equality, or commonality, among the people *of any* nation is the recognition of an elite class of citizens."[173]

The principles of uniformity and equality are intertwined and interdependent in the American legal system. There must be equality of treatment under the law in order for the law to be uniform. And there must be uniformity of rules of law so that there are no privileged classes of people.

VI. Islamic Law Examined Under Principle of Equality

Certain inequalities of individuals are built in to the Islamic system of law. The abhorrence of privileged classes, which was ingrained into the American constitution, is missing in Islamic law. Islamic law historically divided people into classes--Muslims and non-Muslims--and treated the classes differently. It also has traditionally treated men and women differently under the law.

A. Privileged Classes Under Islamic Law

In societies ruled by Islamic law, non-Muslims have been treated as "second-class citizens with few rights."[174] When Muslims conquered a society, they accorded the status of *dhimmi* to non-Muslims who were not killed in the conquest and who did not convert to Islam.[175] *Dhimmi* is defined as a "non-Muslim under protection of Muslim law."[176] The ruling Muslims required adult male dhimmis to pay a tax on their income and ***552** sometimes on their land.[177] Dhimmis often were restricted as to their dress, occupation, and residence.[178]

Christians who were allowed to keep their religious identity were severely restricted in their expression of that identity. For example, in the 7th century Pact of Umar, the Syrian Christians who had been conquered agreed to the following restrictions as their terms of peace with the Caliph Umar:

> We shall not build, in our cities or in their neighborhood, new monasteries, Churches, convents, or monks' cells, nor shall we repair, by day or by night, such of them as fall in ruins or are situated in the quarters of the Muslims .... We shall not manifest our religion publicly nor convert anyone to it. We shall not prevent any of our kin from entering Islam if they wish it .... We shall not display our crosses or our books in the roads or markets of the Muslims. We shall use only clappers in our churches very softly ....[179]

In the same "pact," the Syrian Christians agreed not to ride horses or to bear arms: "We shall not mount on saddles, nor shall we gird swords nor bear any kind of arms nor carry them on our persons."[180] Also, in that pact, the Christians agreed, "We shall show respect toward the Muslims, and we shall rise from our seats when they wish to sit."[181] Thus, in a Muslim society, Muslims were a privileged class and non-Muslims were an underclass.[182]

B. Inequality Between Men and Women in Islamic Law

Under *sharia,* women do not have the same rights as men, particularly in matters pertaining to marriage and family. For example, *sharia* law permits a man to have more than one wife.[183] It does not permit a woman to have more than one husband. In contemporary *fatawa* addressing the question ***553** whether such polygamy is legal, some Muslim religious authorities answer that the law of the land does not permit polygamy, but assert that it is lawful under Islam, while other Muslim religious authorities simply assert that polygamy is lawful under Islam.[184]

Within the marriage relationship, *sharia* law sanctions the striking of a married woman by her husband, and, in fact, prescribes such conduct. The Quran instructs husbands as follows:

> Men are the protectors and maintainers of women because Allah has given one more strength than the other and because they support them from their means. Therefore, righteous women are devoutly obedient, and guard in [the husband's] absence what Allah would have them guard. As to those [wives] on whose part you fear arrogance - [first] caution them; [then if they persist], refuse to share their beds; and [finally], beat them.[185]

Nothing in the Quran prescribes such conduct toward men. This difference in status is far from a position of equality under the law.

Furthermore, under *sharia,* women have decidedly weaker rights than do men in regard to divorce. The Quran gives married men a right to divorce their wives.[186] Nothing in the Quran gives married women the same right. In the Islamic law on divorce, in keeping with the Quran's provision, the husband has a unilateral right to obtain a divorce.[187] A man may divorce his wife by a process known as *talaq,* in which the man may simply state three times, either three times in a row or three times over a specified period, that he is divorcing his wife.[188] A woman, in order to obtain a divorce, ordinarily must go through a much more involved process known as *tafriq,* in which she must petition a judge and show grounds for divorce.[189] A wife generally may exercise *talaq* only if her husband has delegated to her the right to do so in their marriage contract.[190]

Sharia law also contains built-in inequality as to the inheritance rights of women. The Quran provides that female children are to inherit only half as much as male children: "Allah commands you regarding (the inheritance ***554** for) your children. To the male, a portion equal to that of two females ...."[191] Under Islamic law, a widow's rights to a monetary share of a deceased husband's estate are insubstantial. The set of rules is draconian and complex:

> Islamic law gives widows a slim fraction of the entire estate. Because the Qur'an limits any person from devising more than one-third of his estate, the intestacy distribution scheme affects every estate under Islamic law. Just as critical, Sunni law, which governs ninety percent of the world's Muslims, forbids any named heir, including wives, from taking under a will, leaving only intestate distribution for wives. The Qur'an provides that the wife may never inherit more than one-fourth of the estate. Her small share is slashed in half to one-eighth of the estate if her deceased husband leaves any children, whether in common with the surviving spouse or not. In the event of multiple wives, the wife's share is split evenly among the wives, instead of each receiving her own share as a wife.[192]

In Islamic law, the rules concerning witness testimony discriminate between men and women. For example, a woman's testimony is worth half that of a man's, according to the following instructions from the Quran: "And get two witnesses out of your own men, and if two men are not there then a man and two women ... so that if one makes a mistake, the other can remind her."[193] Apparently, a man is presumed to be a competent witness, whereas a woman is not.

The British experience with Islamic law has exposed some of the inequalities between men and women which are inherent in the Islamic legal system. This exposure has produced commentary arguing that Islamic law, as to the status of women, cannot be incorporated into British law without denying fundamental rights. For example:

> Since Islamic law--regardless of what its apologists argue--discriminates against women in and out of the married state, it ***555** can *never* be in conformity with British legislation. If Muslim women here are British citizens, then they are entitled to exactly the same freedoms and protections as other British women.[194]

This commentary concludes: "There is no reason why religion should trump citizenship in the legal area."[195]

C. Absence of Unalienable Rights Theory in Islamic Law

The concept of humans made in the image of God, which has been seen as the fundamental basis for the recognition of the equality of individuals under the common law system, is not fundamental to Islamic law. The dominant theology of Islam holds to the doctrine that there is a "total and absolute *difference* between the Creator and the creature from any and every point of view."[196] Although one verse of the Quran says that Allah "breathed into" Adam a soul,[197] that concept has not carried over into the Islamic law. Writers who are sympathetic with the Sufi approach of Islam emphasize that a tradition of Muhammed indicates that Allah "created Adam upon His own form."[198] However, the Sufi approach has not developed a school of legal jurisprudence; it likely has not influenced the rules of Islamic law in a significant way.

Coupled with the view of human beings as totally different from their creator is the view that human beings are the slaves of their Creator. Throughout the Quran, Allah refers to various human beings as "my slave."[199]

***556** The understanding of the relationship between the creator and human beings--as totally different types of beings and as having the relationship of master to slave--lacks an assumption of the inherent value in each human being. Without an assumption as to the value of each human being, there can be no doctrine of unalienable rights. Without a doctrine of unalienable rights, there is no imprimatur for equal treatment of individuals in the Islamic legal system. The government thus is unrestricted in its ability to create different classes of people; it may deny rights to some classes which it affords to other classes, without limitation.

VII. Conclusions: Effects of Introducing Islamic Law Into American Courts

Both the common law system and the system of Islamic law have strong and significant religious roots. The common law system is characterized by written, binding precedent, which produces a large measure of consistency and predictability. In contrast, the system of Islamic law is characterized by the absence of binding precedent and, therefore, cannot afford consistency and predictability to those under its system. The common law system has been guided by a principle of equality in the sense that it avoids the creation of privileged classes and strives for equal treatment under the law. In contrast, the system of Islamic law has allowed for, and encouraged the creation of, privileged classes, and it defines the rights of those classes in blatantly unequal terms.

Islamic law may enter into the American court system through a number of avenues. Those avenues include: rules of comity recognizing foreign judgments;[200] choice of law rules recognizing foreign law;[201] the application of neutral principles of law;[202] the assertion of a so-called "cultural ***557** defense;"[203] decisions of private arbitration tribunals;[204] and free exercise and establishment clause claims.[205] In each of these avenues, there is the potential for United States courts to give way to rules or principles which are contrary to the common law tradition. As the judges of the United States consider claims in which parties seek to have Islamic law applied, they should be aware that stark incongruities will arise, and, in some instances, fundamental rights will be denied, if courts attempt to integrate aspects of the Islamic system of law into the common law system of the United States.

Footnotes

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1 By uniformity, I refer to the development of the common law as a system in which there is a certain level of internal consistency and in which those under the law have notice of what the law requires because it does not change arbitrarily. This definition of uniformity takes into account, however, the historic ability of the common law to adapt to new circumstances without abandoning its key values and its foundations. By equality, I refer to the commitment within the common law to treating individuals equally under the rules of law without according special privileges to classes of people. The common law has not always practiced these principles perfectly, but it has developed and grown in these principles for centuries. In the discussion of these principles, the article will refer to the Bible and to writings which are biblically informed. In the discussion of Islamic law, the article will refer to the Quran and to writings which are informed by the Quran.

2 The tracing of the biblical influence on the common law has been described in detail by scholars to whom I am indebted. *See, e.g.*, Gary Amos, Defending the Declaration: How the Bible and Christianity Influenced the Writing of the Declaration of Independence (1989); Harold J. Berman, Law and Revolution I, at 165 (1983) (referring to the "religious dimension" of the Western legal tradition); Herbert W. Titus, God, Man, and Law: The Biblical Principles (1994) [hereinafter God, Man, and Law]; John C. H. Wu, Fountain of Justice (1959); Herbert W. Titus, *God's Revelation: The Foundation of the Common Law,* 4 Regent U. L. Rev. 1 (1994).

3 Calvin's Case, 77 Eng. Rep. 377 (KB. 1608).

4 Wu, *supra* note 2, at 93.

5 *Id.* at 128.

6 God, Man, and Law, *supra* note 2, at 41.

7 1 William Blackstone, Commentaries *43.

8 *Id.* at *39.

9 *Id.*

10 *Id* at *40 (emphasis added).

11 *Id.* at *42 (emphasis added).

12 *Id.* at *42.

13 Blackstone, *supra* note 7, at *41. Blackstone explained that the law of revelation was "really a part of the original law of nature," but that it is "expressly declared so to be by God Himself [in the scriptures]." *Id.* at *40, *42. He thus distinguished between "natural law," that is, the "moral system framed by ethical writers" and which is arrived at "by the assistance of human reason," and the "revealed law," which is "the law of nature expressly declared so to be by God Himself." *Id.* at *40, *42.

14 Declaration of Independence, para. 1 (U.S. 1776).

15 Herbert W. Titus & Gerald R. Thompson, America's Heritage: Constitutional Liberty 6 (2006):
The 'laws of nature's God,' while not the exact term used by Blackstone parallels what he called the revealed or divine law. God had not only established His laws in the created universe, He had spoken those very laws in the Holy Bible. Therefore, the phrase 'the laws of nature and nature's God' was a most convenient term to refer to the laws of God in the created order and in God's word. Those who claim otherwise must show that the Declaration used the phrase in a novel way, for Jefferson, Adams and other Framers consistently claimed that the Declaration contained no new ideas.

16 Jesse Root, The Origin of Government and Laws in Connecticut, 1798, *reprinted in* The Legal Mind in America 33, cited by God, Man, and Law, *supra* note 2, at 41.

17 God, Man, and Law, *supra* note 2, at 41.

18 Madison, for example, asserted that "'religion, or the duty we owe to our Creator and the manner of discharging it, can only be directed by reason and conviction, not by force or violence.'" James Madison, Memorial and Remonstrance Against Religious Assessments (1785) (quoting Virginia Declaration of Rights, art. 16).

19 In so doing, the Framers instituted a relationship between church and magistrate contemplated by John Locke. "[T]he instruments of force which belong to another jurisdiction [the state], and do ill become a churchman's hands. Let [the church] not call in the magistrate's authority to the aid of their eloquence, or learning ...." John Locke, *Four Letters Concerning Toleration,* 5 The Works 23 (1689), oll.libertyfund.org/quotes/498.

20 U.S. Const. amend. I.

21 *Luke* 20:25 (New King James). *See also* God, Man, and Law, *supra* note 2, at 64.

22 Berman, *supra* note 2, at 269.

23 *Id.* at 292.

24 God, Man, and Law, *supra* note 2, at 38.

25 The absence of any civil penalty for idolatry is one illustration of the limited jurisdiction of the civil government in the common law system. Although the scripture in Deuteronomy 17 gave the Old Testament nation of Israel authority to execute those guilty of idolatry, the biblically based principle of jurisdiction inherent in the common law does not give the civil government of other nations any such authority.

26 Wu, supra note 2, at 71.

27 *Id.* at 72.

28 *Id.*

29 Harold J. Berman, Law and Revolution II 273 (2003).

30 Jamal J. Nasir, The Islamic Law of Personal Status 351 (Mark S. W. Hoyle ed. 2d ed. 1990). Various spellings are seen in the authorities on Islamic law, including *shariah, shari'ah, sharia;* in this article the spelling *"sharia"* will be used in text; other spellings will be used in quotations, following the spellings used in the original sources.

31 Maria Reiss, *The Materialization of Legal Pluralism in Britain: Why Shari'a Council Decisions Should Be Non-Binding,* 26 Ariz. J. Int'l & Comp. L. 739, 742 (2009).

32 *See, e.g.,* Mona Rafeeq, Comment, *Rethinking Islamic Law Arbitration Tribunals: Are They Compatible with Traditional American Notions of Justice?,* 28 Wis. Int'l L.J. 108, 116-17, n.60, 61 (2010). In this article, the terms "Islamic law" and *"sharia"* will both be used; *"sharia"* will refer to specific rules from the Quran, the original source for Islamic law.

33 Brief for Foundation for Moral Law et al. as Amici Curiae supporting Petitioners, Awad v. Ziriax, 2011 WL 1461738 (C.A.10), at *12 [hereinafter *Awad* Brief].

34 Nasir, *supra* note 30, at 1.

35 Ibn Mohamad Jawad Chirri, Inquiries About Islam 167 (1965).

36 Sura 2:83 (Syed Vickar Ahamed trans., 2007) ("[Y]ou will worship no one but Allah ....").

37 Sadiq Reza, *Due Process in Islamic Criminal Law,* 46 Geo. Wash. Int'l L. Rev. 1, 5 (2013). The hudud category of crimes includes apostasy, adultery or fornication, theft, and wine drinking; the punishments for hudud crimes may be flogging, amputation, or death. *Id.* at n.11.

38 Denis MacEoin, Sharia Law or 'One Law for All?' 39-40 (David G. Green ed. 2009).

39 Seyyed Hossein Nasr, Ideals and Realities of Islam 16 (2000).

40 *Id.*

41 *Id.* at 17.

42 *Id.*

43 *Id.*

44 Nasir, *supra* note 30, at 1; Nasr, *supra* note 39, at 14, 129.

45 *See, e.g., Fatwa 10446 Meaning of the Word Islam,* IslamQA (May 1, 2007), https://islamqa.info/en/10446 (indicating that the meaning of "Islam" is "submission, humbling oneself, and obeying commands and heeding prohibitions without objection ....").

46 Abdullahi Ahmed an-Naim, Islam and the Secular State 1 (2008).

47 Duncan B. MacDonald, Development of Muslim Theology, Jurisprudence and Constitutional Theory 66-77 (1903).

48 Nasir, *supra* note 30, at 7, 19.

49 *Id.* at 6-7.

50 *Id.*

51 *Id.*

52 *Id.* at 6-7, 19-24; *Awad* Brief, *supra* note 33, at *15. This article describes the various schools of Islamic jurisprudence. *Infra* Part IV.

53 Nasir, *supra* note 30, at 20; Nasr, *supra* note 39, at 92 ("In essence, all of the *Shariah* is contained in the Quran"); Reiss, *supra* note 31, at 742.

54 Nasir, *supra* note 30, at 19.

55 Sura 5:49 (Syed Vickar Ahamed trans., 2007); Nasir, *supra* note 30, at 19.

56 Nasir, *supra* note 30, at 1-2.

57 Sura 16:44 (Syed Vickar Ahamed trans., 2007); Nasir, *supra* note 30, at 1-2.

58 Nasir, *supra* note 30, at 351.

59 *Id.*

60 Sura 59:7 (Syed Vickar Ahamed trans., 2007); *See* Nasir, *supra* note 30, at 19.

61 Rafeeq, *supra* note 32, at 117.

62 *Id.*

63 Ahmad S. Moussalli, Gordon D. Newby & Ahmad Moussalli, *Muhammed, in* The Oxford Encyclopedia of the Islamic World, http://www.oxfordislamicstudies.com/article/opr/t236/e0550 (last visited July 20, 2015).

64 *See, e.g.*, Nasir, *supra* note 30, at 351.

65 *Id.* at 22.

66 Sura 4:105 (Syed Vickar Ahamed trans., 2007); *see also* Nasir, *supra* note 30, at 19.

67 Nasir, *supra* note 30, at 2.

68 *Id.* at 2-4.

69 *Id.* at 6-7.

70 *See id.* at 6-18.

71 *Id.* at 6-7. However, analogy from precedents in Islamic jurisprudence, where it is permitted, does not involve the use of written reports containing binding precedent, in sharp contrast to the common law system, as is discussed further *infra* Part.

72 Black et al., Modern Perspectives on Islamic Law 2-3 (2013).

73 Nasir, *supra* note 30, at 19.

74 Hisham M. Ramadan, Understanding Islamic Law: From Classical to Contemporary 14 (2006).

75 Rafeeq, *supra* note 32, at 119.

76 Ramadan, *supra* note 74, at 17-18. A well-known 14th century treatise, Al-Misri's Reliance of the Traveller and Tools of the Worshipper, is a compilation *of fiqh* for the Shafii school. *Awad* Brief, *supra* note 33, at 16.

77 Wael B. Hallaq, *The Logic of Legal Reasoning in Religious and Non-Religious Cultures: The Case of Islamic Law and the Common Law*, 34 Clev. St. L. Rev. 79, 80 (1985-1986). Hallaq attributes this "rudimentary" state of knowledge to the fact that "modern scholars of Islam translate *qiyas* as analogy without realizing the existence of other [types of logical] arguments which are likely included in *qiyas*." *Id.*

78 Ramadan, *supra* note 74, at 15.

79 *Id.*

80 "Fatwa" in Ahmad S. Moussalli, Gordon D. Newby & Ahmad Moussalli, The Oxford Encyclopedia of the Islamic World, http://www.oxfordislamicstudies.com/article/opr/t236/e0550 (last visited July 20, 2015).

81 *Fatwa*, Black's Law Dictionary (10th ed. 2014).

82 The Oxford Encyclopedia of the Islamic World, *supra* note 80.

83 1 Encyclopedia of Islam in the United States 240 (Jocelyne Cesari ed. 2007) (defining a fatwa as "a nonbinding religious opinion issued by a *mufti*, or legal expert."). *Accord* The Oxford Encyclopedia of the Islamic World, *supra* note 80 ("A fatwa ... is neither binding nor enforceable. Its authority is based on the mufti's education and status within the community. If the inquirer is not persuaded by the fatwa, he is free to go to another mufti and obtain another opinion; but once he finds a convincing opinion, he should obey it.").

84 Encyclopedia of Islam in the United States, *supra* note 83.

85 *Id. Accord* The Oxford Encyclopedia of the Islamic World, *supra* note 80 ("Theoretically, muftis should be capable of exercising legal reasoning independently of schools of law (ijtihad), although followers of tradition (muqallids) are also allowed to issue fatwas.").

86 *Awad* Brief, *supra* note 33, at 15.

87 MacEoin, *supra* note 38, at 27.

88 *Id.* at 27, 41, 62, 68-69.

89 F. N. Lee, *King Alfred the Great and our Common Law* (Jan. 2, 2015), http://www.drfnlee.org/king-alfred-the-great-and-our-common-law/ (crediting the Doom Book with formulating customary law which developed into the common law of England).

90 "Doom" or "Dome" comes from the Anglo-Saxon word meaning "judgment." *Doom*, Black's Law Dictionary (10th ed. 2014) (citing W.J.V. Windeyer, Lectures on Legal History 1 (2d ed. 1949)).

91 *Doombook*, Black's Law Dictionary (10th ed. 2014) (emphasis added). Blackstone addressed the Book of Doom in his Commentaries saying:

> And indeed our antiquarians and first historians do all positively assure us, that our body of laws is of this compounded nature. For they tell us that in the time of Alfred the local customs of the several provinces of the kingdom were grown so various, that he found it expedient to compile his *Dome-Book* or *Liber Judicialis,* for the general use of the whole kingdom. This book is said to have been extant so late as the reign of King Edward the Fourth, but is now unfortunately lost. It contained, we may probably suppose, the principal maxims of the common law, the penalties for misdemeanors, and the forms of judicial proceedings. Thus much may at least be collected from that injunction to observe it, which we find in the laws of King Edward the elder, the Son of Alfred.
> Blackstone, *supra* note 7, at *65 (letters modernized).

92 Will Durant, The Story of Civilization: The Age of Faith 678 (1950) (emphasis added). Durant attributes the emphasized phrase to Glanville. *Id.*

93 *Id.*

94 John Beale, A Translation of Glanville x-xi (1900).

95 Berman, *supra* note 2, at 458.

96 Magna Carta, cl. 39 (1215).

97 Berman, *supra* note 2, at 293.

98 Berman, *supra* note 29, at 273.

99 Wu, *supra* note 2, at 71-72.

100 Berman, *supra* note 29, at 273.

101 *Id.*

102 *Id.*

103 Bracton, De legibus, III, 0.2 (fol. 107); *see also* Wu, *supra* note 2, at 73.

104 John M. Gest, *The Writings of Sir Edward Coke,* 18 Yale L.J. 504, 505 (1909).

105 Berman, *supra* note 29, at 207-08.

106 Blackstone, *supra* note 7, at *71.

107 *Id.*

108 *Id.* Blackstone indicated that these written notes were taken by scribes of the court from the reign of Edward II to Henry VIII. *Id.* He acknowledged that from Henry VIII to the time of his writing of his Commentaries, this task was delegated to private writers whose recordings of the proceedings contained inaccuracies. *Id.* at *72.

109 *Id.* at *71.

110 *Id.* at *73.

111 *Id.* at *69.

112 *Id.* at *77.

113 *Id.* To show how the common law of England treated variance in local custom, Blackstone pointed out that a widow in certain boroughs was entitled to inherit all of her husband's lands, whereas the law of the land provided she was entitled to inherit one third of his lands. *Id.* at *75. Despite the variance in local custom, the local rules were consistent with the general principle that a widow had substantial rights of inheritance in her husband's estate.

114 *See supra* Part II-B.

115 *See supra* Part II.

116 Rafeeq, *supra* note 32, at 118-19 (citing Irshad Abdal-Haqq, *Islamic Law: An Overview of Its Origin and Elements,* in Understanding Islamic Law: From Classical to Contemporary 1, 3 (Hisham M. Ramadan ed., 2006). *See also* MacEoin, *supra* note 38, at 29-32 (describing the four Sunni schools of thought); Wael B. Hallaq, A History of Islamic Legal Theories: An Introduction To Sunni Usul-Ul-FighH (1997) (discussing the four Sunni schools of thought).

117 Nasir, *supra* note 30, at 15.

118 *Id.* at 7. For a detailed history and description of the schools of Islamic jurisprudence and a list of the nations in which each school of thought has been accepted or has a following, see Nasir, *supra* note 30, at 6-18. For a detailed nation-by-nation compendium of the contemporary Islamic law of personal status in Arab states, with comments on which schools of jurisprudence have flourished or been influential, see Nasir, *supra* note 30, at 29-40.

119 Nasir, *supra* note 30, at 7.

120 *Id.; see also* Reiss, *supra* note 31, at 743.

121 Nasir, *supra* note 30, at 7; *see also* Reiss, *supra* note 31, at 743.

122 Nasir, *supra* note 30, at 24.

123 *Awad* Brief, *supra* note 33, at *15.

124 *Id.*

125 *Id.*

126 *Id.*

127 *Id.*

128 Nasir, *supra* note 30, at 21-22.

129 *Id.* at 22.

130 *See supra* Part II-D.

131 *See supra* Part II-B.

132 *See supra* Part -A.

133 Reiss, *supra* note 31, at 743.

134 Rafeeq, *supra* note 32, at 139.

135 Reza, *supra* note 37, at 4.

136 *Id.*

137 Emily L. Thompson & F. Soniya Yunus, *Choice of Laws or Choice of Culture: How Western Nations Treat Islamic Marriage Contract in Domestic Courts,* 25 Wis. Int'l L.J. 361, 369-70 (2007) (emphasis added).

138 Reiss, *supra* note 31, at 743.

139 Reza, *supra* note 37, at 16 (emphasis added).

140 Nasir, *supra* note 30, at 20. The passage abrogating an earlier one is called *nasikh. Id.*

141 *Id.*

142 Sura 73:10 (Syed Vickar Ahamed trans., 2007)

143 Sura 8:12 (Syed Vickar Ahamed trans., 2007). Sura 8 was written during the Medina period of Muhammed's life, and is later than Sura 73, which was written during the Mecca period of Muhammed's life. The Quran is not arranged in chronological order. *See* MacEoin, *supra* note 38, at 21-22.

144 MacEoin, *supra* note 38, at 22.

145 Ancient Laws and Institutes of England: Comprising Laws Enacted Under the Angl-Saxon Kings from Æthelbirht to Cnut, with an English Translation of the Saxon; the Laws Called Edward the Confessor's; the Laws of William the Conqueror, and Those Ascribed to Henry the First; Also, Monumenta Ecclesiastica Anglicana, from the Seventh to the Tenth Century; and the Anciety Latin Version of the Anglo-Saxon Laws (Benjamin Thorpe ed., 1840).

146 Magna Carta, cl. 1-2(1215).

147 Magna Carta, cl. 39 (1215).

148 Magna Carta, cl. 40 (1215) (emphasis added).

149 Griffe Witte, *After 800 Years, Britain Finally Asks: Do We Need a Written Constitution?*, Wash. Post (June 6, 2015), https://www.washingtonpost.com/world/europe/after-800-years-britain-finally-asks-do-we-need-a-written-constitution/2015/06/07/6097b50c-e908-lle4-8581-633c536add4b_story.html?utm_term=.2d2e731350bf.

150 The Legal Mind in America 17 (P. Miller ed. 1962) (cited in God, Man, and Law, *supra* note 2, at 100).

151 *Deuteronomy* 1:17 (New King James).

152 *Leviticus* 24:22 (New King James).

153 Declaration of Independence para. 2.

154 Martin Luther King, "I Have a Dream" Address (Aug. 28, 1963) (emphasis added).

155 *See, e.g.*, Ellis Sandoz, *Religion and the American Founding*, 20 Regent U. L. Rev. 17, 22 (2008) ("Many things, to be sure, not least of all the familiar Creator-creature relationship affirmed in general language in the Declaration of Independence in 1776 and indelibly vesting each human being with inalienable attributes among which were said to be rights to "Life, Liberty, and the Pursuit of Happiness."); Jeffrey C. Tuomala, *Marbury v. Madison and the Foundation of Law*, 4 Liberty U. L. Rev. 297, 297-98 (2010) ("The Declaration of Independence explains the origin and relationship of the right and will of the people to declare their existence as an independent nation-state and to establish a form of government they believe is best designed to secure their God-given rights."); *see* God, Man, and Law, *supra* note 2, at 99-135.

156 *Genesis* 1:26 (New King James).

157 Gary Amos, Defending the Declaration: How the Bible and Christianity Influenced the Writing of the Declaration of Independence 104 (1989).

158 *Id.*

159 *Id.* at 107.

160 *Id.*

161 Daniel Webster, Bunker Hill Address (1843).

162 The Federalist No. 51 (James Madison).

163 *Id.*

164 U.S. Const. amend. V.

165 U.S. Const. amend. XIV.

166 God, Man, and Law, *supra* note 2, at 99.

167 *Id.* (emphasis added).

168 *II Chronicles* 19:6-7 (New King James) (emphasis added).

169 U.S. Const. art. I, §§ 9, 10.

170 U.S. Const. art. I, §§ 9.

171 God, Man, and Law, *supra* note 2, at 104 (describing constitutions of Maryland, Virginia, and Delaware, as examples). Other states, the District of Columbia, and Puerto Rico have prohibited titles of nobility either in their Constitutions or by Statute. *See* Ala. Const. art. I, § 29; Alaska Const. art. I, § 15; Del. Const. art. 1, § 19; Haw. Const. art. 1, § 21; Ind. Const. art. I, § 35; Kan. Const. B. of R. § 19; Ky. Const. § 23; Mass. Const. Pt. I, art. VI; Me. Const. art. I, § 23; Md. Const. Decl Of Rights, art. XLII; Mo. Const. art. I, § 13; Mont. Const. art. II, § 31; Ohio Const. art. I, § 17; Or. Const. art. I, § 29; Pa. Const. art. I, § 24; S.C. Const. art. I, § 4; P.R. Const. art. II, § 14; D.C. Code § 1-203.02.

172 Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 239 (1995) (Scalia, J., concurring); Downes v. Bidwell, 182 U.S. 244, 277 (1901); White v. Hart, 80 U.S. 646, 652 (1871); Briscoe v. Bank of Commonwealth of Kentucky, 36 U.S. 257, 350 (1837) (recognizing that titles of nobility "were opposed to the whole spirit of the people, and the constitution ... annulled all power, state and federal, to do these things; and the prohibition is, in its nature and object, absolute and illimitable."); Ogden v. Saunders, 25 U.S. 213, 334-35 (1827).

173 Titus & Thompson, *supra* note 15, at 22 (emphasis added).

174 Encountering the World of Islam 51 (Keith E. Swartley ed., 2d ed. 2014).

175 *Id.* at 51, 59.

176 "Dhimmi," in The Oxford Encyclopedia of the Islamic World, http://www.oxfordislamicstudies.com/article/opr/t236/e0550 (last visited Dec. 1, 2016).

177 *Id.*

178 *Id.*

179 Paul Halsall, *Medieval Sourcebook: Pact of Umar, 7th Century? The Status of Non-Muslims Under Muslim Rule,* Fordham Univ. (1996), http://sourcebooks.fordham.edu/halsall/source/pact-umar.asp.

180 *Id.*

181 *Id.*

182 The class system based on dhimmitude eventually "declined in importance" as a result of "formation of nation-states and Western or quasi-Western legal codes." "Dhimmi," *supra* note 176.

183 Sura 4:3 (Syed Vickar Ahamed trans., 2007). *See also* Wael B. Hallaq, Shari'a: Theory, Practice, Transformations 277 (2009).

184 *See, e.g.,* MacEoin, *supra* note 38, at 84, 102, 111.

185 Sura 4:34 (Syed Vickar Ahamed trans., 2007).

186 Sura 65:1 (Syed Vickar Ahamed trans., 2007).

187 Hallaq, *supra* note 183, at 280.

188 *Id.*

189 *Id.*

190 *Id.* at 282-83. *See also* David J. Western, *Islamic "Purse Strings": The Key to the Amelioration of Women's Legal Rights in the Middle East,* 61 A.F. L. Rev. 79, 121 (2008).

191 Sura 4:11 (Syed Vickar Ahamed trans., 2007).

192 Robin Fretwell Wilson, *Privatizing Family Law in the Name of Religion,* 18 Wm. & Mary Bill. Rts. J. 925, 942-43 (2010). Wilson contrasts with Islamic law the current law of the United Kingdom and the United States, which provide "significant, concrete protection" for surviving spouses of either sex. *Id.* at 942. Wilson then describes several hypothetical situations showing graphic contrasts between what a widow would inherit under British law and what she would inherit under Islamic law. *Id.* at 943-46.

193 Sura 2:282 (Syed Vickar Ahamed trans., 2007).

194 MacEoin, *supra* note 38, at 52 (emphasis added).

195 *Id.* at 50.

196 W.H.T. Gairdner, The Rebuke of Islam 116 (1919) (emphasis added).

197 Sura 15:29 (Syed Vickar Ahamed trans., 2007).

198 *See, e.g.,* Nasr, *supra* note 39, at 4 (reference to the tradition), 114-140 (argument for a "spiritual way" employing the Sufi approach). Sufism is a mystical, rather than legalistic, approach to Islam; its adherents were influenced by Christian monasticism in the Middle East; Sufis seek to relate to God and receive revelation directly from him. *See* Encountering the World of Islam, *supra* note 174, at 233-235.

199 *See, e.g.,* Sura 37:132 (Syed Vickar Ahamed trans., 2007); Sura 39:16-17 (Syed Vickar Ahamed trans., 2007); Sura 42:47 (Syed Vickar Ahamed trans., 2007); Sura 50:11 (Syed Vickar Ahamed trans., 2007); Sura 66:10 (Syed Vickar Ahamed trans., 2007); Sura 71:27 (Syed Vickar Ahamed trans., 2007); Sura 89:29 (Syed Vickar Ahamed trans., 2007); Sura 97:5 (Syed Vickar Ahamed trans., 2007). There are hundreds of examples. The verses referenced, and many others in the Quran, use the Arabic word "Ibad" or "Ibadi" to describe human beings. This Arabic word derives from a root word, *"ayn ba dal,"* sometimes referred to as "A-B-D," which means "a slave." Some English translations, including the Ahamed translation used herein, render the word "servant." Other English translations, including the widely-used Pickthall translation, render the word "slave." Based on the root meaning of the word, the rendering of "slave" is more accurate. *See* Language Research Group of University of Leeds, *The Quranic Arabic Corpus,* corpus.quran.com/wordbyword (last visited Feb. 10, 2017) (containing a word-by-word linguistic study of the Quran).

200 *See, e.g.,* Aleem v. Aleem, 947 A.2d 489, 501 (2008) (denying comity to a Pakistani *talaq* divorce); Hosain v. Malik, 671 A.2d 988 (1996) (granting comity to a Pakistani child custody decision where "welfare of child" standard incorporated Islamic rules of family law); Chaudry v. Chaudry, 159 N.J. Super. 566, 571-72 (1978) (granting comity to a Pakistani divorce).

201 *See, e.g.,* Ghassemi v. Ghassemi, 998 So. 2d 731 (La. App. 2008) (recognizing Iranian marriage between first cousins--with no mention of religious affiliation--where Louisiana choice of law rule required recognizing a marriage that was valid where celebrated).

202 *See, e.g.,* Akileh v. Elchahal, 666 So. 2d 246, 248 (Fla. Dist. Ct. App. 1996) (upholding an Islamic ante-nuptial agreement, called a *sadaq,* for husband to pay wife a sum in the event of divorce, based on court's authority to require a party to fulfill the secular obligations of a religious ante-nuptial agreement).

203 *See, e.g.,* State v. Al-Hussaini, 579 N.W.2d 561, 563 (1998) (denying request for probation in lieu of incarceration to defendant convicted of statutory rape after marrying 13-year-old girl).

204 *See, e.g.,* Jabri v. Qaddura, 108 S.W.3d 404, 410 (Tex. App. 2003) (staying proceedings in state court and sending case to Islamic arbitration tribunal to be decided under Islamic rules of law where arbitration agreement met statutory requirements).

205 *See, e.g.*, Awad v. Ziriax, 670 F.3d 1111 (10th Cir. 2012) (upholding free exercise challenge to Oklahoma statute which disallowed application of *sharia* law in state courts, where plaintiff claimed the statute would prevent the probate of his will, which apparently referenced sharia law without naming specific beneficiaries).

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76 S. Cal. L. Rev. 189

Southern California Law Review
November, 2002

Note
Lindsey E. Blenkhorn[a1]

ISLAMIC MARRIAGE CONTRACTS IN AMERICAN COURTS: INTERPRETING MAHR AGREEMENTS AS PRENUPTIALS AND THEIR EFFECT ON MUSLIM WOMEN

"[There is a] continuing misuse of religion as a mask behind which man hides his vindictive desire to maintain his absolute supremacy over woman by forcing her into servitude, making her the creature of his whim, a mere vessel and purchasable ware."

-Anwar el-Sadat, former president of Egypt[1]

I. INTRODUCTION

In 1958 in Pakistan, Parveen Chaudry's parents introduced her to Hanif Chaudry, the man they had chosen to be her husband.[2] In accordance with Islamic tradition, Parveen's parents negotiated the terms of her ***190** marriage contract with Hanif, consenting to and even signing the contract on Parveen's behalf.[3] According to Islamic law, Parveen's marriage contract included a mahr provision, or dower, in the amount of 15,000 rupees (approximately $1,500),[4] to protect Parveen if Hanif suddenly divorced her. Islamic law provides that couples retain their assets before, during, and after marriage, and because Parveen would likely not be permitted to work outside the marriage home without her husband's permission, the mahr was a nest-egg in case the marriage soured.

One year after their marriage, Hanif moved to London to pursue a career in medicine, leaving Parveen behind in her native Pakistan with her parents and one-year-old child until her parents were able to pay for plane tickets to London.[5] Once Parveen joined Hanif in London, he moved his family to New Jersey, where Parveen gave birth to their second child.[6] Five years later, Hanif sent his wife and children back to Pakistan with the understanding that he would join them shortly.[7] During the next five years, Parveen, who by now had three young children, attempted to rejoin Hanif in New Jersey, while Hanif took affirmative action to prevent her return and ultimately responded with divorce proceedings.[8]

The divorce, which was obtained through the Pakistani Consulate in New York, left Parveen without alimony or child support, and with only her $1,500 mahr with which to support her three children. When Parveen brought suit in New Jersey, Hanif argued that Parveen's mahr was a prenuptial agreement and that her parents' assent to the agreement signified her intent to forgo any additional rights to her husband's property under New Jersey divorce law.[9] The court agreed, effectively precluding Parveen--after fourteen years of marriage--from any portion of her psychiatrist-husband's estate.[10]

The story of Parveen Chaudry is not unique. Islam is America's third largest religion, and with the number of Muslim immigrants into the United States on the rise,[11] courts are more frequently overseeing divorce proceedings between Muslim couples. Adjudicating an Islamic divorce forces a court to decide whether the Qur'an-based Shari'a, the body of law ***191** that dictated

the couple's marriage in their native country, should apply to the divorce proceeding, or whether state dissolution rules are more appropriate. As this Note illustrates, this determination is fraught with numerous legal, constitutional, and policy minefields.

Islamic law has a storied, if frequently misportrayed, relationship with Muslim women. Although the Western press routinely mischaracterizes the situation of Muslim women, it is true that very little change has occurred in the area of Islamic family law since the tenth century.[12] This stagnation explains why some of the more draconian laws with respect to women persist today, and why many American courts understandably balk at applying them. With Islamic religious fundamentalism on the rise, any attempt at feminist reform in Muslim countries continues to be derided as immoral, heretical, and as a source of destruction both to the sanctity of the family and to the basic pillars of Islam itself.[13]

It is the treatment of Muslim women here in the United States, however, with which this Note is concerned. This Note addresses whether and to what extent American courts sanction the continued economic and cultural subjugation of Muslim women by enforcing foreign-made dower agreements against them. As the case of Parveen Chaudry illustrates, enforcing mahr provisions against women who do not personally bargain for or even sign the agreements effectively substitutes the meager mahr payment for the divorcing wife's rights under community property or equitable distribution regimes, leaving them unfairly and needlessly destitute. Little to no scholarship addresses the reception Muslim women receive in the American legal system--so preoccupied have scholars and feminists been with exposing the alleged mistreatment of Muslim women in the Middle East. This Note attempts to fill that void by exposing the subjugation of Muslim women occurring right here in our own courtrooms.

***192** In order to fully comprehend the potential economic and cultural inequalities that occur in these cases, it is important to first appreciate the social, legal, and religious implications of being a Muslim woman. Part II of this Note describes the position that women hold in Islamic religious texts and the dichotomy between the Qur'an, Islam's holy book, and the statutory regulations and cultural practices in Islamic countries. Part II also explains the Muslim woman's role as bride and wife, and how cultural norms shape the creation of mahr agreements. Part III delineates the inherent differences between a mahr agreement and a prenuptial, and why contracting parties do not intend at the point of inception to have their religious marriage contract serve as a prenuptial agreement in a distant American courtroom. Part IV addresses the fact that, due to unwavering, patriarchal cultural and religious forces, most Muslim women in Islamic countries do not enjoy the freedom to contract in their own best interests or to assent to the terms of the mahr agreement. This Part also addresses the unique situation of American Muslims who create mahr agreements. Lastly, Part V addresses the tension between respecting cultural and religious differences, while calling for an end to the gender apartheid that currently exists in many Muslim communities.[14] This Note concludes that until Muslim women are freed from the patriarchal and cultural ties that bind them, American courts cannot interpret mahr agreements as waivers of women's property rights under domestic marital dissolution regimes.

II. WOMEN IN ISLAM

In most Muslim countries, Islamic law, or the Shari'a, is the law of God, dictating every aspect of the legal system, from international law to criminal, civil, commercial, and constitutional law. Family law, however, has been called the "heart" of the Shari'a.[15] The Shari'a is considered ***193** divine in origin, based on the traditions and revelations of the Prophet Muhammad.[16] Although a significant portion of current Islamic family law incorporates ancient Arabian customs developed centuries before the rise of Islam, it is generally believed that the Prophet Muhammad and the introduction of the Qur'an significantly ameliorated the lot of women.[17] In fact, as the following Section illustrates, the Qur'an itself is relatively revolutionary with respect to women, especially considering the oppressive treatment of women found in the religious texts of the other major world religions that developed during the same period.[18]

A. The Status of Women, Sex, and Marriage in the Muslim World

1. Muslim Men and Women: Separate, Different, but Equally Important

Despite Western reports of Islam's alleged oppression of women, the holy Qur'an itself grants Muslim women rights at least theoretically equal to, albeit different from, those of men.[19] Although the Qur'an does not purport to give equal rights to women the way that most Western feminists would expect or prefer, the Qur'an realizes that the spheres of potential capabilities of men and women are equally important, if not exactly the same-- equality does not mean similarity in Islam:[20]

> Both the husband and the wife enjoy equal social and legal rights and their duties merely reflect a functional distribution between them. It merely points out that the field of work of each member of the family is different from the other and is based on their biological and ***194** psychological differences. Both are equal but not similar in the eyes of the law.[21]

Numerous verses in the Qur'an explicitly recognize this belief, stating that "nowise is the male like the female,"[22] but also that "be [it] male or female: you are members, one of another."[23] Muslims believe that God made women and men "equal participants in the human species," and thus, any gender-based oppression is considered a grave offense.[24]

Similarly, the Qur'an repeatedly addresses both men and women equally in its exhortations of faith,[25] giving comparable social responsibility to both sexes to "enjoin what is just, and forbid what is evil."[26] Importantly, unlike the Judeo-Christian tradition where Eve was created from the rib of Adam, God created both men and women from "a single Person" that is not gender-specific.[27] It should be noted, however, that Muslims view equality not as one general concept pertaining to all aspects of life, but rather, as separately applicable to different spheres. Thus, most Muslims believe that women and men are spiritually equal before God, but that women are socially inferior to men due to distinct, asymmetrical domestic duties.[28]

2. Domestic Marital Relations and the Qur'an

It has been said that the marital rights that women enjoy in their culture and religion are often a good indicator of women's status in society at large.[29] Just as in Islam in general, women enjoy separate but equally important roles in the institution of marriage, and both spouses are viewed as owing a religious duty to the other: "They [the wives] are your garments and you [the husbands] are their garments."[30]

***195** Marriage is very important in Islam. It is viewed as the key to social harmony, a "bulwark against social discord and disorganization."[31] The Qur'an encourages those who are able to marry, stating, "Let those who find not the wherewithal for marriage keep themselves chaste, until Allah gives them means out of His grace."[32] Islam considers marriage to be an all-important safeguard of chastity, as well as a life-affirming act central to the growth of society and Islam.[33]

While marriage plays a very important role in the Muslim family and society in general, the initiation of marriage itself is interestingly a matter-of-fact proposition. The Islamic marriage is purely a contractual agreement between two parties, devoid of the sacramental significance found in the Christian tradition, for example.[34] The significance of the civil contract of marriage in Islam is an authorization of intercourse and the procreation of children between two equal partners,[35] as well as fulfillment of human nature as created by God.[36]

Before a marriage can actually take place, consideration of the social status of a potential spouse, although not mandated by the Qur'an, is required by the Shari'a. The doctrine of kafaah, or equality, requires that the man be of equal status to the woman,[37] because if marriages are to reinforce social harmony, society cannot afford to risk the instability inherent in unequal matches.[38] The practical effect of this law is that a bride may only marry a husband who is in an occupation either comparable or superior

to the occupation of her father, while men may marry beneath them and thus raise the woman to their superior status through marriage.[39] Similarly, women are prohibited from marrying non-Muslim men, while ***196** men are permitted to marry "People of the Book," or Jewish and Christian women.[40]

Once married, a man bears the primary responsibility to sustain his wife and family financially, regardless of the woman's wealth. The wife is entitled to maintenance according to her husband's means, including food, clothing, housing, toiletries, medical attention, and servants for those women at certain social positions.[41] Theoretically, the wife is not required to prepare food for the family, clean the home, or even nurse the baby, but if she chooses to do so, such acts are viewed as voluntary, charitable contributions to the family done only with her consent.[42] As a result of the man's religious responsibility to maintain his wife and family, the Qur'an states that a good Muslim wife recognizes and respects her husband's authority over the entire family.[43]

Although Muslim women are routinely characterized as sexually oppressed, women enjoy equal access to sex, which is viewed as neither sinful nor taboo, albeit only in the context of marriage.[44] The Qur'an ***197** recognizes and even fears the normal human sexual urges of both men and women, and thus encourages marriage in the belief that such a union is the only way to safely express and satisfy those urges.[45] Sex is thus very important to marriage; in fact, the full legal consequences of marriage are not realized until sexual intercourse consummates it.[46] Evidence of equal access to sex is indicated by the law that, once a woman moves in with her husband, she has the right to demand sex from him, and if he does not perform, she may either request a divorce or receive additional monetary compensation.[47] The Qur'an is quite careful, however, to forbid sex for "lustful" purposes or for "taking paramours,"[48] because it cheapens the act by focusing on physical pleasure.[49] Similarly, Islam forbids unmarried men and women from mingling in secluded places where sexual relations are possible.[50]

3. The Act of Marriage and the Islamic Marriage Contract

The marriage itself, or nikah, is negotiated by the groom and the bride's guardian, or wali, who is usually her father, grandfather, or uncle.[51] The actual marriage contract includes the names and lineages of the bride and groom, the names of two witnesses who are chosen to swear that both parties consent to the marriage, and the details of the dower, or mahr.[52] Like most contracts, the Islamic marriage contract requires the making of an offer (ijab) and acceptance (qabul) at the same meeting in the presence of two male witnesses.[53] Under most interpretations of the Shari'a, one ***198** can contract a marriage when they reach puberty, an age which varies according to country and region, but for males ranges from twelve to twenty-one, while females can be as young as nine or as old as eighteen.[54]

According to the Qur'an, the bride has an unfettered right to withhold her consent from any term in the marriage contract, including whether to marry the proffered groom in the first place.[55] Realistically, however, the bride has little choice in either the terms of the contract or the choice of the groom. In most communities, if a bride were to protest an arranged marriage, she would be viewed as highly disrespectful and would risk permanent ostracism from her family and community and may even risk death.[56] In order to avoid such situations, the bride's consent or acceptance is defined quite differently than in the Anglo-American legal tradition: Smiles, tears, and sullen silence by the bride are deemed a sufficient sign of acceptance, not a refusal to marry the groom.[57] Also, marriages contracted in jest or even under duress are given effect.[58]

Similarly, the bride herself has little to no involvement in the negotiation of the mahr. She may never conclude a marriage contract on her own in most Islamic legal systems; instead, she must defer to her wali to bargain for the terms of the contract and even to sign the finalized agreement.[59] Theoretically, the bride has the right to add conditions to the ***199** marriage contract through her wali, ranging from forcing the husband to pledge never to take an additional wife, to promising never to relocate away from the wife's hometown.[60] This ability has raised the status of women in marital relationships considerably

and has compensated somewhat for the oppressive laws of the Shari'a over time, although not all Muslim legal schools allow the practice.[61] Empirical research indicates that such stipulations are more "an ideal than a reality" because they suggest that the husband will be imperfect in the marriage, thus offending his honor and dignity and providing an explanation as to why few marriage contracts include such specifications.[62]

The marriage dower is an essential part of the Islamic marriage ceremony; without the mahr, some schools hold that the nikah is improperly solemnized.[63] The mahr is defined as "[t]he property given by the husband to indicate his willingness to contract marriage, to establish a family, and to lay the foundations for affection and companionship."[64] Its role is grounded in the Qur'an, which urges men to "give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer."[65] Contrary to Western misconceptions, the mahr is not a "bride-price" to be paid to the father or guardian, but rather, is designed for receipt by the bride herself,[66] although there are circumstances where the bride's mahr is taken by her father or brothers.[67] According to most Islamic legal systems, ***200** the husband relinquishes all right to the mahr and the bride may spend it freely. Accordingly, she cannot be forced to use it to purchase furniture or other domestic necessities.[68]

There is no actual monetary ceiling on the mahr, and thus it can range from a small token to a heap of gold, to property or to "anything that can be valued in money."[69] If the marriage contract does not specify the amount of the mahr, the wife is entitled to a "dower of equivalence" (mahr al-mithl), which is calculated according to the amount received by other females in the bride's family upon their marriage, in addition to consideration of the bride's beauty, age, and virginity.[70] Importantly, the husband cannot reduce the mahr on a whim after contracting the marriage; the Islamic courts will force the husband to adhere to the original, agreed-upon amount.[71]

B. Mahr Provisions in Muslim Countries: Needed Protection for Women

Mahr provisions were originally conceived in part as a protective mechanism for women, who rarely have assets of their own as a result of restrictions from either working outside the home or leaving the home without their husbands' permission.[72] The mahr's two parts reflect this purpose: There is the muqaddam, or the portion of the dower that is paid by the groom upon marriage to honor his bride, and the mu'akhkhar, or the deferred portion of the dower that is paid in the event of divorce or death to ***201** provide for the wife when her husband discontinues maintenance of her.[73] The payment of the deferred mahr is taken very seriously in Muslim countries, as it is legally considered an unsecured debt ranking equally with other unsecured debts that must be paid by court order or jail term if necessary.[74]

The deferred dower acts as a constraint on the husband's ability to divorce his wife--by making divorce an expensive endeavor, families prevent the return of their now non-virgin daughters.[75] Of course, there are circumstances where the husband manages to avoid paying the mahr upon divorce, ranging from an inability to pay to abuse of his wife such that she initiates the divorce (in legal schools that allow female-initiated divorce) in order to force the woman to forfeit her share.[76] Furthermore, the amount of the mahr is often too small to act as an effective constraint on the husband from divorcing his wife,[77] and oftentimes women are pressured to illustrate their devotion to their husbands by forgiving the debt of the mahr altogether.[78] On the whole, however, the deferred dower has allowed women in Muslim countries to receive relatively better protection within the patriarchal, male-constructed legal system.[79] In fact, a study of Palestinian women concluded that the mahr is the major vehicle through which women gain property of their own.[80]

The deferred dower is also viewed as compensation to women for men's unlimited, unilateral right to divorce. The much-publicized Islamic divorce procedure talaq, whereby the husband severs the marriage by simply repeating "I divorce thee" three

times, in most schools is an extra-judicial proceeding that does not require formal witnesses or cause, does not consider the wife's consent or objections, and cannot be readdressed in *202 a court of law.[81] Although under limited circumstances women may occasionally initiate divorce, the primary mode of divorce in Muslim countries is through men's initiation of the talaq.[82] Thus, because the typical Muslim woman lives in constant fear of being repudiated at-will by her husband,[83] the deferred mahr is akin to a security deposit in case she suddenly finds herself divorced and without a home.[84] As indicated above, because most Muslim countries restrict women from working outside the home, many women become instantly destitute upon divorce, and because of their now non-virgin status, have little hope of remarrying. Consequently, although the concept of the mahr conflicts with traditional Western-feminist principles of sex equality, it appears to be a necessary, potentially ameliorating side-effect of the more oppressive practices inherent in the Shari'a and other such traditions.[85]

III. INTERPRETING MAHR AGREEMENTS AS PRENUPTIALS: CONTRARY TO BOTH THE DESIGN OF THE AGREEMENT AND THE INTENT OF MUSLIM BRIDES AND GROOMS

While a necessary protection for women in Muslim countries, mahr provisions should not be enforced in American courts as prenuptial agreements. Interpreting mahr agreements as prenuptials both ignores the inherent differences in a prenuptial agreement and a mahr provision in Muslim societies, and more importantly, contravenes the original intent of *203 the contracting parties. Such an interpretation effectively and unfairly precludes Muslim women in America from enjoying their rights under community property or equitable division schemes, while unnecessarily leaving them destitute.

A. Islamic Mahr Provisions Are Not Synonymous with American Prenuptial Agreements

Although several courts have reasoned that mahr provisions are tantamount to prenuptial agreements,[86] a comparison between the two indicates that mahr agreements, by religious tradition and legal definition, are far different both in purpose and effect. Unlike the mahr, prenuptial agreements do not provide for a sum of money solely to the wife in order to compensate for inequities in marital law. Rather, prenuptial agreements seek either to protect the separate character of property owned before marriage or to define the character of any property acquired during the course of the marriage.[87] There is no tradition or history of either attempting to compensate for unusually harsh property laws or supporting a woman after divorce by utilizing a prenuptial. In fact, the prenuptial evolved to protect assets from the spouse (usually the wife), not provide for her: The "'purpose and effect of most premarital agreements is to protect the wealth and earnings of an economically superior spouse from being shared with an economically inferior spouse.'"[88] In contrast, mahr provisions were created to protect women from abandonment in an extremely patriarchal society, ameliorate the harsh effects of unilateral divorce, and adhere to Qur'anic traditions. Further, a prenuptial agreement is gender-neutral--both men and women can contract around community *204 property laws to protect their assets--while the mahr is gender-specific by definition and design, and thus not comparable.

An example of an American court recognizing this distinction is In re Marriage of Shaban, in which the California Court of Appeal carefully considered whether a couple's mahr was a premarital agreement.[89] The court found that the document was merely a marriage certificate, not a prenuptial, because it provided more information about the parties to the wedding, including the address and descriptions of the witnesses, than it did about any agreement between the two parties as to property dissolution in an American court.[90] A New York court reached the same conclusion, finding that "the [wedding contract] simply stated where the marriage took place, who . . . the participants [were,] and who officiated the ceremony."[91]

Importantly, as evidenced by these cases, Muslim parties to a marriage contract do not contemplate the assets of each party. Because Islamic law requires that both parties retain their own assets before, during, and after the marriage, consideration of divvying their assets is a non-issue beyond the agreed-upon dower.[92] In contrast, the sole point of the prenuptial agreement is to contemplate the character of certain assets and provide for their ownership upon divorce.

The importance of determining whether mahr agreements are identical to prenuptials or are simply elements of the Islamic marriage contract cannot be overlooked. The financial security of divorcing Muslim women depends on this determination because in many Muslim communities, couples provide for a mahr that is more of a symbolic, rather than a practical, component of the marriage contract. In other words, instead of a large dower, the couple simply designates a small, religiously significant amount embodying a traditional meaning that dates back to the times of the Prophet.[93]

For example, in In re Marriage of Shaban, the couple contracted their marriage in Egypt, providing for an immediate mahr of approximately twenty-five piasters, or about one dollar, and a deferred mahr equal to *205 about thirty dollars.[94] Had the court found that the deferred mahr was a valid prenuptial agreement, the wife would have received thirty dollars instead of sharing in half of the more than three-million-dollar estate she shared with her physician-husband under California community property rules.[95]

While the Shaban court appreciated this distinction and avoided the potentially disastrous effects of classifying the couple's mahr as a prenuptial, some courts, out of ignorance of Islamic law and custom, have interpreted the mahr as preempting ordinary property dissolution schemes. For example, a New Jersey court in Chaudry v. Chaudry, held that the mahr agreement was an "antenuptial agreement" such that it superceded alimony or equitable distribution, awarding the wife her $1,500 deferred mahr instead of half of her doctor-husband's estate.[96] Although the court based its conclusion in part on the husband's Pakistani divorce and international divorce comity,[97] the extent to which the New Jersey court assumed that the mahr agreement was a property waiver is nevertheless illustrative of the ignorance of Islamic law under which many courts operate. Another example of a court's failure to appreciate the nuances between a prenuptial and mahr agreement was Akileh v. Elchahal, where the Florida Court of Appeal concluded that the mahr was enforceable as an antenuptial agreement without inquiry into Islamic custom or the legal significance of the document.[98] Presumably, the conclusion that the document was a prenuptial agreement forestalled any additional discussion of the couple's marital property and its dissolution according to ordinary property rules.[99]

Scholars have also misinterpreted mahr provisions. One author argues that treating mahr provisions as prenuptials "is an appropriate way to interpret and enforce" them.[100] The author, however, fails to explore *206 whether classifying the mahr as a premarital agreement will preclude women from exercising their additional rights under community property or equitable distribution regimes. Because a prenuptial is a mechanism that usually preempts ordinary property rules in favor of a system of its own design, arguing that the mahr is a prenuptial often has the unfortunate effect of leaving Muslim women unfairly destitute.

1. Further Evidence that Mahr Provisions Are Not Identical to Prenuptial Agreements: The "Profiteering by Divorce" Theory

Further militating against classifying mahr agreements as prenuptials is the fact that mahr agreements, by definition, are documents that preemptively attempt to deal with the divorce of the parties in monetary terms, leading several courts to refuse enforcement because they allow "profiteering by divorce," which is inconsistent with public policy.[101]

In In re Marriage of Dajani, a Muslim couple married in Jordan, agreeing to a deferred mahr equivalent to approximately $1,700 in case of divorce.[102] The California Court of Appeal struck down the agreement because it "clearly provided for [the] wife to profit by a divorce," despite the fact that the mahr was worth very little.[103] The court reached a similar conclusion in In re Marriage of Noghrey, where shortly before the wedding, two Iranian immigrants agreed to a kethuba, the Jewish equivalent of the mahr. The kethuba provided the mate with either $500,000 and the husband's house or one-half of his assets, whichever was *207 greater upon divorce.[104] When the wife filed for divorce only seven months after the marriage, the court dryly concluded that "[t]he prospect of receiving a house and a minimum of $500,000 by obtaining the no-fault divorce available in California would menace the marriage of the best intentioned spouse."[105]

These cases illustrate that mahr agreements are substantively different from prenuptial agreements. As both cases emphasize, mahr agreements by design do not mention the respective spouses' rights to preexisting property or property acquired during the marriage; instead, they deal only with voluntary gifts of money or property upon divorce:

> The agreement before us, however, is not of the type that seeks to define the character of property acquired after marriage nor does it seek to ensure the separate character of property acquired prior to the marriage. This agreement is surely different and speaks to a wholly unrelated subject. It constitutes a promise by the husband to give the wife a very substantial amount of money and property, but only upon the occurrence of divorce.[106]

As a result, legal practitioner's guides caution attorneys that in order to ensure enforcement, valid prenuptials must address issues of property owned prior to and during the marriage, not provide for payment only in the event of divorce.[107]

2. What If Defining Mahr Agreements As Religious Marriage Certificates Instead of Prenuptials Actually Hurts Muslim Women in American Courts?

Urging American courts to interpret mahr agreements as religious marriage contracts instead of mahr agreements will, in most cases, benefit Muslim women by allowing them to exercise their rights under community property or equitable distribution regimes. Nevertheless, what if this policy actually hurts women instead of helping them? One prominent Muslim legal scholar has suggested that encouraging Muslim women to abandon their rights under Islamic marriage contracts in the belief that American ***208** law is more favorable is incorrect.[108] She argues that such advice is borne out of ignorance and "implicit bias" against Islam. Whereas, if Islamic law were applied in American courts, she argues, women would receive a fuller and more religiously appropriate vindication of their rights.[109]

One case where the wife was financially better off exercising her rights under the religious marriage contract was in Akileh v. Elchahal, where the wife appealed the lower court's decision invalidating a deferred mahr worth $50,000.[110] Concluding that the mahr was enforceable, the Florida Court of Appeal awarded the full amount of the deferred dower to the wife, which appears to have been more valuable than half of her husband's assets.[111] Thus, the court probably gave the wife more money by enforcing the mahr agreement than she otherwise would have received under Florida property rules.

This result begs the question of whether it is fair to enforce mahr agreements only in the rare case where the wife profits financially. Revisiting the original purpose of mahr agreements provides the answer: The agreements are meant in part to act as a restraint on the ease with which a husband--and only a husband, not a wife--can unilaterally and verbally divorce his spouse. Mahr agreements are not meant to be prenuptials in the Western sense and thus should not act to dictate the terms of a marriage's dissolution, no matter how lopsided or favorable they might be to one of the parties.[112]

Moreover, if actually enforcing mahr provisions protected the rights of Muslim women more effectively, does that mean that we must also recognize men's asymmetrical, extra-judicial, unlimited, and undocumented right to divorce, since the mahr was created in part to ***209** prevent this?[113] Although at least one husband has tried to enforce an American-issued talaq in court,[114] many courts hopefully would not recognize a divorce procured in the United States through such means.[115] Because we would probably not recognize the talaq mechanism of divorce as effective in this country, we should not recognize the mechanism created to prevent it, either, regardless of whether it may occasionally ameliorate the plight of women. Doing so only privileges the reception that one part of Islamic law, mahr, receives in U.S. courts, while condemning the other, talaq. Such a policy seems to allow Muslim women to have their proverbial cake and eat it too by protecting them from U.S.-issued talaq, while allowing monetary recovery of foreign-made dowers if more profitable. Therefore, if Muslim couples take their religious commitment to give mahr gifts seriously, they should seek religious intervention by an imam or other religious arbitration counsel to enforce it, not a civil courtroom.

*210 B. Discerning the Original Intent of the Bride and Groom: Uncertain Terms in Mahr Agreements Preclude Enforcement

Cultural and class differences, time, and varying legal schools within Islamic law prevent enforcement of mahr agreements because accurately ascertaining the original intent of a divorcing couple when they created the mahr decades ago is very difficult, if not impossible. Uncertainty as to the couple's intent manifests itself in two ways. First, mahr agreements are too short on operative details, definitions, and explicit requests to have their terms represent an entire remedy at law in a civil courtroom. Second, filling in the details and contractual intent of the parties by reference to then-existing cultural and legal practices is significantly hindered by varying interpretations of the Shari'a.

1. Uncertainty Regarding the Terms and Intended Effect of the Mahr Agreement

As part of a larger marriage contract, mahr agreements are often vague and sparsely, if at all, defined. The reason is that Muslim couples do not need to define the operative details of the mahr, as it is steeped in both tradition and religion familiar to all marrying Muslims. Also, specificity is not necessary because there is no other property dissolution arrangement to contend with other than Islamic law, which dictates that each party retains its own assets. Most parties marrying in Islamic countries do not foresee that they will someday move to America and eventually divorce under different property rules. Further, mahr agreements are so culturally entrenched in marriage itself that, where a contract does not specify a mahr, it is either void ab initio in some schools or is inferred by the courts according to other females in the bride's family, her own beauty, her age, or her virginity.[116]

Uncertainty in interpreting the actual terms of mahr agreements in American courts occurs when it is unclear whether couples intended their mahr agreement to be the only remedy upon divorce in America. Also, the terms of the dowers are vague such that courts cannot determine how to dissolve the property or which property has been selected for dissolution. These uncertainties implicate the Statute of Frauds. Contracts involving either marriage or a promise to marry, as well as contracts that are not capable of performance within a year (as presumably most marriages and ensuing prenuptials are not), must state with reasonable specificity the ***211** terms and conditions of the contract.[117] Further, the substance of the agreement cannot be the product of parol evidence; otherwise, the "whole object of the statute would be frustrated if any substantive portion of the agreement could be established by parol evidence."[118] Both variations of uncertainty are often issues in interpreting mahr agreements because Islamic marriage contracts are usually standard forms provided by the government. The boilerplate, fill-in-the-blank forms lack the detail from which a court can conclusively discern their intended effect.

Failure to specify an expressed desire to have Islamic law govern divorce in In re Marriage of Shaban led a California appellate court to override a mahr agreement.[119] The court affirmed the lower court's refusal to allow the husband to introduce parol evidence in the form of an expert witness who was prepared to testify that the contract manifested an intent by both the husband and wife to have their property dissolution governed exclusively by Islamic law.[120] Islamic law would have given the wife her deferred mahr of thirty dollars and would have prevented the wife from receiving any part of her physician-husband's estate. The court concluded that there was no valid prenuptial agreement:

> It is one thing for a couple to agree to basic terms, and choose the system of law that they want to govern the construction or interpretation of their premarital agreement. . . . It is quite another to say, without any agreement as to basic terms, that a marriage will simply be governed by a given system of law and then hope that parol evidence will supply those basic terms.[121]

The second type of ambiguity that precludes enforcement of mahr agreements is where the actual terms of the agreement relating to property *212 division lack operational and definitional details. Many mahr agreements include tangible property like buildings, real estate, and gold coins, for example, instead of specifying an actual dollar amount.

This type of ambiguity arose in Habibi-Fahnrich v. Fahnrich, where the court found that the terms of a sadaq (another word for mahr), which included a ring upon marriage and half of the husband's possessions upon divorce, were "not specific enough that a person reading it would be able to grasp the gist of the agreement."[122] The court concluded that the term relating to half of the husband's "possessions" did not describe exactly what constituted a "possession" in order for the court to split them, nor did the document detail how or at what point the assets would be measured and divided.[123] Additionally, the agreement suffered from the first type of imprecision above; namely, it failed to specify whether the dissolution arrangement represented the sole property division upon divorce or whether it was supposed to be in addition to division according to ordinary New York property rules.[124]

Operational difficulties may occur even when the mahr specifies a dollar amount. Some families are eager to represent their socioeconomic status as higher than it really is, so couples create "sham dowers" by agreeing in writing to large sums for public-image purposes only to orally modify the contract to make the sum much smaller in reality.[125] Oral modifications to a written marriage contract or prenuptial are clearly prohibited under the Statute of Frauds, and by refusing to admit oral testimony as to the true amount, doubt is cast upon the legitimacy of the specified mahr, further preventing enforcement.[126] Unless mahr agreements become more detailed and specific at inception, courts cannot disregard the Statute of Frauds by allowing couples to rewrite their contracts at divorce and potentially alter their intended effect.

*213 2. Uncertainty in Determining the Couple's Intent by Reference to Then-Existing Legal Schools

The other uncertainty in attempting to interpret mahr agreements as prenuptials is that the existence of several Islamic legal schools and different cultural and class traditions significantly obscure a clear determination of the couple's original intent. Many Islamic marriage contracts state an oblique desire to have Islamic law govern,[127] and courts may again encounter parol evidence and Statute of Frauds problems when it is unclear exactly what a reference to "Islamic law" means in practice.

"Islamic law" has many different meanings. There are at least four different legal schools within Islam, and some states, like Egypt, adhere to more than one of these schools, such as the Hanafi and Maliki.[128] Thus, as the In re Marriage of Shaban court noted, experts would have to opine whether, based on their knowledge of Egypt thirty years ago when the couple was married, whether the couple intended to have codified Egyptian law apply, or whether they intended to have a particular legal school govern the division of the assets upon divorce.[129] Different legal schools within Islam affect adjudication of the mahr. For example, the Hanafi school holds that where the woman initiates divorce, she forfeits her mahr, while the Maliki school holds that if the husband is at fault, the wife retains the mahr.[130] Thus, if the husband was at fault in Shaban, the court would have had to speculate whether the couple meant to adhere to the Maliki or Hanafi school--which itself assumes that the couple intended to make such a determination, which they likely did not--in considering whether the mahr should be granted.

This guessing game is made more complicated by the fact that Muslims enjoy the right to "switch" legal schools either for the sake of convenience or where one school's legal regime is more favorable to their purposes.[131] The difficulty in determining when and if a couple voluntarily chose to switch legal schools, coupled with the fact that Islamic marriages *214 do not involve lawyers and many parties are not aware of this ability, suggests that there are too many variables in interpreting standard mahr provisions. Such ambiguity as to the original intent of the parties cannot support the existence of a prenuptial agreement, because it would potentially contravene the couple's own original purpose in the process.

3. Constitutional Constraints on Deducing the Parties' Original Intent

Another complexity that prevents enforcement of mahr agreements in American courts is that, in determining the couple's original intent, the court may run afoul of the Constitution. The question of whether the couple meant to waive community property and equitable distribution rules implicates the Establishment Clause[132] because interpreting mahr *215 agreements necessarily entails an analysis of Islamic religious doctrine.[133] Courts have increasingly dealt with the constitutional barrier to religion in regard to prenuptials by adhering to a "neutral principles" approach, whereby the courts attempt to avoid religious doctrine when interpreting the secular terms of a contract.

The neutral principles approach to enforcing religious marriage contracts began in the context of a Jewish marriage contract, or ketubah, in Avitzur v. Avitzur.[134] In interpreting the religious marriage contract, the court concluded that the husband must abide by his contractual promise to grant a get, or Jewish divorce, to his wife.[135] Avitzur credited its neutral principles approach to an amalgam of cases culminating in Jones v. Wolf,[136] which used the neutral principles approach in the context of a property dispute between competing churches. The issue in Jones was the separation by a local church from its hierarchical organization and the ensuing dispute over which church--the local faction or national organization-- owned the land.[137] The Supreme Court held that neutral principles of law can be applied to resolve religious issues so long as there is no issue of religious practice or doctrinal controversy.[138]

*216 Avoiding Islamic doctrinal controversy in attempting to deduce whether the couple intended to forgo American property dissolution rules in favor of Islamic ones necessarily requires the court to become enmeshed in the principles of the religious-based Shari'a. Ironically, failing to inquire into the different possible religious and cultural dogmas that formed the basis of the couple's agreement may either overlook or rewrite the true intent of the parties.

The marriage contract, which contains the terms of the mahr, consists of a one-page document written in boilerplate language on a form provided by the Muslim state, and includes blank spaces where the couples write in their names, addresses, and mahr amount.[139] As the dissent in Avitzur emphasized, it is incorrect to assume that couples intend their marriage contracts to "manifest secular promises or have any civil or secular status or any legal significance independent of the religious ceremony."[140] Further, couples may agree to a mahr only because the Islamic system does not provide for any other property rights for the wife upon divorce--perhaps they would not have created the agreement had they foreseen their move to America and been aware of the differing, more generous property rules. Cases that cannot be decided on secular terms alone are not proper for civil adjudication under Jones.[141] Moreover, even a determination of which terms in an Islamic marriage contract are secular and which are not is impermissible because this determination by itself rests upon judicial evaluation of Islamic doctrinal issues.[142]

*217 Given that many parties create mahr agreements out of religious piety and respect for cultural and familial traditions, many parties may not foresee any use for the mahr (especially where the amount is symbolic) other than a religious one. In the context of a ketubah, a commentator vividly describes many parties' nonlegal approach to religious marriage contracts:

> [T]he religious ceremony and the signing of a ketubah are part of a ritual that is adopted because of a feeling for tradition and respect for family expectations. The ketubah usually is signed in the rabbi's study just minutes prior to the ceremony, often in the presence of family members and photographers. The moment is obviously a highly emotional one. . . . [However], it is unlikely that their signatures manifest knowing assent to specific obligations enumerated in that document.[143]

Islamic marriage contracts are often created in similar circumstances. Rarely, if ever, do the parties contemplate how their document will affect property dissolution in a potential divorce in an American court--a place far both spatially and temporally from their wedding in the Middle East. That civil courts might enforce mahr agreements where the couple is not aware of the

legal significance of the act, or where they meant only to soften harsh Islamic property divorce rules, combined with the fact that courts are purposely ignorant of the religious and cultural atmosphere during the contract's inception, makes application of neutral principles of law problematic.

Moreover, civil courts cannot apply neutral principles of law in deducing the couple's intent in a document that is inherently religious. The obligation by the husband to pay the mahr is a religious duty, addressed in the Shari'a and required by the Qur'an.[144] As the dissent argued in Avitzur, enforcement of a religious marriage contract necessarily requires reference to substantive religious and ecclesiastical law,[145] especially where there is a dispute as to which of the numerous legal or religious schools apply. Further, any conclusion by civil courts that Muslim couples intend for the mahr to be their exclusive remedy upon divorce necessarily entails an examination of Islamic law and tradition. For example, in Akileh v. Elchahal, the court applied "neutral principles" only to become mired in a ***218** debate about whether Islamic law forces women to forfeit their mahr when they initiate divorce.[146] As this case illustrates, an attempt to neutrally interpret mahr agreements, which are by definition and design religious, is practically unfeasible.

IV. INTERPRETING MAHR AGREEMENTS AS PRENUPTIALS OVERLOOKS MUSLIM BRIDES' LACK OF FREEDOM TO CONTRACT

Treating a mahr provision as a valid prenuptial agreement that is "freely negotiated [when] the marriage took place"[147] overlooks a central, sad fact of life for many women in Muslim countries: They often lack true freedom to contract and bargain for themselves. Contracts are built on the presumption that there are two equally strong parties, freely bargaining for their mutual obligation to one another.[148] The success of the contract is contingent upon the free agency of both contracting parties because both parties presumably bargain in their own best interests.[149] Unfortunately, the current approach that Islamic family law takes toward women is far more paternalistic, routinely infantilizing the bride and rendering her virtually, if not actually, silent.

A. The Role of the Bride's Wali and Other Cultural Forces in Coercing Her Assent to the Marriage Contract

Although every marriage and family custom varies, many marriages in Islamic countries are contracted out of physical, economic, emotional, and cultural duress or undue influence.[150] The wali often exerts extreme pressure on the bride to accept the chosen terms. Enjoying unilateral, ***219** virtually unchecked power in contracting his charge's marriage in most Muslim countries, the wali may even legally prevent a marriage that he does not believe is an equal match, annul the marriage if the husband is deemed "ineligible," and, in some legal schools, force the woman to marry someone she vehemently refuses.[151] Were the wali to contract a low mahr, the bride has little legal recourse unless she is brave enough to sue her wali, which is unlikely considering he is usually her father.[152] In many Islamic communities, the wali's influence over his charge is so great that women who are divorced do not even attend court to oversee the dissolution; instead, they have their wali litigate the divorce because "[a] woman is given in marriage by her male guardian . . . and similarly she is helped out of marriage by her guardian."[153]

The wali's influence continues to be greatest in the initial, contracting stage of the marriage. Although many schools allow for the bride to add additional stipulations to the contract in order to soften the harsh laws of the Shari'a toward women, this rarely, if ever, occurs because the wali is also under pressure: Failure to marry his daughter adds yet another woman to his household whom he must support, and whose honor he must defend if necessary (read: additional trouble).[154] Further complicating the failure of the wali to demand additional rights for his charge is the fact that stipulations to the contract are often seen as insulting to the groom because they suggest that he will be an abusive, inadequate husband.[155] The wali must try to avoid offending the dignity and honor of the groom, lest he drive the groom away and be left without a provider for his daughter.[156] The bride, for her part, avoids demanding additional rights because "there are always other women who are willing to contract a marriage without these conditions."[157] The social pressure that both the wali exerts and is under, coupled with the often very young,

impressionable age of the bride, *220 results in the frequent abrogation of her will in favor of the wali's.[158] The end result is a compliant, quiet bride who "consents" to the terms of the mahr probably more from fear of her wali and resulting negative social consequences than from voluntary approval.[159]

In more conservative communities, especially the more rural ones, the bride actually harbors a physical fear of both her wali and her brothers, who also seek a profitable marriage for their sibling and often covet the mahr for themselves.[160] Fear of physical abuse at the hands of her family rises to the level of legal duress, which is frequently defined as "consent to a transaction through fear."[161] Although perhaps at the risk of over-generalizing, many women who marry in Islamic countries do so out of fear of the harmful physical consequences they might suffer were they to refuse or protest, ranging from familial fratricide--so-called dowry deaths, where the bride's in-laws kill her for protesting or failing to provide money to her new family[162]--to physical ostracism from her nuclear family and community. In a culture where women are viewed as "repositories of family honor," they must be extremely careful not to offend or disgrace their family in order to preserve their existence.[163]

Another source of pressure or duress on the bride is intense cultural and religious pressure. The bride and the groom are in a unique situation when contracting the mahr: Both are engaged in a discourse about the possible demise of the marriage. Given that Islam frowns upon divorce as "abhorrent to God,"[164] and views marriage as the fulfillment of human nature, both parties are likely not animated by rational bargaining power.[165] As one commentator puts it, "[t]he unique emotional atmosphere *221 surrounding the execution of premarital agreements may lead a person to sign without careful deliberation, since hesitancy may reveal a lack of commitment to the relationship, lack of confidence in the relationship, or a suspicion of the bona fides of the other party."[166] Certainly a young bride, at the mercy of her father or grandfather, does not have the luxury of appearing to distrust the groom chosen for her. Similarly, the seriousness with which Islam views marriage also prevents the bride from appearing to lack a dedication to the institution of marriage itself, especially since marriage is her primary mode of protection and survival. The patriarchal belief that marriage is the only appropriate course for women still flourishes in Muslim countries: Numerous women who have committed the "crime" of living alone instead of marrying have been murdered and their homes set afire.[167]

The straits that Muslim women are often in when agreeing to marriage contracts are frequently overlooked by courts in depriving women of their rightful property upon divorce. Interestingly, however, American-grown prenuptial duress is of a relatively less virulent strain than that described above. One example includes the groom's conditioning marriage on the signing of the prenuptial when the bride was pregnant, had a strong moral objection to abortion, and lived in a small southern town in Alabama where legitimacy of the child was extremely important.[168] Another American case finding duress concerned the husband's threats to take the house and children from the wife unless she agreed to transfer her interest in the house and stock, although she was extremely inexperienced in business, did not know the value of the stock or the house, and was unemployed.[169] The physical fears of death, isolation, or insolvency that face a Muslim woman were she to object to a proposed marriage contract put even these disturbing American duress cases into perspective.

One court displayed a unique and refreshing awareness of the lack of freedom that women in many Muslim countries have in contracting their marriages. In Chaudry v. Chaudry, a New Jersey trial court commented on the involuntariness of mahr provisions as compared to state-sanctioned prenuptial agreements:

> While the State does recognize [prenuptial] agreements, it is essentially because there is a freedom of choice between the parties, and if they with full knowledge of their rights and with proper guidance and counseling *222 come to a certain determination to waive or give up rights this certainly may be enforced in the proper case in this State; but, where as here there was no choice given to the plaintiff under the law of Pakistan and the Islamic law, which I do not criticize . . . she had no choice. She had to waive, give up or not claim support or alimony in the event of a divorce, and it cannot be said that with that choice she chose to do it, because there was no choice involved. To that extent it is so clearly contrary to the public policy of this State that I decline to enforce it . . . .[170]

Unfortunately, the appellate court reversed, stating both that the mahr provision was a prenuptial and that it was "freely negotiated [when] the marriage took place."[171]

1. Cultural and Gendered Pressures on Muslim Women Preclude Enforcement of Mahr Agreements Under the Uniform Premarital Agreement Act

Even where courts insist on interpreting mahr agreements as prenuptials, or alternatively, where a couple actually intends for the mahr to be a prenuptial agreement, the Uniform Premarital Agreement Act ("UPAA") proscribes enforcement of any marital agreement entered into involuntarily.[172] Adopted by approximately half of the states,[173] the UPAA refuses enforcement of agreements contracted out of duress.[174]

*223 A voluntariness inquiry under the UPAA considers elements of normal contract law like duress and undue influence, but also considers other, broader factors because of the parties' confidential relationship.[175] Therefore, even if a court does not invalidate a mahr based on duress or undue influence by the wali or some other cultural force, the court may nevertheless invalidate it under the broader definition of involuntariness found in the UPAA.[176] In determining whether the challenging party voluntarily agreed to a prenuptial, courts regularly consider several factors, the most important of which include: (1) the ages, education, and sophistication of the parties; (2) whether the party seeking to set aside the agreement fully understood the legal significance of its terms when it was executed; (3) the challenging party's opportunity to be represented by independent counsel; and (4) the overall fairness of the terms of the agreement.[177] As the discussion above indicates,[178] Muslim women typically marry at a young age, often lack formal education,[179] and are often ignorant as to the potential legal consequences of their actions. Furthermore, their right to independent counsel is often severely constrained by their culture. Accordingly, mahr agreements, even where interpreted as prenuptials, fail under the UPAA.[180]

2. Coercing Muslim Women to Assent to Dower Terms Is Unlawful Under a "Pure" Reading of the Qur'an

Any argument that suggests that Muslim women do not enjoy freedom to contract because of cultural pressure must also confront the reality that such an argument smacks of Western ethnocentrism and cultural bias. Therefore, it is important to emphasize that the duress women face is culturally and customarily inspired, not religious-based. It is generally *224 accepted among legal scholars that portions of the Shari'a differ from the Qur'an on the issue of consent; most agree that a "pure" reading of the Qur'an indicates that duress-based consent in marriage is wholly against its basic principles.[181] They argue that the Prophet himself established the unfettered right of women to protest the terms of a marriage contract and that the advent of the marriage contract and dower in Islam was designed to raise the status of women from an object-for-sale to a party to the marriage agreement itself.[182] This has been misapplied over time to the point where most state versions of the Shari'a do not require the wali to inform the bride that her silence constitutes consent to both the marriage and the mahr.[183] Thus, although technically legal under the Shari'a, duress is generally viewed as unlawful under an ungendered reading of the Qur'an, despite cultural norms to the contrary.

B. Women's Lack of Freedom to Contract Precludes Application of Islamic Law in American Divorce Proceedings on Public Policy Grounds

Most Islamic marriage contracts express at least an oblique desire to have Islamic law govern the contract.[184] Such a desire creates a quagmire for the courts: Should a court apply Islamic law--a body of law that they are unfamiliar with and that is composed of foreign religious doctrine that may offend public policy--or should the court contravene the contract and apply

domestic law, possibly altering the terms of the contract in the process? Determining whether Muslim women's lack of freedom to contract bars application of Islamic law in American courts necessarily involves a choice-of-law discussion.[185]

***225** In determining whether a forum will apply the laws of a foreign nation, courts regularly consider several factors, including the needs of the international system, the relevant policies of the forums, the uniformity of the result, the ease and determination of the law being applied, and which forum has the "most significant relationship" to the event at issue.[186] Importantly, absent a treaty, American courts are under absolutely no obligation to legitimate or enforce foreign law.[187] When American courts choose to recognize or apply foreign law, they do so as a matter of custom--a party in court cannot demand the application of foreign law,[188] although in order to avoid violating the parties' due process rights, the state must have a sufficient nexus to the subject matter of the litigation.[189]

While most courts routinely apply the laws of other countries, an important exception exists to the application or recognition of foreign law: public policy. If the forum finds that the foreign law is either repugnant to its own policies or prejudicial to its interests or citizens, the court need not apply the law.[190] This principle is reflected in an oft-quoted definition stating that foreign law need not be applied when it "violate[s] some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."[191] Public policy is a useful vehicle to invalidate prenuptial agreements because it is a flexible, catch-all objection that is frequently used to invalidate provisions under various rationales,[192] including a desire to preserve the integrity of marriage[193] and a refusal to recognize agreements contracted out of duress or undue influence. Use of the exception in the context of marriage and divorce has particular pertinence because the state has a strong interest in ***226** protecting the institution itself and in regulating dissolution of marital property.[194]

In some circumstances, public policy can restrict the application of Islamic law in American divorce proceedings. It is a common law principle that agreements contracted out of duress or undue influence are voidable. Given the possibility of duress and other forms of cultural and physical pressure in the offer and acceptance process of many Islamic marriage contracts, most courts should refuse to apply Islamic law and should instead apply community property or equitable division rules. Enforcing a contract against a party that had little to no freedom to object to its terms is contrary to our egalitarian system of offer, acceptance, consideration, and equal bargaining power.

Moreover, in most cases, overriding the wife's rights under community property or equitable division regimes by applying Islamic law unnecessarily leaves the wife destitute. This result is far too harsh. Indeed, any marriage contract that creates a substantial possibility that the wife becomes a ward of the state may "cast[] enough negative spillovers on society for the law to refuse enforcement."[195] Even if the wife does not become a ward of the state per se, the fact that Islamic divorce law operates in a way that unduly prejudices the wife while overwhelmingly favoring the husband runs counter to the state's interest of ensuring a just dissolution of marital property. The Texas Court of Appeals in Seth v. Seth, for example, concluded that recognizing an Islamic talaq divorce would be so harsh to the woman that the public policy of preventing ex parte divorces outweighed the other choice-of-law concerns, such as the needs of the international system.[196] Similarly, the Shari'a--whereby the wife is not permitted to work without permission, but then is not allowed to claim ownership in anything that she does not herself earn--is so repugnant to public policy that it outweighs any other choice-of-law concern.[197]

Lastly, parties attempting to enforce mahr agreements in American courts almost always bear a significant enough relationship to the state to justify application of domestic, rather than Islamic, law. In order to avoid ***227** violating the parties' due process rights, the parties must have a sufficient nexus to the state. A review of the cases dealing with Islamic marriage contracts illustrates that most parties marry in an Islamic country and immigrate to the United States, where they avail themselves of the benefits of the state in which they divorce. In In re Marriage of Shaban, although the husband and wife were married in Egypt, the husband operated a medical practice in California for more than seventeen years before divorcing,[198] and in Chaudry v. Chaudry, the husband lived and worked in New Jersey for more than nine years before filing for divorce.[199] Thus, not only

are the parties' due process rights satisfied, their residence in the United States gives them adequate notice that they may be subject to its laws. Further, because the state has such a historically strong interest in marriage and divorce, especially where one spouse may be left destitute or where children are involved, there is no doubt that the state has just as much, if not more, of a significant relationship to the dissolution of property than the parties' native country.

C. What About American Muslims?: Should Mahr Agreements Contracted in the United States Be Enforced?

This Note establishes that mahr agreements contracted in Muslim countries should be unenforceable because they lack the intent to function as prenuptial agreements and are frequently too vague or contracted under duress. However, what about mahr agreements that are contracted in the United States by American Muslims? Do the same arguments about duress, lack of freedom to contract, cultural and gender pressure, and unclear intent still apply?

A couple of cases deal with American or immigrant Muslims who contracted mahr agreements in the United States. In Akileh v. Elchahal, two Middle Eastern immigrants married in Florida, agreeing to a deferred mahr in the amount of $50,000.[200] When they were divorced, the Court of Appeals overturned the lower court, holding that the mahr agreement was enforceable.[201] There was no discussion of the effect the mahr agreement had on the wife's rights under community property, but because the wife was trying to enforce the agreement, it could be inferred that she would have received more money by enforcing the mahr than by exercising her ***228** rights under traditional community property rules.[202] A different result was reached in Habibi-Fahnrich v. Fahnrich, where the couple's New York mahr agreement was struck down for vagueness and failure to adhere to the Statute of Frauds.[203] Again, the wife was the party seeking to enforce the mahr, largely because there were no marital assets involved in the marriage and, thus, there was no issue of equitable distribution.[204]

As these cases illustrate, women are often the parties seeking to enforce American mahr agreements. Does their eagerness to collect the mahr, as well as a potential absence of duress and cultural pressure, mean that they necessarily should be enforced? The answer to this question is that they occasionally should be enforced on a case-by-case basis. Although some Muslim women in America are presumably under the same cultural pressures that they often are under in Muslim countries, and while some mahr agreements are still bargained for and signed by the American bride's wali, the right of Muslims and all religious peoples to make contracts in adherence to their religion should be preserved.[205]

One caveat must be emphasized: Enforcement of American-made mahr agreements can only be enforced on an ad hoc basis, depending on the relative bargaining power of the bride, the role of the wali, the specificity of the agreement, an indication of which of the many Islamic legal schools apply, and a clear manifestation of an intent to forgo or add upon traditional property dissolution rules.[206] As Habibi-Fahnrich illustrates, marrying couples who fail to protect their mahr agreements by neglecting to spell out the material terms of the mahr or to adhere to the ***229** Statute of Frauds cannot be helped by civil courts; it is the parties' duty to spell out their intent clearly in order to avoid constitutional and Statute of Frauds problems.[207] Further, where courts decide to enforce mahr agreements, judges should take account of the lump sum payment of the mahr in their overall assessment in dissolving the marital estate and should credit the mahr payment to the total amount owed the wife.[208]

Even where a mahr agreement clearly states its intent, it is imperative for the court to inquire into the circumstances of the bride's assent to the agreement. Akileh v. Elchahal suggests that enforcing the mahr agreement without inquiry into the bride's freedom to contract may have been in error.[209] There is an indication in the case that the bride, whom the court notes "had never socialized with a man outside the presence of her family," may not have had unfettered freedom to reject the proffered groom or the terms of the agreement.[210] The opinion describes in some detail the groom's presenting himself to the father to discuss the marriage long before the bride ever met him.[211] Also, the opinion notes that the father negotiated the terms and amount of the mahr, without any participation on the part of the bride.[212] These facts should have served as a red flag to the court of the possibility of an arranged marriage against the bride's will and also that the bride may not have consented to the

terms of the mahr or been apprised that her assent waived her rights under ordinary property dissolution rules. Therefore, courts that attempt to enforce American-made mahr agreements must be especially sensitive to cultural nuances that may affect the validity of the documents.

V. IS A REFUSAL TO ENFORCE MAHR PROVISIONS IN AMERICAN COURTS NECESSARILY A CONDEMNATION OF ISLAM?

The Western world is infamous for perpetuating distortions and inaccuracies about Islam, especially with regard to women. This problem has increased in recent years to the point that one Muslim feminist claims that the "Western obsession" with Muslim women's so-called plight has ***230** made religious and social equality that much more unattainable in the Muslim world.[213] The Western media, although a significant force in the dissemination of such inaccuracies, is not the only culprit, as law journals, foreign affairs newsletters, and politicians get involved in the act as well.[214] Therefore, any Western discussion of women in Islamic family law necessarily begs the question of whether this Note, which urges the cancellation of mahr agreements in American courts, condemns Islam as a religion, people, or body of law. Instead of falling lockstep into the cadence of Islamic inaccuracies and Western condescension, and instead of portraying Muslim women as perennial victims, this Note makes the case that Islam has the potential to be the tolerant, liberating religion its Prophet once envisioned-- a religion that was intended to "[give] women a new status . . . to create a new woman as much as a new man."[215]

A. Patriarchal Interpretation Obscures the Egalitarian Principles of Islam

Those who are resistant to change in the Muslim world argue that "'neo-colonialist Western women"' seek to impose their ideas about feminism and equality--notions supposedly alien to Islam--on the Middle East.[216] To the contrary, most feminist Islamic scholars believe that equality of the sexes is not inconsistent with Islam or an "import from Western capitals"[217]--but that of all the world religions, Islam was the first to envision a truly egalitarian society.[218] As Part II indicates, the Prophet initiated feminist reforms that significantly ameliorated the lot of women in the Middle East, predating any female revisions in other world religions, including those in the West. One example of this is the verse in the Qur'an that states that both men and women were made out of "a single Person" ***231** who is not gender-specific.[219] Even religious scriptures, however, cannot escape the rigid grip of patriarchy and class structures, which have distorted many of the world religions' texts, including the progressive Qur'an, over time. In fact, the Shari'a in some places contradicts the spirit of the Qur'an to the point that it takes a "diligent search . . . to reconstruct Islamic law in its true, liberal, humanistic, and progressive spirit."[220] One scholar believes that the Qur'an itself is actually two documents, one part eternal and unchanging, the other part reflective of social conditions and patriarchal structure.[221] The at-times misogynistic, other times infantilizing, misinterpretations and customs continue to persist throughout the Shari'a to date, however, and as a result, women will be prevented from enjoying the same rights as men in marriage and divorce so long as religious norms continue to disguise harmful cultural traditions.[222]

The best example of this continuing problem is the requirement in the Shari'a that a woman contract her marriage only through a wali. Never mind the fact that the Qur'an created the wali only in order to prevent minors from making poor decisions--not in order to substitute women's autonomy for the will of their male guardian.[223] This misapplication, which has been inspired by the historical and continuing practice of male guardianship of women the world over, is one of many examples where the true spirit of Islam has been lost in male-constructed laws. Even those elements of the Shari'a that preserve originally female-friendly laws, like one that allows an adult woman to reject an arranged marriage, are undercut by an accompanying law that preserves the right of the wali to invalidate the marriage by petitioning its cancellation in court.[224] Another manifestation of patriarchal custom is the requirement of kafaah, or social equality in marriage, that is not found in the Qur'an but that is found in the Shari'a. This requirement supplants women's autonomy by the state in contracting marriage because women are restricted from marrying entire groups of people depending on nothing more than their social status.[225] These are just some of the retreats

from the liberality and freedom envisioned by Islam.[226] Were the stranglehold of patriarchy and class *232 removed from the Shari'a, scholars generally agree that Islam would come closer to its original egalitarian principles.

B. Is the Attempt to Protect Muslim Women in American Courts Yet Another Form of Subjugation?

In attempting to prevent Muslim women from unwittingly losing their rights under marital property rules in the United States, we risk creating a new kind of subjugation: paternalism and infantilism. By "protecting" Muslim women, are we merely perpetuating their lack of equality by preventing them from being free to contract as they wish? Are we forcing them from their precarious pedestal as half "repositories of family honor," half sexual temptresses, only to be infantilized and imprisoned in a Western-constructed cage of benign paternalism?

On the one hand, preventing Muslim women from contracting around property rules upon marriage sounds as if we view the situation of Muslim women as so benighted that they should simply not be permitted to choose, even though they are technically, if not actually, free.[227] On the other hand, instead of portraying women as perennial victims, this Note makes the Kantian demand that women be treated as free agents--ends in themselves--and not merely "adjuncts to the plans of men."[228] Urging the law to help radically force this change is not infantilizing women, but supporting the idea that the plight of Muslim women is a struggle that our democracy values as worth fighting for.[229]

*233 VI. CONCLUSION

As the second largest religion in the world,[230] and as more Muslim couples immigrate to the United States, American courts will be increasingly faced with the intersection between Islamic and domestic law. Many complexities stem from these cases, including a desire by courts to give due respect to Islamic law and culture. Unfortunately, this desire can be misapplied in harmful ways. By attempting to adhere to Islamic law out of respect for legal and cultural differences, courts risk perpetuating gender and economic inequalities. This danger is vividly illustrated by the interpretation of mahr agreements as prenuptials. Interpreting mahr agreements as prenuptials prevents women from exercising their rights to the marital estate upon divorce, unfairly leaving Muslim women destitute, if not actually wards of the state. This effect is especially damning considering that Muslim women are culturally constrained from working in the community, especially when they have children.

Instead, courts should override mahr agreements and apply ordinary property dissolution rules to Muslim divorces. If a court is particularly determined to honor the mahr agreement civilly, perhaps the court might at least credit the mahr payment to the amount owed by the husband in dissolving the estate between the two parties. If Muslim couples take their religious Qur'anic duty to pay mahr agreements seriously, they should seek enforcement through their own religious institutions, not a civil court. Further, American Muslims who contract mahr agreements may seek enforcement--constitutional constraints allowing--but only where the court inquires into the circumstances of the agreement to ensure that the bride's consent was not forced. American Muslims also might avoid civil litigation by seeking a more religiously appropriate adjudication from an Islamic counsel or imam.

This Note also suggests that an unadulterated, ungendered application of Islam and the Qur'an will lead Islam to become the only major world religion that truly is a "guarantor par excellence of women's rights."[231] Unfortunately, however, because Muslim women tend to be highly religious and do not want to act in contradiction to their faith,[232] and because religious fundamentalists continue to deride "facile adoption of western feminist notions,"[233] reform is stagnant. The most promising *234 vehicle of hope for Muslim women is to encourage change from within the religious institutions themselves by calling for a reinterpretation of the religious texts (ijtihad) that is free from the shackles of patriarchy and class.[234] Until ijtihad forces a return to the true ideals of Islam in the crucial areas of family law, the all-too-common stereotype of Muslim women as incapable of freely providing for their own destinies in many cases remains an all-too-frequent reality. Until and unless this

reality becomes nothing more than a recent memory, American courts should be prevented from conspiring to enforce cultural and economic subjugation against Muslim women within their jurisdictions.

Footnotes

a1 Class of 2003, University of Southern California Law School; B.A. 2000, Political Science and Broadcast Journalism, University of Southern California. I would like to thank Dina Shaban Moatazedi and Sherifa Shaban for their cooperation and inspiration for this Note; without the groundbreaking precedent of Sheri's case, this Note would not be possible. I would also like to thank Dean Scott Altman, for his assistance as my advisor, Eric Enson, for both the idea for this Note and his invaluable editorial assistance, and my parents, Charlie and Teri Blenkhorn, for their unending support and love.

1 Jennifer Jewett, Note, The Recommendations of the International Conference on Population and Development: The Possibility of the Empowerment of Women in Egypt, 29 Cornell Int'l L.J. 191, 203 (1996).

2 See Chaudry v. Chaudry, 388 A.2d 1000, 1003 (N.J. Super. Ct. App. Div. 1978).

3 See id.

4 See id. at 1004.

5 See id.

6 See id.

7 See id.

8 See id.

9 See id.

10 See id. at 1006.

11 See John L. Esposito, The Future of Islam, 25 Fletcher F. World Aff. J. 19, 28 (2001).

12 See Ghada Karmi, Women, Islam and Patriarchalism, in Feminism and Islam: Legal and Literary Perspectives 69, 81 (Mai Yamani ed., 1996). Renowned Egyptian feminist Nawal el Saadawi remarks that changes in other areas of Islamic law have been implemented easily, while female reform continues to stagnate:

The political leaders and the State moved rapidly in the task of changing religious legislation so as to ensure that it remained in line with the economic structures that were under continuous remoulding as society moved from one stage to another, from feudalism to capitalism and then to socialism. The same political leaders and the same State apparatus, which acted so decisively and quickly in so far as religious legislation related to economic needs was concerned, reversed its attitude in the question of women's status and suddenly became as slow, lethargic and negative as it had been fast moving, dynamic and full of initiative.

Nawal El Saadwi, The Hidden Face of Eve: Women in the Arab World 194-95 (Sherif Hetata trans., Beacon Press 1982).

13 See Adrien Katherine Wing, Custom, Religion, and Rights: The Future Legal Status of Palestinian Women, 35 Harv. Int'l L.J. 149, 166 (1994).

14 See Ann Elizabeth Mayer, A "Benign" Apartheid: How Gender Apartheid Has Been Rationalized, 5 UCLA J. Int'l L. & Foreign Aff. 237, 237 (2000).

15 See, e.g., Dawoud Sudqi El Alami & Doreen Hinchcliffe, Islamic Marriage and Divorce Laws of the Arab World 3 (1996); John L. Esposito, Women in Muslim Family Law, at x (1982); Jan Goodwin, Price of Honor: Muslim Women Lift the Veil of Silence on the Islamic World 36 (1994) ("[E]ighty percent of Koranic rulings are devoted to regulating marital relations and the conduct of women."). There are four main legal schools or sects within Islam: the Hanafi, Maliki, Shafi'i, and Hanbali. It should be stressed that there are many variations within the four schools as to interpretations and implementation of the Qur'an, and thus, it is difficult to generalize across many regions, tribes, and countries. I attempt, however, to provide a broad picture of how most schools interpret the Shari'a.

Similarly, because there is no standard method of transliteration from Arabic to English, there are numerous ways to spell certain key words relevant to a discourse on Islam. For consistency, the Shari'a is herein spelled as such (instead of, for example, Shari'ah or Sharia). Further, the Qur'an is herein spelled with a "Q" with punctuation (other forms include Koran and Quran), while the Islamic dower will be referred to as a mahr (other forms include sadaq and nahlah). Also, the Prophet is referred to as Muhammad (other forms include Mahomet and Mohammed).

16 Judith E. Tucker, In the House of the Law 5 (1998).

17 See, e.g., V.R. Jones & L. Bevan Jones, Woman in Islam 70 (Hyperion Press 1981) (1941); Tamilla F. Ghodsi, Note, Tying a Slipknot: Temporary Marriages in Iran, 15 Mich. J. Int'l L. 645, 652-53 (1994); Leila P. Sayeh & Adriaen M. Morse, Jr., Islam and the Treatment of Women: An Incomplete Understanding of Gradualism, 30 Tex Int'l L.J. 311, 322 (1995).

18 In fact, the Prophet is often called "a very earnest champion of women's rights." Jones & Jones, supra note 17, at 70. Of course, this statement is relative to the oppression pre-Muslim women faced in nonreligious tribes in the Middle East, not relative to modern-day Western feminists. Female reforms the Prophet instituted include forbidding female infanticide, restraining guardians from marrying underage female orphans, establishing a law of inheritance for women, and promising religious favors for those who help widows and orphans. Id. at 233. See also Goodwin, supra note 15, at 29-31 (describing Muslims as "the [f]irst [f]eminists" and arguing that "Islam, in fact, may be the only religion that formally specified women's rights and sought ways to protect them").

19 See Asghar Ali Engineer, The Rights of Women in Islam 98 (1992).

20 The Islamic Ctr. of S. Cal., Islam at a Glance (n.d.) (on file with author).

21 Tove Stang Dahl, The Muslim Family: A Study of Women's Rights in Islam 141 (Ronald Walford trans., 1997).

22 The Qur'an, 3:36 (Abdullah Yusuf Ali trans., 7th Am. ed., Tahrike Tarsile Qur'an 2001) [hereinafter Qur'an].

23 Id. at 3:195.

24 Fathi Osman, Muslim Women: In the Family and the Society 1 (1996).

25 See, e.g., id. at 5 ("And thus does their Lord answer their prayer: I shall not lose sight of the work of any of you who works (in My way) be it man or woman: You are members, one of another.") (quoting Qur'an, supra note 22, at 3:195) (emphasis in original).

26 Qur'an, supra note 22, at 9:71.

27 Id. at 4:1.

28 Anne Sofie Roald, Women in Islam: The Western Experience 122 (2001) ("'Man and woman were created from the same origin without specifying who was created first. - It may be that they were created at the same time, which indicates a spiritual equality of man and woman.'").

29 Ali Engineer, supra note 19, at 98.

30 Qur'an, supra note 22, at 2:187.

31 Tucker, supra note 16, at 40.

32 Qur'an, supra note 22, at 24:33.

33 Esposito, supra note 15, at 15.

34 See Ali Engineer, supra note 19, at 98. Note, however, that the Qur'an warns contracting parties that marriage is "a solemn covenant." Qur'an, supra note 22, at 4:21.

35 Esposito, supra note 15, at 16.

36 Osman, supra note 24, at 10.

37 Esposito, supra note 15, at 22. Equality is often determined by the following criteria: (1) family, (2) Islam, (3) profession, (4) freedom, (5) good character, and (6) means. Id.

38 Tucker, supra note 16, at 41. Thus, a free woman was not permitted to marry a slave, a woman from "'people of learning and religious piety"' could not marry an "'illiterate profligate,"' and a woman with a good background could not marry a man who is "'sinful, poor, or employed in a vile profession."' Id.

39 Esposito, supra note 15, at 22.

40 Jamal J. Nasir, The Status of Women Under Islamic Law and Under Modern Islamic Legislation 28 (1990). Interestingly, the rationale advanced for the restriction on eligible men for Muslim women is explained in terms of feminism:
Under Islam, woman enjoys more rights. A Christian girl coming into a Muslim home becomes elevated in her human dignity and rights. A Muslim girl going into a Christian home loses her elevation; for according to Christianity, woman is the cause of all evil and thus impure and unclean....In Islam woman is as good as man. A Christian woman merges her identity in that of her husband, losing her very name and adopting that of her husband.
Jones & Jones, supra note 17, at 107. See also Symposium, Roman Catholic, Islamic, and Jewish Treatment of Familial Issues, Including Education, Abortion, In Vitro Fertilization, Prenuptial Agreements, Contraception, and Marital Fraud, 16 Loy. L.A. Int'l & Comp. L. Rev. 9, 67 (1993) (advancing the argument that the ban on women marrying non-Muslim men is due to the fear that patriarchal structures in other religions will interfere with a Muslim wife's right to the free exercise of her Muslim faith) [hereinafter Symposium].

41 Nasir, supra note 40, at 59. Many Islamic jurists believe that a woman forfeits her right to maintenance if she works outside the home without the permission of her husband. Id. at 62. The more liberal Egyptian law provides that a woman forfeits the maintenance right only if her outside work conflicts with the family and only if she was actually forbidden by her husband from working. Id. at 63. Similarly, the wife may risk her maintenance right if she is disobedient, or a nashiza (literally, a rebellious wife), by withholding sex from her husband or leaving the marriage home indefinitely without permission. Id.

42 Osman, supra note 24, at 54. This principle reflects the Muslim belief that the marriage is not a service contract, but rather, is a contract for human companionship. Azizah al-Hibri, Muslim Marriage Contract in American Courts, Address at the Minaret of Freedom Banquet (May 20, 2000), at http:// www.minaret.org/azizah.htm [hereinafter Azizah al-Hibri Address].

43 Barbara Freyer Stowasser, Women and Citizenship in the Qur'an, in Women, the Family, and Divorce Laws in Islamic History 23, 32 (Amira El Azhary Sonbol ed., 1996).

44 See Mary Ann Fay, The Ties That Bound: Women and Households in Eighteenth-Century Egypt, in Women, the Family, and Divorce Laws in Islamic History, supra note 43, at 155, 170. One woman traveler in eighteenth century Turkey noted that "I look upon Turkish women as the only free people in the Empire," because the veils that women were forced to wear actually gave them a certain degree of anonymity in the streets to pursue sexual opportunities. Id. Because a jealous husband could never recognize his wife from the numerous other veiled women, and because it would be inappropriate to touch or follow a suspected wife in public, women easily moved in and out of different relationships with illicit partners. Id.

45 Dahl, supra note 21, at 51.

46 Tucker, supra note 16, at 44. Many Muslim families contractually marry their children to one another at a very young age before they are ready for sexual intercourse, but the marriage does not itself begin until sexual intercourse occurs. Id.

47 Id. at 45.

48 Qur'an, supra note 22, at 4:25.

49 Ali Engineer, supra note 19, at 100.

50 Osman, supra note 24, at 37.

51 Tucker, supra note 16, at 46-47. Some schools only allow the wali to contract a marriage where the parties have not yet reached majority, while others have a wali for the woman regardless of her age. See David Pearl, A Textbook on Muslim Law 44 (1979).

52 Tucker, supra note 16, at 38.

53 See, e.g., El Alami & Hinchcliffe, supra note 15, at 5; Nasir, supra note 40, at 6. If two men are not available, a man and two women witnesses suffices, thus indicating that the word of two women is equal to the word of one man: "And get two witnesses,...and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs the other can remind her." Esposito, supra note 15, at 17. This law was recently justified by a writer for the Islamic Center of Southern California as "not [an] impl[ication of] any inferiority of a woman physically or morally. It refers to a general observation that some women may not be interested to keep in their memories such financial details, or be familiar with the legal aspects that should be accurately noticed." Osman, supra note 24, at 40.

54 See, e.g., Pearl, supra note 51, at 43. Many schools hold that a woman married by her guardian before she reaches puberty may repudiate the marriage when she reaches majority. Id. at 44-45.

55 Indeed, there is evidence in the Qur'an that one goal of Islam was to elevate women to the status of men. See Ali Engineer, supra note 19, at 107-08. Over time, however, the tribes, who were long used to having guardians represent women in most affairs, added the presence of a wali to the contracting of marriage, thus robbing women of their newfound ability to determine their domestic fate. See id. Today, her consent is little more than a mere "nod or to keep silent." Id. at 108 .

56 See Goodwin, supra note 15, at 32.

57 El Alami & Hinchcliffe, supra note 15, at 6 ("If the woman remains silent on hearing the offer of marriage, this will be construed as acceptance, as also if she laughs or even if she cries a little, for a few tears will be seen as a sign that she regrets leaving her parents, and not as a refusal of the offer of marriage."). See also Judith Romney Wegner, The Status of Women in Jewish and Islamic Marriage and Divorce Law, 5 Harv. Women's L.J. 1, 11 n.41 (1982) (arguing that although a bride's consent may be inferred from her silence, this is contrary to the objections of the Prophet's wife, A'isha, who remarked that a young girl's modesty would prevent her from protesting).

58 El Alami & Hinchcliffe, supra note 15, at 6.

59 Pearl, supra note 51, at 44. In the Shafi'i and Maliki schools, a woman may only contract a marriage herself when she is no longer a virgin, either because of a consummated marriage, divorce, or an illicit relationship . Id.

60 See, e.g., Nasir, supra note 40, at 15. One condition that may nullify the contract altogether is imposition of a time-limit: Sunni Muslims hold that any implication of a time-limit on the marriage is contrary to the institution of marriage itself and is void ab initio. Id. at 16. Other schools may recognize temporary marriages, or muta (pleasure) marriages, contracted in order to avoid illicit sex. Id. at 17-18.

61 Esposito, supra note 15, at 23 (noting that the Hanafi school does not allow the wife to contract for additional requirements in the marriage).

62 Dahl, supra note 21, at 70. See also Wing, supra note 13, at 162-63 (noting that stipulations to the contract are rarely used, either because of a reluctance to defy custom or because of a lack of knowledge that stipulations are an option). For more information on using contract stipulations to protect women's rights, see generally Carol Weisbrod, Universals and Particulars: A Comment on Women's Human Rights and Religious Marriage Contracts, 9 S. Cal. Rev. L. & Women's Stud. 77 (1999).

63 Ali Engineer, supra note 19, at 111. The dower is not consideration for the marriage contract, however, but is an effect of the contract itself. Pearl, supra note 51, at 57.

64 Nasir, supra note 40, at 43 (quoting the Moroccan definition of a mahr).

65 Qur'an, supra note 22, at 4:4.

66 Nasir, supra note 40, at 43. See also Sayeh & Morse, supra note 17, at 327 ("Because the amount of the dower has been viewed as contingent on the resources of the husband rather than upon any attributes of the wife or her status, it is evident that the mahr cannot be considered as the price paid for a wife.").

67 See, e.g., Tucker, supra note 16, at 48 (describing an instance in which the village head pocketed the mahr instead of giving it to the bride); Fariba Zarinebaf-Shahr, Women, Law, and Imperial Justice in Ottoman Istanbul in the Late Seventeenth Century, in Women,

the Family, and Divorce Laws in Islamic History, supra note 43, at 81, 92-93 (noting that seventeenth century family court proceedings indicate numerous complaints by wives of husbands who, in order to retain the deferred mahr, often forced wives to initiate divorce proceedings, which legally freed the husband from having to pay the wife her dower); Kathryn J. Webber, The Economic Future of Afghan Women: The Interaction Between Islamic Law and Muslim Culture, 18 U. Pa. J. Int'l Econ. L. 1049, 1074-75 (1997) (noting that a study of women in the West Bank indicates that wives often give up their mahr to their families, especially their fathers, and often that the husband takes it back as well).

68 Nasir, supra note 40, at 44.

69 Id. at 44-45. The only items excluded from the dower are wine and pigs, which are viewed as traditionally unclean. Id. at 45.

70 El Alami & Hinchcliffe, supra note 15, at 19.

71 Tucker, supra note 16, at 54.

72 El Saadawi, supra note 12, at 191 (arguing that men prevent women from working because of a fear that their earnings would "lead the wife to be more conscious of her personality, and her dignity, and that therefore she will refuse to accept the humiliations she was subjected to before....[Thus a] 'woman who works without the permission of her husband would be considered an outcast'").

73 Dahl, supra note 21, at 70. Social custom dictates the amount of the prompt and deferred dower. Symposium, supra note 40, at 68.

74 Esposito, supra note 15, at 25; Tucker, supra note 16, at 92.

75 See Jones & Jones, supra note 17, at 136-38. Importantly, however, the mahr does not act as a constraint against divorce among the poor because the amount of the deferred mahr is already set at such a low value. See id. at 138.

76 Id. at 138-39. Where the woman initiates the divorce, or khul', she waives her right to collect the deferred dower in most legal schools. Pearl, supra note 51, at 102-03.

77 Sebastian Poulter, The Claim to a Separate Islamic System of Personal Law for British Muslims, in Islamic Family Law 147, 161 (Chibli Mallat & Jane Connors eds., 1990) ("The notion...that to pay [mahr] would commonly bankrupt the husband seems extremely far-fetched.").

78 Azizah al-Hibri Address, supra note 42.

79 See Dahl, supra note 21, at 70.

80 Webber, supra note 67, at 1062. Significantly, however, many women never even receive their dower after divorce because they often are afraid to sue their husbands. Id. at 1074-75.

81 El Alami & Hinchcliffe, supra note 15, at 22. In fact, the wife herself need not be present to validate the talaq. Id. Also, the husband retains the right to rescind the talaq and take his wife back at any point during a three-month waiting period (idda) during which the wife ensures that she is not pregnant with her husband's child. Id. at 23.

82 Id. at 22.

83 See Ali Engineer, supra note 19, at 126 ("[Talaq] has made the lives of thousands of women most miserable. If the husband says divorce thrice, even in a state of anger or inebriation, or just for fun, the woman is irrevocably divorced....No one can help the wife either....Often husbands use this form of divorce to punish their wives for not submitting to their authority.").

84 Id. at 113.

85 There is strong evidence suggesting that the mahr itself perpetuates gender inequalities. If a woman is divorced before the marriage has been consummated, she is only entitled to half the mahr, not the entire mahr, which indicates that the dower is a form of financial compensation paid for the sexual enjoyment of a woman. Mona Siddiqui, Law and the Desire for Social Control: An Insight into the Hanafi Concept of Kafa'a with Reference to the Fatawa 'Alamgiri (1664-1672), in Feminism and Islam: Legal and Literary Perspectives, supra note 12, at 49, 54. See also Shahla Haeri, Divorce in Contemporary Iran: A Male Prerogative in Self-Will, in Islamic Family Law, supra note 77, at 55, 57-58. In fact, the word "nikah," which refers to the marriage itself, has been interpreted to

mean unlimited ownership or use of the vagina by the husband. Ghodsi, supra note 17, at 665. Thus, the mahr is a "confirmation of gendered roles" whereby the man gets unlimited sexual enjoyment and the woman is entitled to economic maintenance and protection in return. Siddiqui, supra, at 54. Others argue that mahr is a "'mark of respect for [the wife].'" Ghodsi, supra note 17, at 665 n.101.

86 See, e.g., Chaudry v. Chaudry, 388 A.2d 1000, 1006 (N.J. Super. Ct. App. Div. 1978) (holding that the mahr agreement was an "antenuptial agreement" and leaving the wife with a $1,500 deferred mahr instead of half of the doctor-husband's estate); In re Marriage of Dajani, 251 Cal. Rptr. 871, 872 (Ct. App. 1988) (concluding that the mahr agreement was a prenuptial agreement, albeit an unenforceable one). Cf. Habibi-Fahnrich v. Fahnrich, No. 46186/93, 1995 WL 507388, at *1 (N.Y. Sup. Ct. July 10, 1995) (stating that since there were no marital assets involved, the issue of equitable distribution did not need to be discussed while interpreting the mahr provision). One court rejected the argument that a the mahr agreement was a prenuptial and rejected that finding in favor of the wife. See In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 865 (Ct. App. 2001) (refusing to find that the mahr agreement was a prenuptial because the contract was void under the Statute of Frauds). One court interpreted a mahr agreement, but did not specify whether the agreement would block equitable distribution. See Aziz v. Aziz, 488 N.Y.S.2d 123, 124 (N.Y. Sup. Ct. 1985).

87 Dennis Wasser, Prenuptial Disagreements, 23 L.A. Law. 26, 30 (Dec. 2000).

88 Brian Bix, Bargaining in the Shadow of Love: The Enforcement of Premarital Agreements and How We Think About Marriage, 40 Wm. & Mary L. Rev. 145, 149 (1998) (quoting Gail Frommer Brod, Premarital Agreements and Gender Justice, 6 Yale J.L. & Feminism 229, 234 (1994)).

89 See 105 Cal. Rptr. 2d at 867-69.

90 See id. at 869.

91 Habibi-Fahnrich, 1995 WL 507388, at *3 (holding that a mahr provision was unenforceable in part because it told more information about the couple than it did about the agreement; the small portion relating to the mahr did not signify an agreement by itself).

92 See Shaban, 105 Cal. Rptr. 2d at 866-67.

93 See Symposium, supra note 40, at 68. In the Hanafi school, the traditional figure is ten dihrams, while in Maliki law, it is three dihrams. Pearl, supra note 51, at 58.

94 105 Cal. Rptr. 2d at 865-66.

95 See id. at 870. Interestingly, the wife significantly contributed to the value of the husband's medical practice by working in his office for many years. Had the court ruled differently, her picture would have been bleak. According to law professor and Muslim legal scholar Aziza al-Hibri, "she does not have the family arrangement in the U.S. Today, if she gets divorced, she is out on the street. She might not have children. Her parents are God knows where--if they're still alive. She has nobody." Azizah al-Hibri Address, supra note 42.

96 388 A.2d 1000, 1006 (N.J. Super. Ct. App. Div. 1978).

97 See id. at 1006-08.

98 See 666 So. 2d 246, 248-49 (Fla. Dist. Ct. App. 1996).

99 See id.

100 Ghada G. Qaisi, Note, Religious Marriage Contracts: Judicial Enforcement of Mahr Agreements in American Courts, 15 J.L. & Religion 67, 72 (2000-2001). The author also argues that mahr provisions should always be upheld, apparently ignoring the harsh effect such a course will have on many Muslim women in this country. See id.

101 Note that some courts do not hold that premarital agreements establishing property and maintenance rights upon divorce are per se invalid. See, e.g., Burtoff v. Burtoff, 418 A.2d 1085, 1088-89 (D.C. 1980). As "public policy considerations change with societal conditions" and because societal conditions are such that divorce has now become a "commonplace fact of life," the profiteering by divorce theory may no longer apply. Robert Roy, Annotation, Modern Status of Views as to Validity of Premarital Agreements Contemplating Divorce or Separation, 53 A.L.R. 4th 22 (1987). Therefore, an important distinction must be made between agreements that encourage divorce by allowing one party to profit, and agreements that merely contemplate divorce as a circumstance itself (for

example, which party owns what upon divorce), which are not void as against public policy. See, e.g., Belcher v. Belcher, 271 So. 2d 7, 7 (Fla. 1972); Hill v. Hill, 356 N.W.2d 49, 49 (Minn. Ct. App. 1984).

102 See 251 Cal. Rptr. 871, 871 & n.3 (Ct. App. 1988).

103 Id. at 872. An interesting side-note to this case is the lower court's analysis about whether a Muslim woman forfeits her rights to the mahr if she files for divorce. Depending on which legal school applies, if the wife does forfeit the mahr by filing, the argument that mahr agreements, unlike prenuptials, encourage profiteering would not apply because she would not divorce her husband if doing so put her ability to "profit" at risk. Id. But the wife may still profit by divorce without endangering her mahr, because she can simply make the husband's life miserable such that he initiates divorce, while she profits. Either way, mahr agreements do not comply with American requirements for prenuptial agreements, because in the end, one party profits only on condition of divorce.

104 In re Marriage of Noghrey, 215 Cal. Rptr. 153, 154-55 (Ct. App. 1985).

105 Id. at 157.

106 Id. at 156 (emphasis in original).

107 See Wasser, supra note 87, at 30. Technically, it is probably incorrect to conclude that mahr provisions encourage or promote divorce given that they are read into every Muslim marriage contract. See Qaisi, supra note 100, at 78-80. Nonetheless, their very nature still supports the proposition that they differ by design from ordinary prenuptial agreements.

108 See Panel Discussion, Does Professionalism Leave Room for Religious Commitment?, 26 Fordham Urb. L.J. 875, 890 (1999) [hereinafter Panel Discussion]. A student note also takes this position, arguing that Muslim women are denied their rights to contract where mahr agreements are considered profiteering via divorce. See Qaisi, supra note 100, at 78. This argument, while superficially provocative, ignores the truth of the matter: Muslim women can create prenuptials, just as any other woman or man may. If people of any creed wish to exercise their right to contract in the form of a prenuptial agreement, they may, provided they do so in a manner that does not encourage divorce. Indeed, the public policy of striking down premarital agreements that encourage divorce applies to women of every creed, not just Muslim women.

109 See Panel Discussion, supra note 108, at 890.

110 See 666 So. 2d 246, 247-48 (Fl. Dist. Ct. App. 1996).

111 See id.

112 Muslim women might attempt to enforce mahr agreements in addition to the ordinary property dissolution proceedings, but the agreements should not be read to supercede the property rules of the state.

113 While the right to divorce in American jurisdictions is also unilateral in that the other party cannot block a divorce, it is still substantively and procedurally different from a talaq. Talaq is asymmetrical and gender-defined in that only men can divorce with such ease. A woman must go to court and suffer through extensive litigation regarding her marriage, proving that she had cause to divorce based on one of four reasons: the husband cannot consummate the marriage, has a venereal disease, has leprosy, or is insane. Pearl, supra note 51, at 108. Alternatively, she can petition for a judicial divorce, which is granted only if the husband consents--there is no such thing as a unilateral divorce for women. Id. at 89-90, 102. In contrast, domestic divorce does not favor one party or gender over the other. Further, the talaq that is the "most approved method of repudiation" is one where the husband repudiates his wife once, then waits for the idda, or three menstrual cycles, of his wife to pass. Id. at 89. Anytime during these three months, the husband can take his wife back and thus cancel his repudiation; the wife has absolutely no say and must wait patiently to see what her fate will be. Id. at 90. If he does take her back, she has no choice but to accept and become his wife again, bearing the duty of sexual relations with the man who has just threatened to get rid of her. See id. If the husband pronounces talaq while drunk, in many schools it is still effective. Id. at 93. The differences between unilateral divorce in America and talaq are quite clear.

114 See Shikoh v. Murff, 257 F.2d 306, 309 (2d Cir. 1958) (refusing to recognize the husband's attempt to divorce his wife via the talaq procedure, noting that "[w]here the divorce is obtained within the jurisdiction of the State of New York, it must be secured in accordance with the laws of that State").

115 Shikoh v. Murff suggested that, had the husband obtained a talaq divorce properly in Pakistan according to its procedures, the court may have recognized the divorce as valid. See id. More importantly, though, we are concerned with divorces procured in the United States, not outside of it, and thus most courts would probably never recognize a domestic talaq as effective. See Seth v. Seth, 694 S.W.2d 459, 463 (Tex. Ct. App. 1985) (refusing to recognize the talaq that the husband tried to enforce because "[t]he harshness of such a result...runs so counter to our notions of good morals and natural justice that we hold that Islamic law in this situation need not be applied").

116 See Pearl, supra note 51, at 61.

117 See, e.g., Cal. Fam. Code § 1615 (Deering 1994); In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 865 (Ct. App. 2001); Burge v. Krug, 325 P.2d 119, 123 (Cal. Ct. App. 1958); 9 Samuel Williston & Richard A. Lord, A Treatise on the Law of Contracts § 21:4 (4th ed. 1999). The court in In re Marriage of Shaban further stressed the need to state with clarity the provisions of prenuptial agreements: There is no reason the same requirement that the writing evidence with reasonable certainty the terms of the contract should not also apply to prenuptial agreements. The policy considerations behind the statute of frauds apply, if anything, with even more force to prenuptial agreements. Such agreements will often be litigated in the highly emotional aftermath of the breakup of an intimate relationship, and will involve subject matter far more personal and more likely to "strike home" than an impersonal real estate transaction. The temptation for selective memory is usually greater in domestic relations cases than it is in real estate deals.
105 Cal. Rptr. 2d 863, 868 (Ct. App. 2001).

118 Id. at 867-68.

119 See id. at 865.

120 See id.

121 Id. at 864-65 (emphasis in original).

122 No. 46186/93, 1995 WL 507388, at *2 (N.Y. Sup. Ct. July 10, 1995).

123 Id. at *2-*3. The court also invalidated the sadaq on two other grounds. First, the parties did not agree to the material terms of the sadaq, as indicated by conflicting testimony as to what the terms meant at trial. Id. Second, it was invalidated on insufficiency grounds because the sadaq was really just evidence of the marriage itself, not evidence of a prenuptial agreement. Id.

124 See id.

125 Werner F. Menski, The Reform of Islamic Family Law and a Uniform Civil Code for India, in Islamic Family Law, supra note 77, at 253, 278.

126 See id.

127 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 866 (Ct. App. 2001) (describing the marriage contract, which stated that "[t]he above legal marriage has been concluded in Accordance with his Almighty God's Holy Book and the Rules of his Prophet to whom all God's prayers and blessings be, by legal offer and acceptance from the two contracting parties," and that the parties have"taken cognizance of legal implications").

128 Bharathi Anandhi Venkatraman, Comment, Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?, 44 Am. U. L. Rev. 1949, 1970, 1984-85 (1995).

129 105 Cal. Rptr. 2d at 869 n.4.

130 Pearl, supra note 51, at 102, 105.

131 Venkatraman, supra note 128, at 1971.

132 Enforcing mahr agreements in American courts may run afoul of the Establishment Clause of the Constitution, which is governed by the three-pronged Lemon test, first articulated in Lemon v. Kurtzman, 403 U.S. 602 (1971): "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute

must not foster 'an excessive government entanglement with religion.'" Id. at 612-13 (internal citations omitted). Although far too comprehensive a subject to address by way of a footnote, it is likely that enforcing mahr agreements may fail the Lemon test:
(1) Secular Purpose: Prenuptial agreements currently enjoy legislative and judicial support, in the belief that they promote martial stability by setting forth the expectations and responsibilities of the parties, Judith T. Younger, Perspectives on Antenuptial Agreements, 40 Rutgers L. Rev. 1059, 1069 (1988), which is certainly a secular state interest. On the other hand, contracting prenuptials is a secular concern, but to condition the enforcement of mahr provisions on religious status--Islamic law applies only to Muslims, and only Muslims can contract mahr agreements--is not a proper secular concern of the state.
(2) Primary Secular Effect: The primary effect of enforcing the religious law or contract must neither advance nor inhibit the practice of religion. Lemon, 403 U.S. at 612. The primary effect of enforcing mahr agreements is to advance Islamic family law by requiring compliance with its principles in order to qualify for the civil benefit of opting out of state property dissolution schemes. Cf. Linda S. Kahan, Note, Jewish Divorce and Secular Courts: The Promise of Avitzur, 73 Geo. L.J. 193, 206 (1984). By recognizing the mahr as a prenuptial, the court effectively forces the woman to adhere to Islamic law by accepting only the proffered dower. Thus, forcing women to abide by a religious principle that they had no choice but accept has a largely religious effect, not a secular one.
(3) Excessive Government Entanglement With Religion: A potential entanglement problem may occur because the court has to decide religious questions; the application of Islamic law is fraught with a number of difficulties and interpretations. See Poulter, supra note 77, at 147-58. Apart from the division between Sunni and Shi'i Muslims, within each sect there exists at least four additional sects of legal schools, all of which have different legal rules regarding marriage and divorce. Id. at 158. If an American court were to attempt to interpret a mahr provision, the outcome of the case would vary wildly based on the nationality, domicile, and country of origin of the parties, not to mention differing expert opinions. See, e.g., Akileh v. Elchahal, 666 So. 2d 246, 247-49 (Fla. Dist. Ct. App. 1996) (enmeshed in a battle of experts to determine whether the wife forfeited her mahr because she initiated the divorce under Islamic religious law); Poulter, supra note 77, at 158.
For more information on the Establishment Clause and religious prenuptial agreements, see generally Michelle Greenberg-Kobrin, Civil Enforceability of Religious Prenuptial Agreements, 32 Colum. J.L. & Soc. Probs. 359 (1999); Kahan, supra, at 193; Lawrence C. Marshall, Comment, The Religion Clauses and Compelled Religious Divorces: A Study in Marital and Constitutional Separations, 80 Nw. U. L. Rev. 204 (1985); Tanina Rostain, Note, Permissible Accommodations of Religion: Reconsidering the New York Get Statute, 96 Yale L.J. 1147 (1987); Patti A. Scott, Comment, New York Divorce Law and the Religion Clauses: An Unconstitutional Exorcism of the Jewish Get Laws, 6 Seton Hall Const. L.J. 1117 (1996); Jodi M. Solovy, Comment, Civil Enforcement of Jewish Marriage and Divorce: Constitutional Accommodation of a Religious Mandate, 45 DePaul L. Rev. 493 (1996).

133 Azizah al-Hibri addresses this issue:
Now consider the fact that the Islamic marriage contract...is usually a one-page document. Fill in your name and the name of your spouse, the names of two witnesses, the name of the imam, the amount of the mahr, and underneath in fine print it says "governed by Islamic law." That's it. What is a judge to do with that, given the separation of church and state? The judge can't tell the clerk, "Go back to the Qur'an and tell me what the Qur'an says" or "what does Islamic jurisprudence say?" We have not told the judges what the parties contracted upon; we just told the judges to go back to Islamic law. You can immediately see that we have inadequate marriage contracts.
Azizah al-Hibri Address, supra note 42.

134 446 N.E.2d 136, 138 (N.Y. 1983).

135 See id. at 138-39. See generally Solovy, supra note 132 (explaining the history of the get procedure and Jewish family law in general).

136 443 U.S. 595 (1979).

137 Id. at 597.

138 See id. at 604. Avitzur and its progeny probably extended the Jones v. Wolf rationale beyond what the Supreme Court intended, however. Clearly, the state has a much stronger interest in resolving a property dispute than in intervening in a dispute about a religious marriage contract. See id. at 602 ("The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively."). Further, there is evidence in Jones that the Court meant only to endorse a neutral principles approach with respect to church property disputes, not for just any variety of religious issues coming before a civil court. See id. at 604 ("We therefore hold that a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.") (emphasis added). In fact, the primary reason the Court adopted the neutral principles approach in the context of property disputes was that although the parties involved were religious, the issue was secularly familiar: "The method relies exclusively on objective, well-established concepts of trust and

property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." Id. at 603. As indicated by Avitzur's extensive discussion and explanation of Jewish law and custom, see Avitzur, 446 N.E.2d at 136-39 (discussing and explaining the duty of a husband to give a get, the tradition of the ketubah, and other "standards of the Jewish law of marriage"), what I call the "familiarity principle" endorsed in Jones is clearly lacking in both Avitzur and other cases attempting to discuss and interpret religious marriage contracts, try though courts might cast the issue as an ordinary contract dispute. See, e.g., Akileh v. Elchahal, 666 So. 2d 246, 248 (Fla. Dist. Ct. App. 1996) (discussing Islamic family law and whether a woman forfeits the mahr if she initiates divorce). For more information on why the neutral principles approach may not be dispositive on religious marriage issues, see Scott, supra note 132, at 1159-63.

139 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 865 n.1 (Ct. App. 2001).

140 446 N.E.2d at 140-41 (Jones, J., dissenting). See also In re Marriage of Goldman, 554 N.E.2d 1016, 1020 (Ill. App. Ct. 1990) (husband testifying that he did not know the legal significance of the ketubah he signed, thinking instead that it was merely "poetry or art rather than a contract").

141 See Elizabeth R. Lieberman, Note, Avitzur v. Avitzur: The Constitutional Implications of Judicially Enforcing Religious Agreements, 33 Cath. U. L. Rev. 219, 241 (1983).

142 See id. at 241-42.

143 Kahan, supra note 132, at 216-17.

144 Ali Engineer, supra note 19, at 111-13.

145 446 N.E.2d at 141-42 (Jones, J., dissenting). The dissent also noted that the wife's attempt to enforce the Jewish marriage contract depended on an expert opinion with respect to Jewish law and tradition. See id. at 141. Likewise, resolving mahr disputes also depends on the law as presented by different Islamic family law experts. See, e.g., Akileh v. Elchahal, 666 So. 2d 246, 247-48 (Fla. Dist. Ct. App. 1996).

146 666 So. 2d at 247-48. See also Aziz v. Aziz, 488 N.Y.S.2d 123, 124 (N.Y. Sup. Ct. 1985) (applying neutral principles to what the court deemed were the mahr's secular terms without determining whether the parties intended to displace equitable division principles in favor of Islamic law).

147 Chaudry v. Chaudry, 388 A.2d 1000, 1006 (N.J. Super. Ct. App. Div. 1978).

148 See Barbara Ann Atwood, Ten Years Later: Lingering Concerns About the Uniform Premarital Agreement Act, 19 J. Legis. 127, 128-29, 131-33, 141 (1993).

149 Odorizzi v. Bloomfield Sch. Dist., 54 Cal. Rptr. 533, 540 (Ct. App. 1966).

150 "Undue influence involves the combination of overpersuasion by one party and vulnerability on the part of the other." Bix, supra note 88, at 186. "[T]he apparent will of the servient person [is] in fact the will of the dominant person." Odorizzi, 54 Cal. Rptr. at 540. The legal definition of duress is defined as a demand by one party that is wrongful or unlawful, where the other party has no means of immediate relief from the duress other than compliance with the demand. See Liebelt v. Liebelt, 801 P.2d 52, 55 (Idaho Ct. App. 1990) (finding that the threat by the groom not to marry the bride unless she signed a prenuptial agreement was not duress because the threat of a refusal to marry is not wrongful in the eyes of the law).

151 Azizah al-Hibri, Islam, Law and Custom: Redefining Muslim Women's Rights, 12 Am. U. J. Int'l L. & Pol'y 1, 15-18 (1997).

152 See id. at 17. Litigation against the bride's father is "not realistic in Muslim countries, even in extreme cases," because such litigation would cause negative social consequences for the bride, especially since the wali is probably her sole financial support. Id. One scholar urges Islamic legislatures to create more realistic ways to punish abuses by the wali besides suit. See id. For more on why the wali requirement continues to persist today, see id.

153 Mai Yamani, Some Observations on Women in Saudi Arabia, in Feminism and Islam: Legal and Literary Perspectives, supra note 12, at 263, 274.

154 See El Saadawi, supra note 12, at 198 (explaining that a bride-daughter who is returned to "her family's house...will be another unwanted or rather doubly unwanted female, since she will have become a permanent burden").

155 Dahl, supra note 21, at 70.

156 See id.

157 Haeri, supra note 85, at 67.

158 In 1991, approximately 33% percent of women in Qatar were married between the ages of fifteen and nineteen, while 17.3% of women in Bahrain were ages fifteen and younger. Munira Fakhro, Gulf Women and Islamic Law, in Feminsim and Islam: Legal and Literary Perspectives, supra note 12, at 251, 258.

159 Although an adult woman can marry without the consent of her guardian under the law, very few women do so because most women either are not adults when married or are engaged before they are of age. See Siddiqui, supra note 85, at 52-53. Those who are old enough to object rarely do so for the same reasons mentioned above.

160 See Webber, supra note 67, at 1073-74.

161 See, e.g., Odorizzi v. Bloomfield Sch. Dist., 54 Cal. Rptr. 533, 538 (Ct. App. 1966).

162 Although this largely happens in the Indian Muslim and Hindu communities, it is nevertheless a fear of Muslim brides in other countries and regions. See generally Laurel Remers Pardee, The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe?, 13 Ariz. J. Int'l & Comp. L. 491 (1996).

163 Wing, supra note 13, at 154.

164 Mai Yamani, Introduction, in Feminism and Islam: Legal and Literary Perspectives, supra note 12, at 1, 17.

165 See Atwood, supra note 148, at 134-35.

166 Id.

167 Karmi, supra note 12, at 71.

168 See Ex parte Williams, 617 So. 2d 1032, 1035 (Ala. 1992).

169 See Link v. Link, 179 S.E.2d 697, 703 (N.C. 1971).

170 388 A.2d 1000, 1003 (N.J. Super. Ct. App. Div. 1978) (quoting the trial judge in the reversing appellate opinion).

171 Id. at 1006.

172 See, e.g., Cal. Fam. Code § 1615 (Deering 1994).

173 Bix, supra note 88, at 154. For more information on the UPAA, see generally Laura P. Graham, Comment, The Uniform Premarital Agreement Act and Modern Social Policy: The Enforceability of Premarital Agreements Regulating the Ongoing Marriage, 28 Wake Forest L. Rev. 1037 (1993).

174 Note that challengers to a prenuptial may show either a lack of voluntariness, or that the contract was unconscionable at the time it was entered and that the party did not have actual or constructive "fair and reasonable" knowledge of the assets and obligations of the other party. See, e.g., Cal. Fam. Code § 1615(a) (Deering 1994). See also Wasser, supra note 87, at 28. Significantly, very few prenuptial agreements have been nullified on the grounds that the agreement was unconscionable, largely because of unconscionability's demanding and exacting standards. See id.
In fact, some commentators believe that the UPAA created a stricter standard for nonenforcement of prenuptials because ordinary contract law simply requires a showing of unconscionability, not unconscionability plus disclosure of the party's assets. See Suzanne D. Albert, The Perils of Premarital Provisions, 48 R.I. B.J. 5, 35-36 (2000); Atwood, supra note 148, at 128-29; Bix, supra note 88, at 155-56; Gail Frommer Brod, Premarital Agreements and Gender Justice, 6 Yale J.L. & Feminism 229, 254-63 (1994) (arguing that the UPAA has increased financial disparity between the sexes). Because unconscionability is determined as of the time the agreement

was entered into, not as of the time of dissolution, Cal. Fam. Code § 1615(a)(2), it is unlikely that a Muslim wife can invalidate a mahr on these grounds because the contract only becomes unconscionable when a woman moves to the United States and gets divorced.

175 Brod, supra note 174, at 257.

176 See id.

177 See Cal. Fam. Code § 1615; Wasser, supra note 87, at 28.

178 See supra notes 150-71 and accompanying text.

179 The female adult literacy rates in Muslim countries ranges from 12% in Afghanistan to 22.3% in Pakistan, to as high as 55% in Iran. Martha C. Nussbaum, Sex and Social Justice 100 (1999). Preventing women from receiving education is often justified on religious grounds: For example, preventing them from learning the written word protects their religious purity and honor. Id. at 100-01.

180 There is another ground on which to invalidate the mahr agreement under the UPAA. Any agreement that causes one party to the marriage to be "eligible for support under a program of public assistance" at the time of divorce because of a prenuptial agreement may receive court-ordered additional support from their spouse. Atwood, supra note 148, at 144. Although empirical evidence is wanting, it is not hard to imagine that a divorced woman with no assets of her own, in a country far from her family, who has no education or skills but who has a brood of children, might be relegated to public assistance were the mahr to be enforced against her.

181 See, e.g., Ali Engineer, supra note 19, at 98-100, 107; Esposito, supra note 15, at 106-08; Tucker, supra note 16, at 46-70. "It would be interesting to understand how Islamic jurisprudence developed in order to understand certain practices which are not mentioned in the Qur'an but are an integral part of Islamic shari'ah today." Ali Engineer, supra note 19, at 107.

182 Esposito, supra note 15, at 107.

183 al-Hibri, supra note 151, at 15.

184 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 866 (Ct. App. 2001). The court employed three different translators to determine whether the Arabic phrase that formed the basis of the husband's appeal truly expressed a desire for Islamic law to govern. See id. The court accepted the version most beneficial to the husband, which read, "The above legal marriage has been concluded in Accordance with his Almighty God's Holy Book and the Rules of his Prophet to whom all God's prayers and blessings be, by legal offer and acceptance from the two contracting parties." Id. at 866. The other basis of the husband's appeal was the following phrase in the contract: "two parties [having] taken cognizance of legal implications." Id. (word added in original).

185 Because choice-of-law approaches vary by state, for information on which jurisdiction applies what approach, see Symeon C. Symeonides, Choice of Law in the American Courts in 2000: As the Century Turns, 49 Am. J. Comp. L. 1 (2001).

186 Restatement (Second) of the Conflict of Laws §§ 6, 145 (1971). See also Alan Reed, The Anglo-American Revolution in Tort Choice of Law Principles: Paradigm Shift or Pandora's Box?, 18 Ariz. J. Int'l & Comp. L. 867, 889-91 (2001) (also setting out choice of law principles). This is, of course, only one method courts apply in determining choice of law, but it continues to be the dominant one among most states.

187 David F. Forte, Islamic Law in American Courts, 7 Suffolk Transnat'l L.J. 1, 2 (1983).

188 Id. at 2-3.

189 L. Lynn Hogue, State Common-Law Choice-of-Law Doctrine and Same-Sex "Marriage": How Will States Enforce the Public Policy Exception?, 32 Creighton L. Rev. 29, 38 (1998).

190 Holly Sprague, Comment, Choice of Law: A Fond Farewell to Comity and Public Policy, 74 Cal. L. Rev. 1447, 1450 (1986).

191 Loucks v. Standard Oil Co., 120 N.E. 198, 202 (N.Y. 1918). The standard of what, exactly, offends public policy is unclear, however. See Sprague, supra note 190, at 1452.

192 See Katharine B. Silbaugh, Marriage Contracts and the Family Economy, 93 Nw. U. L. Rev. 65, 81 (1998).

193 Id.

194 Hogue, supra note 189, at 29-30.

195 Eric Rasmusen & Jeffrey Evans Stake, Lifting the Veil of Ignorance: Personalizing the Marriage Contract, 73 Ind. L.J. 453, 487 (1998).

196 See 694 S.W.2d 459, 463-64 (Tex. Ct. App. 1985).

197 Iranian Ayatollah Mutahari, who created the policy on women in the workplace after the Iranian Revolution, wrote: "[T]he specific task of women in this society is to marry and bear children. They will be discouraged from entering legislative, judicial, or whatever careers may require decision making, as women lack the intellectual ability and discerning judgment required for these careers." Nussbaum, supra note 179, at 94.

198 105 Cal. Rptr. 2d 863, 865, 867 (Ct. App. 2001).

199 388 A.2d 1000, 1002 (N.J. Super. Ct. App. Div. 1978).

200 666 So. 2d 246, 247-48 (Fla. Dist. Ct. App. 1996).

201 See id.

202 See id. at 247.

203 No. 46186/93, 1995 WL 507388, at *1-*3 (N.Y. Sup. Ct. July 10, 1995).

204 Id. The amount of the mahr was a "ring advanced and half of husband's possessions postponed." Id. at *1.

205 For more information on this view, see generally Weisbrod, supra note 62. For more on this view in the context of recognizing foreign divorces, see generally Alan Reed, Transnational Non-Judicial Divorces: A Comparative Analysis of Recognition Under English and U.S. Jurisprudence, 18 Loy. L.A. Int'l & Comp. L. Rev. 311 (1996).

206 In fact, Islamic legal scholar Azizah al-Hibri is writing a book on how to create an American-made mahr agreement that will be enforceable by civil courts. See Azizah Al-Hibri, The Islamic Marriage Contract in American Courts (forthcoming 2003).
She recently has stated that:
One thing we can do for the judge when we execute a Muslim marriage contract is to define the terms, define all the rules, make it clear which madhhabwe [legal school] are following, which point of view this couple is committed to....What are the definitions of the various concepts in the Islamic marriage contract? What are the rules of the various madhhabs? And how do they work in the case of divorce?
Azizah al-Hibri Address, supra note 42. Note, however, that even American-made mahr agreements still must avoid being struck down under the profiteering by divorce theory discussed supra in Part III.A.1.

207 See, e.g., Aziz v. Aziz, 488 N.Y.S.2d 123, 124 (N.Y. Sup. Ct. 1985) (upholding an American-made mahr agreement based on its secular terms because, inter alia, it met the specificity guidelines under the Statute of Frauds).

208 English courts enforcing mahr provisions have taken mahr payments into account in divvying up marital property. See Poulter, supra note 77, at 156.

209 See 666 So. 2d 246, 248 (Fla. Dist. Ct. App. 1996).

210 Id. at 247.

211 See id.

212 See id.

213 See Mai Yamani, supra note 164, at 7 (discussing the views of Raja' El-Nimr).

214 See Sayeh & Morse, supra note 17, at 312.

215 Ali Engineer, supra note 19, at 108.

216 Mayer, supra note 14, at 300 (quoting Islamic legal professor and scholar, Azizah al-Hibri). See also Fatima Mernissi, Women's Rebellion and Islamic Memory 13 (1996) ("'Feminism is not home-grown in Arab lands, it is an import from Western capitals.' This often-heard statement is shared by two groups of people one would never think of as having anything in common: Conservative Religious Arab Male Leaders, and the Provincial Western Feminists. The implication of this statement is that the Arab woman is a semi-idiotic submissive subhuman who bathes happily in patriarchally organized degradation and institutionalized deprivation.'").

217 Mernissi, supra note 216, at 13.

218 See, e.g., al-Hibri, supra note 151, at 26-27; Sayeh & Morse, supra note 17, at 322-24; Joelle Entelis, Note, International Human Rights: Islam's Friend or Foe?, 20 Fordham Int'l L.J. 1251, 1254-55 (1997).

219 Qur'an, supra note 22, at 4:1.

220 Ali Engineer, supra note 19, at 14.

221 See Karmi, supra note 12, at 83.

222 See El Saadawi, supra note 12, at 203.

223 Sayeh & Morse, supra note 17, at 326.

224 Siddiqui, supra note 85, at 53-54.

225 See Ali Engineer, supra note 19, at 109 ("Society is unable to keep pace with divine justice.").

226 Sayeh & Morse, supra note 17, at 326.

227 Weisbrod, supra note 62, at 93-94.

228 Nussbaum, supra note 179, at 20.

229 See id. This argument invokes the debate between universalism and cultural relativism. While a subject far too vast to explore in the concluding remarks of this Note, invalidating foreign-made mahr agreements for lack of freedom and intent is subject to the reader's belief in one of the two schools. Universalism promotes the belief that all people are born with human rights regardless of religion or culture, while cultural relativists believe that human rights vary from culture to culture and that most definitions of human rights are Western-based. For more information on cultural relativism versus universalism, see generally Mayer, supra note 14; Elene G. Mountis, Cultural Relativity and Universalism: Reevaluating Gender Rights in a Multicultural Context, 15 Dick. J. Int'l L. 113 (1996); Leti Volpp, Feminism Versus Multiculturalism, 101 Colum. L. Rev. 1181 (2001). Of the two schools of thought, I favor universalism, even though change from within is probably the most effective route for Muslim women: "Under the banner of their fashionable opposition to universalism march ancient religious taboos, the luxury of the pampered husband, educational deprivation, unequal health care, and premature death." Nussbaum, supra note 179, at 36.

230 Esposito, supra note 11, at 19.

231 al-Hibri, supra note 151, at 2.

232 Id. at 3.

233 Wing, supra note 13, at 165-66.

234 See El Saadawi, supra note 12, at 196; Esposito, supra note 15, at 105.

45 Wake Forest L. Rev. 579

Wake Forest Law Review
Fall 2010

Contracts in Context: Identity, Power, and Contractual Justice

Article
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BARGAINING IN THE SHADOW OF GOD'S LAW: ISLAMIC MAHR CONTRACTS AND THE PERILS OF LEGAL SPECIALIZATION

Introduction

In 1978, the courts of New Jersey dissolved the marriage of the Chaudrys.[1] Hanif, the husband, was a successful physician in New Jersey.[2] Parveen, his wife, was a homemaker who returned to their native Pakistan with her children upon the dissolution of the marriage.[3] Because they were Muslim, the Chaudrys signed a contract when they were married.[4] Indeed, for a Muslim marriage is a contract.[5] It is not possible to enter into a Muslim marriage without signing a contract.[6] Like all Islamic marriage contracts, the Chaudrys' agreement contained what is known as a deferred mahr, a sum of money--in this case $1500--that the husband promised to pay to the wife in the event of divorce.[7] Hanif claimed that this provision in their marriage contract constituted a premarital agreement in which Parveen had bargained away any future claims under American divorce law.[8] The New Jersey court accepted this ***580** argument, denying Parveen any claim on the marital assets.[9]

Chaudry v. Chaudry is a vivid illustration of a broader issue. As the Muslim population of the United States increases, American courts increasingly must decide on the meaning of Islamic marriage contracts, particularly the much-litigated question of how to treat deferred mahr provisions. This Article uses the treatment of mahr provisions by the American courts to illustrate one of the perils of creating a specialized body of law. The common law of contracts has long been criticized for being too general and abstract, applying the same rules to parties regardless of their status or the nature of their agreement.[10] In response, lawmakers have carved out particular classes of transactions from the common law of contract, creating specialized bodies of law such as labor law, employment law, or the like. This is an understandable and, at times, laudable development. The creation of such specialized bodies of law, however, is not without its problems. In particular, lawmakers often overestimate their knowledge of the particularities of certain kinds of transactions or fail to foresee new or unexpected transactional forms.[11] When this happens, two sorts of problems can arise.

The harsh result in Chaudry v. Chaudry illustrates the first problem posed by specialized bodies of law. The court in Chaudry almost certainly misinterpreted the meaning of the contract and the intentions of the parties. It made this error because it failed to understand the particular cultural and religious context that framed the Chaudrys' marriage contract and gave it meaning. The court assumed that the contract must be a premarital agreement, a contract bargaining away rights in divorce. The mahr provision in the Chaudrys' contract, however, was not intended to bargain away rights in divorce. Indeed, the requirement in Islamic law that a marriage contract contain a deferred mahr predates the existence of the common law--to say nothing of the United States--by centuries and was developed to solve a different set of social concerns than those presented by the ordinary premarital agreement.[12] No ***581** approach to contract law can eliminate the risk of misconstruing the meaning of parties' agreements. Courts will always be called on to interpret the meaning of contracts, and such interpretation always carries with

it the danger of misunderstanding meaning because of ignorance of the context in which the contract was made. It is possible, however, that the New Jersey court assumed that the Chaudrys were bargaining over their default rights in divorce when they signed their marriage contract because, in the United States, we have created a specialized body of contract law--the law of premarital agreements--structured around the assumption that such rights are what contracts made in contemplation of marriage are about.[13] The strong assumptions that this specialized body of law makes about the content of contracts can lure courts into ignoring context because the law already purports to inform them of what is "really" going into particular kinds of contracts.

Legal specialization creates another problem that is also on display in American courts' treatment of Islamic marriage contracts. The law of premarital agreements has developed a set of specialized rules that are designed to closely fit a particular cultural script about marriage and the presumed problems of contracts made on the threshold of matrimony. Embedded in the law of premarital agreements is a story about marriage. Accordingly, this body of law creates special defenses that can be raised to contractual liability, defenses that are designed to protect parties from the particular pathologies assumed to lurk in the "typical" premarital agreement. Because they occur in a different cultural context, however, mahr contracts do not raise the concerns that motivate the law of premarital agreements. Hence, the Uniform Premarital Agreements Act ("UPAA") creates requirements that are meant to act as a prophylaxis against inconsiderately bargaining away one's rights in divorce.[14] Mahr contracts, by contrast, are not about bargaining away such rights. Nevertheless, in litigation, parties to mahr contracts can invoke the requirements of the law of premarital agreements to escape liability. In the context of Islamic marriage contracts, however, these special defenses cease to serve a purpose. Rather, they simply add to the complexity of the law, providing parties with a defense against liability in situations in which we have no reason to suppose that imposing liability is problematic. In short, when reality diverges from the narrative assumed by the law, specialized rules can become traps for the unwary, and can become meaningless technicalities to be exploited by the opportunistic.

*582 This Article proceeds as follows: In Part I, I argue that creating specialized bodies of law increases the danger of promulgating rules that diverge from transactional reality. In Part II, I illustrate these problems in the context of Islamic marriage contracts, explaining the religious context in which they arise and the way in which the law of premarital obligations can be perversely applied to them. Finally, in Part III, I argue that the general law of contracts, rather than the supposedly more nuanced law of premarital agreements, allows judges to reach defensible results in litigation over mahr contracts.

I. The Perils of Specialization

Much of contract doctrine is pitched at a very high level of generality. The common law of contracts, for example, purports to apply to all "persons," regardless of whether they are actual human beings or corporations.[15] Likewise, many rules, such as those involving offer, acceptance, consideration, and the like, purportedly apply equally to a contract over the sale of a cow and to a contract over the sale of a multibillion dollar international oil company.[16] Over the course of the twentieth century, however, new bodies of law have been created to govern particular kinds of transactions. Hence, we have the law of the sale of goods codified in Article 2 of the Uniform Commercial Code ("U.C.C."), the rise of labor law, and the proliferation of law at both the state and federal level governing employment contracts.[17] The proliferation of these specialized bodies of transaction-specific law can be traced in part to a critique of the common law of contract's drive toward generality and abstraction.[18]

*583 In the traditional telling, the movement toward generality and abstraction in classical contract doctrine is the lingering remnant of a discredited set of late-nineteenth-century assumptions about the nature of law. In this story, Christopher Columbus Langdell and his minions are cast as the villains, seeking to create a "scientific" body of contract law devoted to formal consistency and abstract intellectual elegance without responding to the practical vagaries of real transactions.[19] When Holmes called Langdell "the greatest living legal theologian," it was not meant as a compliment.[20] Rather, "theologian" was offered as a term of intellectual abuse, suggesting that Langdell had disregarded social realities in favor of ethereal abstractions that, like the mythical angels of the scholastics, danced on the heads of pins but offered scant guidance to the practical work of the law.[21]

Elsewhere, I have argued that the normative basis for contract law's generality is less incoherent than critics have suggested and that generality serves important pragmatic goals.[22] In particular, I have claimed that contractual generality serves as a prophylaxis against capture by special interest groups.[23] Like the extended republic of James Madison's Federalist Number 10,[24] a general law of contract is more difficult for any particular faction to rig for its own benefit.[25] The generality of contract law also promotes ***584** innovation in transactional structure by remaining largely agnostic about how parties should order their contracts.[26] This, in turn, allows for a diffused process of trial and error by which parties using differing transactional structures can find solutions to their collective problems.[27]

If generality has unappreciated virtues, legal specialization--the process of creating transaction-specific bodies of law--also has its own vices. Any kind of contract law will necessarily rest on either implicit or explicit assumptions about the shape of typical transactions. Another way of putting this point is that behind every legal rule there is a narrative. This narrative tells the story of a deal, of how it could go wrong (or right), and how the law should deal with it. Hence, one of the important questions in assessing any rule is whether the narrative on which it rests corresponds to reality, or at least corresponds frequently enough for the rule to be serviceable. The fact that the law makes narrative assumptions is, of course, true whether the law in question consists of the highly abstract rules of classical contract doctrine or the specialized rules of transaction-specific bodies of law. Indeed, one of the persistent critiques of general contract law is that its implicit narrative of equal bargaining is false, a point pithily captured in James Gordon's summary of the curriculum of a first year contracts class: "Contracts. Study rules based on a model of two-fisted negotiators with equal bargaining power who dicker freely, voluntarily agree on all terms, and reduce their understanding to a writing intended to embody their full agreement. Learn that the last contract fitting this model was signed in 1879."[28]

The divergence of the law's narrative from reality, however, becomes particularly acute when dealing with specialized bodies of contract law precisely because such rules aim to capture transactional structure at a much finer level of granularity. Accordingly, there are more ways in which legal rules can fall prey to reality. Consider section 2-207 of the U.C.C.[29] This section is drafted around a very specific narrative about the so-called "battle of the forms."[30] The battle arises when parties engage in negotiations by exchanging preprinted forms.[31] Under the common law, no contract is formed until the offeree proffers an acceptance that ***585** exactly matches the terms of the offeror.[32] The drafters of 2-207 imagined that the technicality of this rule allowed some parties to escape contractual obligations to which they ought to be held.[33] In the paradigmatic case, Buyer orders goods from Seller using a preprinted order form. Seller agrees to supply the goods by replying with a preprinted invoice. Buyer then changes his mind and seeks to escape his obligations to Seller by noting the difference between Seller's invoice and Buyer's order form. Buyer's offer was never accepted by Seller and under the mirror image rule no contract was ever formed![34] To the drafters of 2-207, this result was perverse, injecting uncertainty into the validity of unobjectionable agreements through the application of a technical rule to texts that no one reads and on which no one relies.[35] Accordingly, 2-207 jettisons the mirror image rule, stating instead that "[a] definite and seasonable expression of acceptance . . . operates as an acceptance even though it states terms additional to or different from those offered or agreed upon . . . ."[36] Problem solved.

The drafters of 2-207, however, assumed a much greater familiarity with commercial practice than they in fact possessed.[37] In fact, very few parties get caught in the snares of the mirror image rule so as to allow their counterparties to escape from otherwise unobjectionable agreements.[38] Indeed, the narrative of competing forms assumed by 2-207 has proved dangerously simplistic. In contrast to the simple exchange of forms with differing terms, the cases reveal a much more variegated world. One survey of reported decisions showed "cases where there were three documents, a solicitation, a purchase order, and an acknowledgement; where one party signed the other's documents; and where a party's behavior ***586** appeared to indicate assent to materially different terms in the other's responsive form."[39] Rather than protecting expectations by ensuring that a party could not weasel out of contractual liability on a technicality, the rule has injected uncertainty into the contracting process by allowing parties to litigate endlessly about which of the terms in the various conflicting writings control. In short, section 2-207 displays the confusion and difficulties that result when the narrative implicit in a transaction-specific rule diverges from actual practice.[40]

This Article, fortunately, is not the place to sort out the best approach for dealing with the chaos that section 2-207 has wrought. Rather, I bring up the section because it provides a familiar illustration of a more general set of problems. The drafting of transaction-specific rules will necessarily involve lawmakers in assumptions about the standard shape of the underlying transaction. The more detailed the transaction-specific rule becomes, the stronger those assumptions will necessarily be. This creates two problems. The first is that in mastering a specialized body of law judges come to internalize the narrative implicitly assumed by that law. This can lead them to mischaracterize transactions and even misapply the law. For example, in ProCD v. Zeidenberg, the pull of the underlying narrative of the battle of the forms led an otherwise well-informed and sophisticated judge to erroneously conclude that 2-207 does not apply to the formation and interpretation of contracts where no forms are exchanged, even though the language of the section clearly contains no such limitation.[41] My claim is not that specialized bodies of law require judges to misinterpret contracts. Rather, I am making the more modest claim that specialized bodies of law embed in judges' minds a particular script about transactions, and once this script is entrenched, it may be difficult for judges to recognize and apply the law to fact patterns that diverge from it.

The second problem is that specialized bodies of law provide parties with defenses and other doctrinal tools based on a particular set of assumptions about the problems to which their transaction is prone. When the transactions that the rules are called on to govern deviate significantly from the script that the rules implicitly assume, however, these doctrines cease to serve their original purpose. Rather, they simply add to the complexity of legal arguments. This creates the danger of turning litigation into a lottery, with winners and losers being chosen through the ***587** application of rules that serve little functional purpose in the litigants' context. Less worryingly, it adds to the burden and complexity of litigation, a fact testified to by the continual tide of cases over section 2-207.[42] At best, courts will be forced to offer strained interpretations of the transaction-specific rule in order to reach sensible outcomes.[43] At worst, parties will be able to escape liability in situations in which we have no reason to suppose that imposing liability is problematic.

It is possible, of course, to overstate the dichotomy between specialized bodies of contract law and the general law of contracts. Discussing issues in terms of these two poles is useful because it allows us to sharpen our sense of the problems that our approach to the law can create. The reality, however, is always messier than any neat dichotomy suggests. The common law of contracts, for example, always contained specialized, transaction-specific doctrines.[44] Likewise, specialized statutes governing particular transactions never wholly displace the general law of contracts. Rather, even when such laws displace particular doctrines or rules, the background law of contracts always stands ready to answer questions in areas in which specialized bodies of law are silent.[45] In practice this means that when litigating and deciding cases, lawyers and judges move seamlessly from arguments based on general principles of contract to arguments based on transaction-specific rules without noting or even being aware of any distinction between them.

That said, both of the problems discussed above are on display in the application of a specialized body of contract law--in this case the law of premarital agreements--to Islamic marriage contracts. Rather than conforming to the culturally specific script envisioned by the law of premarital agreements, Islamic marriage contracts operate in a very different context, one in which the transactional ***588** assumptions of the law of premarital obligations prove misleading.

II. Mahr Contracts

In order to understand the problems that legal specialization has created in the enforcement of Islamic marriage contracts, it is necessary to understand the context in which such contracts arise. In particular, their meanings as well as the practices surrounding them have their origins in Muslim religious law. Accordingly, before looking at the American case law, it is necessary to provide a brief introduction to the Islamic law of marriage and divorce.

A. The Islamic Law of Marriage and Divorce

Islamic law has its origins in the life of the Prophet Muhammed. In 610 C.E., Muhammed, then a successful merchant in the city of Mecca, heard the voice of the angel Gabriel in the desert commanding him to "Recite!"[46] The results were the first suras (chapters) of what became the Qua'ran and eventually the founding of a new monotheistic faith.[47] Unlike Jesus, who was never an overtly civic leader,[48] the religion that Muhammed promulgated was necessarily political. Perhaps the key moment in the ministry of Muhammed came in 622 C.E., when he left Mecca and migrated in the so-called Hijra to the city of Yathrib, also known as Medina.[49] There Muhammed became not only a spiritual but also a civic and military leader.[50] The portions of the Qua'ran received by Muhammed in this period, unlike those received during the so-called Meccan period, frequently dealt with matters of civic administration--in short, with matters of law.[51] Law is thus deeply woven into the sacred texts and founding myths of Islam.[52] For a Muslim, following Muhammed's example as a pious adherent of Islam necessarily means trying to emulate his effort to realize God's ***589** justice in the world. Later generations of Muslims built on the Medinan passages of the Qua'ran and the stories recounting the actions and teachings of the Prophet, known as sunna or hadith, to create an elaborate system of religious law. This system is known as the shari'a or fiqh.[53] Among the issues that the fiqh treats in great detail are matters of marriage and divorce.

In Islam, marriage is a contract, not a sacrament.[54] Indeed, there is no notion of priesthood or of a priestly class in Islam and hence no sacramental or liturgical rules.[55] In order for a marriage to be formed, the prospective husband and wife must consent to their union in a written contract.[56] In the case of a "virgin"--a woman who has not been previously married--the marriage negotiations are conducted by a wali, generally her closest male relative.[57] The purpose of the wali is to safeguard the interests of the prospective wife in the marriage negotiations.[58] The husband must also confer on the wife a dower known as a mahr or saddaq.[59] Contrary to how it has been characterized by some, the mahr is not a "bride price."[60] Rather, it is meant to ensure that a woman begins her marriage with some measure of financial independence.[61] ***590** Under the classical fiqh, a marriage contract is not valid without a mahr.[62] In practice, the mahr is always divided into an immediate gift of property--in modern Muslim marriages this can take the form of anything from a wedding ring to a substantial pool of personal property such as an apartment, a car, or furniture--and a deferred sum of money to be paid on either the death of the husband or the couple's divorce.[63]

There is no analogy under Islamic law to the common law idea of coverture. A Muslim woman does not lose her legal identity upon marriage.[64] Likewise, there is nothing in Islamic law analogous to community or marital property.[65] Any assets brought to the marriage by either party remain the individual property of that person.[66] Property acquired during marriage remains the sole property of the person acquiring it.[67] Upon divorce, Islamic law provides nothing similar to the equitable distribution of marital property.[68] Rather, each spouse walks away from the marriage with his or her individual property.[69] Because there are frequently strong moral and social pressures against Muslim women working outside the home after marriage,[70] however, in practice this often means that a divorced wife is left with little or no claim on the collective wealth of the couple. The most dramatic exception to this is the deferred mahr. Absent the wife's consent, the husband's obligation to pay the deferred mahr promised upon divorce is virtually ***591** absolute.[71] The mahr is not treated as a distribution of marital assets.[72] Rather, it is a debt owed by the husband to the wife.[73] Indeed, the husband owes the debt even if the couple has no assets.[74] In Iran, for example, a husband who fails to pay a deferred mahr upon divorce will be jailed.[75]

Under Islamic law divorce may take several forms. If a woman wishes to divorce her husband she has two options. First, she may seek what is known as a tafriq.[76] This is essentially divorce for cause. It must be granted by a religious judge--a qadi--and is generally only available in cases of abuse or abandonment.[77] If the woman is successful in obtaining a tafriq the marriage is

dissolved and the husband is obligated to pay her the deferred mahr in their marriage contract.[78] The second method is known as a khul '.[79] This is a divorce by mutual consent. It does not require any showing of cause or the intervention of a qadi.[80] However, it does require the husband's consent.[81] Furthermore, in order to be valid, a khul' must be supported by consideration that passes from the wife to the husband.[82] As a practical matter, this consideration virtually always consists of the wife relinquishing her claim to the deferred ***592** mahr in the marriage contract.[83]

In contrast to a woman's options, a husband may unilaterally divorce his wife through a mechanism known as talaq.[84] The husband's power of talaq is essentially unlimited. There is no requirement to show cause, nor is there any intervention by a qadi.[85] However, upon talaq, the husband must pay the wife her deferred mahr.[86] Indeed, one of the reasons that the custom of a deferred mahr developed was to limit the husband's power of talaq.[87] Women have no power analogous to talaq; their divorce options are limited to tafriq or khul'. A husband's power of talaq, however, may be delegated to another party by contract,[88] and some Muslim feminists have advocated marriage contracts in which the husband delegates the power of talaq to his wife, in effect equalizing spousal access to unilateral divorce.[89] While such a provision would be unobjectionable under most interpretations of Islamic law, it is not a common feature of most Muslim marriage contracts.[90]

With the exception of a few jurisdictions, such as Saudi Arabia, the classical fiqh is not the municipal law of most Islamic countries.[91] It has, however, exercised a profound influence on the formally enacted law of many nations with large Muslim populations.[92] Hence the law of marriage in a country such as Jordan or Pakistan follows the broad outlines of traditional Islamic law.[93] Marriage is formed by a contract between the husband and the wife or, more commonly, between a husband and the wife's ***593** wali.[94] The marriage contract will be required to contain a mahr provision to be valid.[95] The law of divorce and the distribution of a couple's assets will likewise closely follow the rules of the classical fiqh.[96] Some countries with large Muslim minorities--such as Israel and India--have created a parallel family court system for Muslims in which judges apply Islamic law, even if such law is not applied generally or to the marriages of non-Muslims.[97] In addition, religious Muslims living in non-Muslim societies--such as Muslim immigrants in Europe or the United States--often conform to the requirements of the fiqh as a matter of piety in contracting their marriages.[98] Accordingly, when Muslim marriages in the United States end in divorce, American courts often face the question of how to treat Islamic marriage contracts.[99]

B. Mahr Contracts in American Courts

The overwhelming majority of these cases deal with the effect of the mahr provision on the distribution of marital property under American divorce statutes. Litigation over these contracts often becomes complex, especially when the marriage was entered into overseas and the court must deal with difficult questions of the applicable law under principles of international comity.[100] In addition, because Islamic marriage contracts are religious agreements, objections to their enforcement have been raised under ***594** both the First Amendment and state constitutional equivalents.[101] Such issues are beyond the scope of this Article, but I flag them because they explain why courts' discussions of the pure contract issues in these cases are frequently short and confused by other legal theories. As a matter of contract, both husbands and wives invoke the mahr provision, albeit in different factual circumstances. In divorces in which there are substantial marital assets subject to potential distribution, husbands invoke the mahr provision in the hope of obtaining the bulk of the marital property. In Ahmad v. Ahmad,[102] for example, a Jordanian student in Ohio married a woman in Jordan that he met through a courtship arranged by the couple's families.[103] On returning to the United States, the marriage deteriorated, and the wife instituted divorce proceedings in Ohio.[104] Over the course of the marriage, the couple acquired real estate in Ohio, which became the subject of litigation in the divorce.[105] The husband invoked the mahr contract signed in the course of the couple's marriage in Jordan, insisting that the court lacked

jurisdiction to distribute the Ohio property because "the parties had previously entered into a contract delegating their rights and responsibilities upon divorce."[106]

Wives, in contrast, invoke the mahr provision in cases in which there are relatively few marital assets on which they could make a claim under American divorce statutes. In these cases, they claim that regardless of the equitable distribution of the marital estate, they are entitled to the amount of money promised them in the mahr contract. Another Ohio case, Zawahiri v. Alwattar,[107] provides an example. A medical student and a college student met through their families and subsequently were married under Ohio law.[108] The students and their families, however, were observant Muslims and the marriage contract contained a deferred mahr of $25,000.[109] ***595** According to the court, "Unfortunately, the parties' marriage quickly foundered. They never lived together and, instead, remained in their respective parents' homes while Zawahiri studied for his medical board exams and Alwattar completed her college degree. Due to their largely separate lives, the parties did not acquire any marital assets or debts."[110] There being no assets of which the wife could have a claim in divorce, she instead sued to enforce the $25,000 deferred mahr.[111]

Both husbands and wives have sought to shield themselves using the law of premarital contracts. The UPAA,[112] which has been adopted in twenty-six states and the District of Columbia,[113] creates special defenses against liability for premarital contracts. In addition to the ordinary requirements that a contract be voluntarily made and not be unconscionable, section 6 of the Act provides that a party who "was not provided fair and reasonable disclosure of the property or financial obligations of the other party" and who "did not have . . . an adequate knowledge" of those obligations may avoid liability under the contract.[114] Wives wishing to avoid having their claim to marital property limited to the value of their deferred mahr have relied on this provision, arguing that prior to signing the marriage contract their prospective husbands failed to disclose their assets.[115] Likewise, husbands wishing to avoid the obligation to pay the deferred mahr have insisted that they are relieved of any obligation under the marriage contract because their prospective wives failed to make the same disclosure.[116]

With a few exceptions,[117] most American courts faced with mahr ***596** contracts have treated them as premarital agreements.[118] Generally speaking, judges have reached fairly sensible results in these cases. Husbands have not been particularly successful in using mahr contracts as an upper limit on their wives' claims to marital assets. In some of the cases this is because the husbands' legal arguments overreached. For example, in In re Marriage of Shaban,[119] a couple married in Egypt using a traditional contract ending with the words: "The above legal marriage has been concluded in Accordance with his Almighty God's Holy Book and the Rules of his Prophet to whom all God's prayers and blessings be, by legal offer and acceptance from the two contracting parties."[120]

The husband argued that with this language the parties had imported the whole of the Islamic law of marriage and divorce into their agreement.[121] The court dismissed this argument on parol evidence and statute of frauds grounds.[122] Husbands making the more modest claim that their wives had bargained away their rights to equitable distribution of marital property in return for the deferred mahr have been met with the holding that they failed to properly disclose their financial situation.[123] While wives seeking to enforce the mahr claim have been met on occasion with the same failure-to-disclose defense,[124] courts have generally been friendlier to their claims for the payment of the deferred dower.[125]

Treating mahr contracts as premarital agreements, however, creates a risk of perverse outcomes. In Chaudry v. Chaudry,[126] the New Jersey appellate court considered the divorce of a couple who had married many years before in Pakistan by executing a traditional marriage contract.[127] Pakistani family law follows the ***597** classical fiqh in providing no equitable distribution of property upon divorce.[128] The couple moved to America where they lived for many years.[129] The husband was a successful doctor and the wife was a homemaker.[130] During the course of the marriage, the couple acquired substantial property in New

Jersey.[131] Upon their divorce, the husband invoked the mahr contract, arguing that he was entitled to exclusive control of the couple's property over and above the amount of the deferred mahr.[132] The New Jersey appellate court wrote:

> [W]e have concluded that the wife is not entitled to equitable distribution by reason of the antenuptial agreement [i.e., the mahr provision], which was negotiated on her behalf by her parents. It could have lawfully provided for giving her an interest in her husband's property, but it contained no such provision.[133]

Accordingly, the court concluded, she was entitled to a mere $1500 in the couple's divorce.[134] The husband walked away with the rest of the marital assets.[135]

Less dramatically but more frequently, the specialized law of premarital agreements provides parties with special defenses to liability not available under ordinary rules of contract law. Litigation over mahr agreements in Ohio illustrates the issue. In Gross v. Gross,[136] the Ohio Supreme Court considered the general enforceability of prenuptial agreements. The court sought a middle ground between the position that prenuptial agreements should be treated as ordinary contracts and the position that they should be ***598** void as violating public policy.[137] It concluded:

> Upon our considered view and analysis of the very specialized purpose of these types of agreements, i.e., the disposition of property, and provision for support or sustenance alimony at the time that a divorce or separation might take place between the parties, we conclude that a strict application of the law of contracts would not be appropriate.[138]

Accordingly, the court concluded that in addition to the ordinary requirement that there be no duress or overreaching in contract formation, there must be "a full disclosure of the assets of the parties" and the contract must "not promote or encourage divorce."[139] This disclosure requirement--not present in the ordinary law of contracts--is essentially identical to that required under the UPAA.[140]

The so-called Gross requirements have been invoked by both husbands and wives litigating mahr provisions. In the case of Zawahiri v. Alwattar mentioned above, the husband was able to successfully invoke Gross to avoid liability to pay the mahr.[141] At trial, the wife had urged the court to enforce the contract as a premarital agreement, but the court held that "the parties entered the marriage contract under circumstances that rendered the contract invalid and unenforceable as a prenuptial agreement."[142] Likewise, in Ahmad v. Ahmad, also mentioned above, the wife invoked the same Gross disclosure requirements against her husband, who wished to have the mahr contract enforced as a relinquishment of her rights in divorce.[143] The court concluded that:

> [T]he sadaq or antenuptial agreement was unenforceable under Ohio law because at the time of the agreement was entered into, appellee was not represented by counsel, there was no disclosure of appellant's assets, and the agreement did not take into consideration the assets subsequently acquired in Ohio during the eight-year marriage.[144]

***599** One might see the application of this doctrine to both husbands and wives as laudable evenhandedness by the Ohio courts. As discussed below, however, it more likely represents the more or less arbitrary invalidation of contracts in situations in which the absence of the required disclosure is unobjectionable.

III. The Virtues of General Contract Law

The law of premarital agreements is based on a social script about premarital bargaining. This script yields a set of assumptions about both the typical content of premarital agreements and the primary concerns presented by such agreements. As a practical matter, most premarital agreements are designed to shield the assets and income of a wealthier spouse (generally, but not always, the husband) from the claims of a poorer spouse (generally, but not always, the wife) upon divorce.[145] Premarital agreement law is therefore geared around the assumption that a prospective spouse presented with a premarital contract is being asked to bargain away his or her rights to equitable distribution of marital property upon divorce.[146] This bargaining dynamic creates an awkward and dangerous situation. In negotiating the terms of the premarital contract, the interests of the parties are adverse. On the threshold of marriage, however, there are likely to be high levels of trust and optimism. The trust creates a temptation for the wealthier prospective spouse to take advantage of his or her poorer partner by getting him or her to sign away claims on future assets and income without providing full disclosure of the value of what is being lost.[147] Likewise, the law fears that in the midst of prenuptial optimism men and women underestimate the likelihood of divorce and inconsiderately give up valuable rights that they erroneously believe they will never wish to exercise.[148] Given these concerns, invalidating premarital agreements in which parties fail to take the ***600** prophylactic step of full disclosure of assets and liabilities makes sense.[149]

When these assumptions are transposed to the context of Islamic marriage contracts, however, problems arise. Understood in their own terms, Islamic marriage contracts do not fit within these narratives. When the parties make these contracts, they do not intend to bargain away their rights under American divorce law.[150] The requirement that a marriage contract contain a mahr predates the existence of the United States by centuries. Indeed, it predates the very existence of the common law by centuries.[151] Within the context of Islamic law, it does not make sense to say that a wife is bargaining away her claim on her husband's future assets or income. Islamic law gives her no such claim to bargain away. Given this social context, it is implausible to interpret these contracts as bargaining away such rights. To be sure, a man who gets married under shari'a law in Saudi Arabia may well expect that upon divorce his wife will have no claim on the wealth he has acquired during the course of the marriage. This expectation, however, does not arise as a matter of contract. Rather, it arises because of the background rules of Islamic property law. Such expectations will be disappointed in an American divorce proceeding after the couple moves to America. The disappointment, however, arises not because of a refusal to enforce the marriage contract but because American rather than Saudi Arabian property law governs the case.

The presence of a specialized law of premarital agreements, however, encourages American courts to understand mahr contracts as analogous to ordinary prenuptial agreements. Accordingly, numerous courts have concluded that mahr contracts are intended to bargain away a wife's right to marital property upon divorce, even when those courts have successfully labored to find some reason for invalidating the contract so as to avoid this harsh result.[152] This ***601** creates the risk of Chaudry-like outcomes in cases in which courts are unable to find some other reason to deny enforcement. This is a problem of interpretation that can be cured within the framework of premarital agreement law. Nothing in that law requires courts to interpret mahr provisions as bargaining away rights in divorce. Courts, however, must resist the temptation to assume that the contract before them falls within the implicit social script of premarital agreement law simply because that law can arguably be applied to it. Rather, they should strive to understand the contract within its actual social context and according to the intentions and expectations of the parties. There is nothing in the UPAA that prohibits them from doing this, but the courts' error is understandable given the script that the Act presents to them. Indeed, part of the purpose of having a specialized body of law, ironically, is to relieve courts of the need to devote so much energy to understanding the transaction in the parties' terms. Rather, we invest energy in understanding transactional forms and drafting specialized laws in part to spare courts from having to invest in understanding transactional forms at the level of adjudication. There are limits, however, on the drafters' ability to understand and foresee new or different transactional forms.

Once they are properly understood, there is little reason, absent special circumstances, not to enforce mahr contracts as written. Doing so respects the intentions of the parties, and when the courts give effect to such religiously motivated bargains, they take citizens' religious convictions seriously in ways that do not undermine the separation of church and state or religious freedom. Furthermore, enforcing such contracts helps to limit the abuse of talaq by Muslim men. Indeed, the Islamic law of talaq assumes that a wife's enforceable claim to a deferred mahr will limit its abuse.[153] American courts that have been asked to acknowledge the legal validity of talaq have refused to do so on equal protection grounds or under state conflicts law.[154] Regardless of its legal validity, however, talaq remains an important social institution in the lives of many Muslim men and women. When a husband performs talaq against his wife, she is no longer married in the eyes of Islamic law--and often in the eyes of the Islamic community--even if she remains married in the eyes of the state.[155] Accordingly, talaq can create most of the social and economic consequences of divorce without the ***602** formal protections provided by a secular divorce proceeding. To the extent that women and their families wish to use legally enforceable contracts as a way of protecting wives from the abusive use of talaq by their husbands, there seems little reason not to recognize such agreements.

Not only are the implicit assumptions of premarital agreement law with regard to the substance of mahr contracts incorrect, the implicit assumptions about the areas of concern are also misplaced. The social script on which the UPAA is based assumes that there is necessarily something awkward about injecting the antagonistic norms of bargaining into the context of an impending marriage. The fear is that parties will inconsiderately bargain away their rights in these circumstances.[156] A key element of this script is the notion that bargaining and contract are foreign and unexpected in the context of marriage. Within Islam, however, marriage is a contract.[157] It is not possible for a pious Muslim to become married without making a formal contract.[158] Furthermore, because the existence of a mahr is necessary for a valid marriage contract but the amount of the mahr is left to the parties, negotiation over the size of the mahr is an integral part of the parties' social expectations. For a person operating within the Muslim context nothing could be more natural than premarital haggling over the size of the dower followed by the parties formally signing the contract. Such activities are as much a part of the social script of Muslim marriages as church bells, aisles, altars, and priests or ministers are for Christian marriages.[159]

Given that no one is surprised by the presence of premarital bargaining in the Muslim context, the cautionary rules that the UPAA suggests for prenuptial agreements are beside the point for mahr contracts. There is no special need to make the prospective wife aware of her potential husband's assets and income because she is not bargaining away her claims on these assets and income when she assents to the mahr provision. Nor do the disclosure requirements serve an important cautionary function. The parties ***603** expect to engage in contract negotiations. Certainly, a Muslim husband will have a difficult time plausibly claiming to have been surprised in some way by the notion that he would be asked to agree to some payment to his new wife upon divorce, given that the mahr is a necessary element of a valid marriage contract. Accordingly, in the Muslim context, the disclosure requirements serve as little more than a trap for the unwary--providing parties with technical excuses for avoiding liability ex post, even when the absence of disclosure ex ante provides no reason for supposing that the contract is suspect.

Ironically, to the extent that bargaining over the mahr presents special concerns, the general law of contracts provides better tools for policing abuse than does the UPAA. Muslim marriages are frequently arranged through family members. In the case of unmarried women this social fact is formalized through the requirement of the wali.[160] Prospective husbands, however, will often be represented by their parents in negotiations over the marriage contract.[161] Hence, it is quite common for a couple to be presented with a contract on their wedding day that has been negotiated on their behalf by others.[162] Generally, both the wife's family and the husband's family have good incentives to represent the financial interests of their children. However, this will not always be the case, and when there is misfeasance by a wali or parent in negotiating a contract, the couple will be subject to strong pressure to sign the document on the wedding day. The UPAA's prophylactic disclosures, however, will do nothing to deter abuse in such situations. On the other hand, the common law doctrines of duress and undue influence are specifically designed to allow parties to escape their obligations under contracts entered into as a result of high-pressure tactics by intimates.[163]

The most likely situation involving questionable assent to a contract will involve pressure from family or in-laws, in particular pressure on the wife by her father or other male relative acting as a wali.[164] The pressure placed on a woman to consent to a marriage contract may range from physical abuse to economic and social ***604** abandonment to social pressure not to disappoint familial expectations.[165] In order to make out a claim of duress, a wife would need to show that she entered into the contract because of an improper threat that left her with no reasonable alternative.[166] Any threat of physical violence would clearly satisfy the "improper threat" requirement and would likely leave the woman with no reasonable alternative in cases in which the threatened violence was immediate.[167] Likewise, threats of economic abandonment have been deemed sufficient to make out a case of duress.[168] It is unlikely, however, that mere social pressure will be sufficient to support a case of duress.[169]

On the other hand, someone who enters a contract due to pressure from family members, especially a father acting as a wali, likely has a fairly strong claim for undue influence.[170] Undue influence is much more likely in cases in which family members use their influence to induce one another to sign contracts.[171] Furthermore, when a father or other male relative acts as a wali his purpose is to look after the interests of the putative bride.[172] While not formally required by the fiqh, as a practical matter fathers or older male relatives routinely represent their sons in marriage negotiations in the same manner.[173] These agents are thus in a fiduciary-like relationship with their children. A fiduciary, of course, is a classic example of one who can easily exercise undue influence.[174]

If courts correctly interpret the meaning of mahr provisions and refuse to construe them as premarital agreements relinquishing the wife's claims under state divorce laws, it is very unlikely that during ***605** litigation a wife will wish to challenge the validity of the mahr contract. Nevertheless, should she wish to do so, the laws of duress and especially undue influence are available to protect her from overreaching. Likewise, a husband who was railroaded into signing an agreement through the high-pressure tactics of family and in-laws can object to such tactics using standard contract defenses. Indeed, on appeal in the Zawahiri case discussed above, the husband was successful in making precisely such an argument.[175] There is nothing about the law of premarital agreements that forecloses the application of such doctrines. It is striking, however, that the supposedly nuanced and context-sensitive law of premarital agreements provides no doctrinal tools for policing the sorts of abuse that are likely to arise in mahr contracts. The usefulness of the specialized rules is limited by the understandable failure of the drafters of the UPAA to foresee the issues presented by mahr contracts. On the other hand, the policing doctrines provided by the general law of contracts prove more serviceable precisely because their agnosticism toward transactional structure make them less tied to a particular account of contractual problems.

Conclusion

Context is important in contract law. Islamic marriage contracts vividly illustrate the importance of understanding the context not only of the parties' agreement but also of the concepts that they incorporate into their agreements. In Chaudry v. Chaudry, the court wrongly assumed that when a Muslim couple--or more often their families--negotiates over the deferred mahr to be included in the marriage contract they are negotiating over the wife's rights under American divorce statutes. Once the religious context of Islamic marriage contracts is understood, the absurdity of this interpretive claim is apparent. Of course, the common law of contracts has never denied that in interpreting the meaning and intentions of the parties we must consider the context in which the contract is made. This is a simple point, but one that is worth ***606** remembering, if only because it can be forgotten by courts.

Context, however, also presents a deeper problem. The desire for a law that pays closer attention to the specifics of different kinds of transactions has spawned numerous bodies of law that apply to particular classes of contracts. Embedded in all of these rules is a narrative about how particular transactions work and the particular challenges that they create. When reality diverges from this implicit script, the very specificity of particularized contract law can become a problem. First, the entrenchment of the law's implicit script in the minds of judges can encourage them to ignore conflicting context because the law encourages

them to think they understand what is "really" happening in such contracts. Second, shorn of their connection to the reality of the transaction, the specialized rules can become traps and technicalities.

The law of premarital obligations assumes a particular cultural script about marriage, a script in which contract is an awkward intruder at the wedding feast. The law assumes that what parties will normally be doing in premarital agreements is bargaining away valuable rights upon divorce. Accordingly, it creates special defenses to protect parties from their own ill-considered decisions. In contrast, within Islam, far from being a foreign element at the wedding, contract is at the heart of what it means to get married. One does not get married by walking down the aisle to be pronounced husband and wife by some priestly authority or a modern stand-in in the form of a state official. Rather, one marries by signing a contract. Likewise, the mahr provision, rather than bargaining away preexisting rights in divorce, is designed in large part to constrain talaq, a very specific Muslim practice that has no clear analog in American law. Indeed, the very idea of divorce as a single unitary legal concept does not exist in Islamic law. Rather, there are only the specific forms of tafriq, khul', and talaq. Given the very different cultural script involved in Muslim marriages, it is little wonder that the law of premarital agreements is an awkward fit at best.

Strikingly, however, the much-maligned generality of the common law of contracts performs quite well in the context of Islamic marriage contract. It provides resources in the doctrine of undue influence to police the most likely kind of overreaching in the context of mahr negotiations. Furthermore, by focusing the court's attention on the actual intentions of the parties and the meaning of their contractual actions in social context, it allows the mahr to function as it was intended without creating potentially perverse outcomes. In contrast, the law of premarital obligations focuses the court's attention on a social script that has limited relevance in the context of Islamic marriage contracts.

Footnotes

a1 Associate Professor, William & Mary Law School. This Article is part of a larger research project looking at the treatment of Islamic mahr agreements by American courts. In a longer subsequent article I hope to provide a more detailed discussion of the legal issues surrounding these contracts. Stay tuned. I wish to thank Robert Hillman and Brian Bix for extensive comments and criticism on an earlier draft of this Article. The faults that remain are mine alone. As always, I thank Heather.

1 Chaudry v. Chaudry, 388 A.2d 1000 (N.J. Super. Ct. App. Div. 1978).

2 Id. at 1002.

3 Id. at 1004.

4 Id. at 1003.

5 Wael B. Hallaq, Shari'a: Theory, Practice, Transformations 271 (2009) (discussing the contractual basis behind marriage in Islam).

6 See id. at 272 (noting that marriage in Islam depends on a indefinite contract). This is not literally true, as Islamic law allows marriage contracts to be concluded by proxies. See id. at 274 ("Either of the two contracting parties could be represented by a person acting on his/her behalf as a legally empowered agent."). This, however, simply serves to further emphasize the strongly contractual nature of marriage under Islamic law.

7 See Chaudry, 388 A.2d at 1003-04 (discussing the size of the deferred mahr); see also Hallaq, supra note 5, at 277 (discussing the necessity of a mahr provision for a valid Islamic marriage contract).

8 Chaudry, 388 A.2d at 1002.

9 See id. at 1006 (noting that the marriage did not have any adequate nexus to New Jersey for the court to rule in the wife's favor).

10 See, e.g., Nathan B. Oman, A Pragmatic Defense of Contract Law, 98 Geo. L.J. 77, 79-86 (2009) (summarizing the critiques of general contract law); Alan Schwartz & Robert E. Scott, Contract Theory and the Limits of Contract Law, 113 Yale L.J. 541, 618-19

(2003) (noting that current contract law applies to parties of all types and arguing that contract law should be narrower and more deferential to contracting parties).

11 See, e.g., infra notes 27-38 and accompanying text (noting the oversimplification attendant to the Uniform Commercial Code's approach to the "battle of the forms").

12 See Jamal J.A. Nasir, The Status of Women Under Islamic Law and Modern Islamic Legislation 33-34 (3d ed. 2009) ("The dower (mahr) is another right of the wife....[T]he dower is a sum of money or other property which becomes payable to a man's wife simply as an effect of marriage....[I]t is a token of the affection, esteem and respect that the man feels for the woman he is about to marry."); id. at 87-104 (explaining the mahr).

13 See John De Witt Gregory et al., Understanding Family Law 99-100 (3d ed. 2005) (noting that marital agreements are often used to privately order marriage and divorce).

14 See generally Unif. Premarital Agreement Act, 9C U.L.A. 35 (2001).

15 See Daniel A. Farber, Economic Efficiency and the Ex Ante Perspective, in The Jurisprudential Foundations of Corporate and Commercial Law 54, 54 (Jody S. Kraus & Steven D. Walt eds., 2000) (noting that the common law creates precedential rules); Schwartz & Scott, supra note 10, at 548 (recognizing that the mandatory rules of the common law of contracts apply to both individuals and corporations alike).

16 Compare Sherwood v. Walker, 33 N.W. 919, 921-22 (Mich. 1887) (contract for sale of cow), with Texaco, Inc. v. Pennzoil Co., 729 S.W.2d 768, 788-96 (Tex. App. 1987) (contract for sale of oil company).

17 See generally Andrea Bloom, Lender Liability: Practice and Prevention (1989) (discussing the special laws applying to loan contracts); Michael C. Harper et al., Labor Law: Cases, Materials and Problems (6th ed. 2007) (providing a summary of American labor law); Mark A. Rothstein & Lance Liebman, Employment Law: Cases and Materials (6th ed. 2007) (summarizing American employment law); James J. White & Robert S. Summers, Uniform Commercial Code (5th ed. 2000) (discussing the Uniform Commercial Code); Margaret Wilkie et al., Landlord and Tenant Law (Marise Cremona ed., 5th ed. 2006) (summarizing American landlord-tenant law).

18 See Oman, supra note 10, at 79-86 (discussing the critique of general contract law); Christopher T. Wonnell, The Abstract Character of Contract Law, 22 Conn. L. Rev. 437, 439-48 (1990) (recognizing the erosion of contract abstraction).

19 See generally Thomas C. Grey, Langdell's Orthodoxy, 45 U. Pitt. L. Rev. 1 (1983) (offering an influential interpretation of Langdell's legal thoughts in the context of intellectual trends during the Gilded Age); Bruce A. Kimball, The Langdell Problem: Historicizing the Century of Historiography, 1906-2000s, 22 Law & Hist. Rev. 277 (2004) (summarizing historical work on Langdell). More recent historical scholarship has tended to soften the indictment against Langdell and other architects of classical contract doctrine. See generally, e.g., Bruce A. Kimball, Langdell on Contracts and Legal Reasoning: Correcting the Holmesian Caricature, 25 Law & Hist. Rev. 345 (2007); Mark L. Movsesian, Rediscovering Williston, 62 Wash. & Lee L. Rev. 207 (2004) (offering an account of Samuel Williston that questions the characterization of him and of classical contract doctrine as overly formalistic and abstract).

20 See Oliver Wendell Holmes, Jr., Book Notices, 14 Am. L. Rev. 233, 234 (1880).

21 See id.

22 See Oman, supra note 10, at 86-105 (setting forth practical purposes served by contract law's generality). See generally Nathan B. Oman, Corporations and Autonomy Theories of Contract: A Critique of the New Lex Mercatoria, 83 Denv. U. L. Rev. 101 (2005) (arguing that contrary to claims made by some critics, autonomy theories of contract do not provide reasons for separating contracts by corporations from contracts by natural persons).

23 Oman, supra note 10, at 90 ("The more general the application of a body of law, however, the less likely it is to be subject to such capture by special interests.").

24 See generally The Federalist No. 10 (James Madison).

25 See Oman, supra note 10, at 91-94 (describing the decreased incentives special interests have in investing to capture general contract law).

26 See id. at 103 ("Allowing the widest possible innovation in transactional forms responds to these concerns by allowing the disaggregated process of experimentation with contracts in particular situations to gradually evolve toward effective solutions to a myriad of collective problems.").

27 See id. at 104 (noting that general contract law allows much more innovation than specialized bodies of law).

28 James D. Gordon III, How Not To Succeed in Law School, 100 Yale L.J. 1679, 1696 (1991).

29 U.C.C. § 2-207 (2003).

30 See White & Summers, supra note 17, § 1-3, at 29-48.

31 Id. at 29-30.

32 See Restatement (Second) of Contracts § 39 (1981) (setting forth the mirror image rule).

33 See White & Summers, supra note 17, at 30.

34 See, e.g., Poel v. Brunswick-Balke-Collender Co., 110 N.E. 619, 623 (N.Y. 1915) (holding that no contract between the parties had been formed because of minor differences between the offer and the putative acceptance).

35 See White & Summers, supra note 17, at 30 ("The original drafter of 2-207 designed it mostly to keep the welsher in the contract."); James J. White, Promise Fulfilled and Principle Betrayed, 1988 Ann. Surv. Am. L. 7, 32-33 ("[Section 2-207] appears to have been drafted for two types of transactions. First, it was meant to reverse the outcome in cases like Poel v. Brunswick-Balke-Collender Co..... Second, it was intended to protect an oral agreement from surprise alterations when one or both parties send 'confirming' forms containing terms additional to or different from those already agreed upon."); see also John E. Murray, Jr., The Chaos of the "Battle of the Forms": Solutions, 39 Vand. L. Rev. 1307, 1319 (1986).

36 U.C.C. § 2-207(1) (2003).

37 White, supra note 35, at 33 (stating that the drafters of 2-207 "grossly overestimated their knowledge of the underlying transactions").

38 See Douglas G. Baird & Robert Weisberg, Rules, Standards, and the Battle of the Forms: A Reassessment of § 2-207, 68 Va. L. Rev. 1217, 1233-36 (1982).

39 White, supra note 35, at 34 (footnotes omitted).

40 See White & Summers, supra note 17, at 30 (stating that section 2-207 "is like an amphibious tank that was originally designed to fight in the swamps, but was sent to fight in the desert").

41 See ProCD, Inc. v. Zeidenberg, 86 F.3d 1447, 1452 (7th Cir. 1996) (Easterbrook, J.) ("Our case has only one form; UCC § 2-207 is irrelevant.").

42 See White, supra note 35, at 34-35 (noting that section 2-207 has provoked substantial litigation).

43 See id. at 37 ("Worse, [a particular case under section 2-207] exhibits exactly the kind of statute-torturing that Llewellyn and the other realists most despised. To think that the realist's own statute has reduced a smart judge to such dishonest behavior would embarrass Llewellyn's ghost.").

44 See, e.g., Restatement (Second) of Contracts § 28 (1981) (offers in auctions); id. § 64 (rule regarding acceptance by telephone); id. § 82(2)(c) (promise to perform a contract unenforceable under the statute of limitations); id. § 83 (promise to perform a contract discharged in bankruptcy); id. § 87 (option contracts); id. § 88 (guaranty contracts); id. § 313 (third-party beneficiaries and government contracts).

45 See, e.g., U.C.C. § 1-103 (2003) (stating that principles of law and equity with regard to contracts continue to govern agreements for the sale of goods unless specifically displaced by the U.C.C.). The importance of common law and equity under the U.C.C. is testified to by the existence of a treatise devoted to the subject. See generally Robert A. Hillman et al., Common Law and Equity Under the Uniform Commercial Code (1985).

46 See Daniel C. Peterson, Muhammad: Prophet of God 51 (2d ed. 2007).

47 See id.

48 See id. at 92-93 (observing that Jesus held no political office). But see generally John Dominic Crossan, Jesus: A Revolutionary Biography (1994) (arguing that Jesus should be seen as the leader of a political protest movement); John Dominic Crossan, The Historical Jesus: The Life of a Mediterranean Jewish Peasant (1991) (same).

49 See Peterson, supra note 46, at 91 ("For the move of Muhammad from Mecca to his new home placed Islam and its message, as well as the Prophet himself, on an entirely new plane.").

50 Id. ("Muhammad became a prophet-statesman, the founder of a political order and eventually of an empire that would change the history of the world.").

51 See id. at 93 ("The ideal Islamic paradigm, however, is Muhammad, who ruled a state for nearly half his prophetic ministry and received numerous revelations instructing him how to do it.").

52 The word "myth" is not used here in the pejorative sense of a false story, but to denote a profound story meant to provide meaning to the world.

53 Shari'a and fiqh have slightly different connotations. Shari'a refers to the primal way in which man ought to relate to God. See M. Cherif Bassiouni & Gamal M. Badr, The Shari'ah: Sources, Interpretation, and Rule-Making, 1 UCLA J. Islamic & Near E.L. 135, 141 (2002). One can think of the shari'a as the juridical expression of God's will for man. It is thus always in some sense transcendent and imperfectly grasped by human minds. Fiqh, in contrast, refers not to the transcendent law of God per se, but rather to the body of human interpretation of the divine revelation. See Hallaq, supra note 5, at 3; Lino J. Lauro & Peter A. Samuelson, Toward Pluralism in Sudan: A Traditionalist Approach, 37 Harv. Int'l L.J. 65, 109 n.260 (1996). The purpose of the fiqh is to grasp the shari'a, to put it into practice but as an effort of the human mind; fiqh is in theory contingent and fallible in way that shari'a is not. See Asifa Quaraishi, On Fallibility and Finality: Why Thinking Like a Qadi Helps Me Understand American Constitutional Law, 2009 Mich. St. L. Rev. 339, 342.

54 See Hallaq, supra note 5, at 271 (discussing the contractual nature of marriage in Islam).

55 There is a strong tradition of Muslim clerics, or ulama. See Dale F. Eickelman & James Piscatori, Foreward to Muhammad Qasim Zaman, The Ulama in Contemporary Islam: Custodians of Change, at ix, ix-x (2002). These clerics, however, are either scholars or preachers. See id. They enjoy no special sacerdotal authority in the way that Catholic or Orthodox clergy do. See id.

56 See Hallaq, supra note 5, at 271 ("[M]arriage as nikah [is] a contract with a narrow scope.").

57 See Nasir, supra note 12, at 49-52 (outlining the two forms of guardianship recognized in shari'a law: one that has a right of compulsion exercised over minors or others with limited legal capacity and one that does not have this right of compulsion but instead is chosen in deference to social custom).

58 See Hallaq, supra note 5, at 274-76 (describing the role of the wali in negotiating the marriage contract).

59 See Nasir, supra note 12, at 87-88 (discussing how dower is treated as part of the marriage contract).

60 See id. at 87.

61 See Hallaq, supra note 5, at 277 ("Immediate dower, paid upon conclusion of the contract, remained the wife's property throughout the marriage, and she was not obliged to spend it on anything or anyone other than herself....").

62 See id. ("The dower may not be stipulated in the marriage contract, 'nor is it the point of marriage,' but both theory and practice require[] that it be paid.").

63 See Nasir, supra note 12, at 90-91 (noting the practices relating to the mahr).

64 See Hallaq, supra note 5, at 279 ("But the wife, like her husband, maintains an independent financial status throughout the marriage.").

65 Id. ("Marriage does not create community property.").

66 Id. ("Any inheritance or gift she may receive before or during the marriage remains hers exclusively, and so does her dower and all property that accrues to her.").

67 Id.

68 See, e.g., Ahmad v. Ahmad, No. L-00-1391, 2001 WL 1518116, at *4-6 (Ohio Ct. App. Nov. 30, 2001) (rejecting husband's claim that the mahr provision barred the court from awarding equitable distribution of marital assets).

69 See Hallaq, supra note 5, at 279.

70 See Nagat el-Sanabary, Women and the Nursing Profession in Saudi Arbia, in Arab Women: Between Defiance and Restraint 71, 75-77 (Suha Sabbagh ed., 2003) (describing the social and moral stigma often associated with women working outside of the home).

71 See id. at 277 ("The delayed dower was normally stipulated as protection, becoming due to the wife from the husband if he repudiated her through talaq or if either of them died.").

72 See Jamal J. Nasir, The Islamic Law of Personal Status 89 (2d ed. 1990) ("The dower...shall be the right of the wife once the valid contract is made.").

73 See Nasir, supra note 12, at 88.

74 See id. at 90-91 (describing how a wife can enforce the mahr as a debt owed to her by her spouse).

75 Lindsey E. Blenkhorn, Note, Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women, 76 S. Cal. L. Rev. 189, 201 (2002).

76 See Hallaq, supra note 5, at 279-80 (discussing the requirements and function of tafriq).

77 Iranian To Pay 124,000-Rose Dowry, BBC News, Mar. 3, 2008, http:// news.bbc.co.uk/2/hi/middle_east/7275506.stm; see also Judith E. Tucker, In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine 92 (1988) (documenting the practice of jailing a husband for failure to pay the mahr upon divorce).

78 See Hallaq, supra note 5, at 280 (noting that "a judicial order known as tafriq" is literally translated in Arabic to mean "to separate the spouses from each other").

79 See id. at 283-86 (discussing the application of khul').

80 See Nasir, supra note 12, at 129 ("[M]arriage may be dissolved by the wife literally paying her husband for her freedom under the Qur'anic ruling.").

81 See Hallaq, supra note 5, at 284 ("Khul' is an offer made to the husband by the wife in respect of marital dissolution.... If the husband accepts the offer, he will then repudiate his wife once, considered to be an irrevocable utterance (ba'in).").

82 See id. at 285-86 (discussing the five required elements of a khul' contract, including consideration).

83 See id. at 280 (noting the amount of consideration required for khul' will not exceed the amount of the dower).

84 See id. at 280-83 (outlining the requirements and procedure of talaq).

85 See Hallaq, supra note 5, at 282 (stating that in talaq, men are "not so queried as to their motives"). But see Nasir, supra note 12, at 120-29 (discussing talaq and noting that many countries have begun to curb this nearly unlimited power of the husband).

86 See Hallaq, supra note 5, at 282 (noting that husbands "stood to lose most from marital dissolution" by exercising talaq).

87 See Blenkhorn, supra note 75, at 202 (equating the deferred mahr to a security deposit against talaq).

88 See Hallaq, supra note 5, at 282 ("A husband can repudiate his wife by proxy, a right that he can delegate to the wife herself, enabling her to dissolve her marriage on his behalf.").

89 See Kathleen A. Portuan Miller, Who Says Muslim Women Don't Have the Right To Divorce?--A Comparison Between Anglo-American Law and Islamic Law, 22 N.Y. Int'l L. Rev. 201, 225-26 (2009) (discussing how marriage contracts may be used to enhance a woman's access to divorce).

90 See Blenkhorn, supra note 75, at 202 (noting the rarity in Islamic marriage contracts of allowing the wife to initiate divorce).

91 Jan Michiel Otto, Sharia and National Law in Muslim Countries: Tensions and Opportunities For Dutch and EU Foreign Policy 8-9 (2008).

92 See generally Otto, supra note 91 (describing the influence of Islamic law in Muslim countries).

93 See id. at 76-104 (discussing Jordanian marriage law in relation to Islamic law).

94 See supra notes 54-58 and accompanying text.

95 See supra notes 59-63 and accompanying text.

96 See Nasir, supra note 12, at 76-104 (discussing the intersection of Islamic law and the law of Arabian countries).

97 See Marc Galanter & Jayanth Krishnan, Personal Law and Human Rights in India and Israel, 34 Isr. L. Rev. 101, 109, 120 (2000).

98 See, e.g., Aleem v. Aleem, 947 A.2d 489, 490-91 (Md. 2008) (adjudicating a dispute over an Islamic marriage contract); Tarikonda v. Pinjari, No. 287403, 2009 WL 930007, at *1-3 (Mich. Ct. App. Apr. 7, 2009) (same).

99 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 864-65 (Ct. App. 2001); In re Marriage of Dajani, 251 Cal. Rptr. 871, 871 (Ct. App. 1988); Akileh v. Elchahal, 666 So. 2d 246, 247-48 (Fla. Dist. Ct. App. 1996); Aleem, 947 A.2d at 490-91; Aleem v. Aleem, 931 A.2d 1123, 1124-31 (Md. Ct. Spec. App. 2007); Odatalla v. Odatalla, 810 A.2d 93, 94-95 (N.J. Super. Ct. Ch. Div. 2002); Chaudry v. Chaudry, 388 A.2d 1000, 1002-03 (N.J. Super. Ct. App. Div. 1978); Habibi-Fahnrich v. Fahnrich, No. 46186/93, 1995 WL 507388, at *1 (N.Y. Sup. Ct. July 10, 1995); Aziz v. Aziz, 488 N.Y.S.2d 123, 124 (Sup. Ct. 1985); Zawahiri v. Alwattar, No. 07-AP-925, 2008 WL 2698679, at *1 (Ohio Ct. App. July 10, 2008); Mir v. Birjandi, Nos. 2006 CA 63, 2006 CA 71, 2006 CA 72, 2007 WL 4170868, at *1-2 (Ohio Ct. App. Nov. 21, 2007); Ahmad v. Ahmad, No. L-00-1391, 2001 WL 1518116, at *1-3 (Ohio Ct. App. Nov. 30, 2001); Ahmed v. Ahmed, 261 S.W.3d 190, 192-94 (Tex. App. 2008).

100 See, e.g., Chaudry, 388 A.2d at 1003-04 (discussing the application of Pakistani law to the couple's marriage contract); Birjandi, 2007 WL 4170868, at *1 (discussing the effect of legal proceedings in Iran under the marriage contract on divorce proceedings in the United States).

101 See, e.g., Odatalla, 810 A.2d at 95 (discussing husband's argument that the enforcement of the mahr provision would violate the First Amendment); Zawahiri, 2008 WL 2698679, at *1 (discussing husband's argument that the enforcement of the mahr provision would violate the Ohio constitution's religion clauses).

102 No. L-00-1391, 2001 WL 1518116 (Ohio Ct. App. Nov. 30, 2001).

103 See id. at *2-3 (describing the events leading up to their marriage).

104 Id. at *2 (noting that the husband had already obtained a divorce in Jordan before the wife filed in the Ohio courts).

105 Id. at *3 (finding that the property at issue included the couple's residence and a block of apartments).

106 Id. at *1 (listing the husband's points of error).

107 No. 07-AP-925, 2008 WL 2698679 (Ohio Ct. App. July 10, 2008).

108 Id. at *1 ("Alwattar and Zawahiri courted for a month before she accepted his proposal.").

109 Id. ("Ultimately, Zawahiri and the bride's father settled on $25,000 for the 'postponed' portion of the mahr. They also agreed that the 'advanced' portion of the mahr would consist of a ring and gold that Zawahiri and his family had already given Alwattar.").

110 Id.

111 Id. ("Alwattar argued that the marriage contract constituted a valid and enforceable prenuptial agreement that entitled her to an award of $25,000.").

112 Unif. Premarital Agreement Act, 9C U.L.A. 35 (2001).

113 Jana Aune Deach, Case Comment, Premarital Settlements: Till Death Do Us Part--Defining the Enforceability of the Uniform Premarital Agreement Act in North Dakota, In Re Estate of Lutz, 563 N.W.2d 90 (N.D. 1997), 74 N.D. L. Rev. 411, 417 n.52 (1998).

114 See Unif. Premarital Agreement Act § 6(a)(2)(i)-(iii), 9C U.L.A. 48 (2001).

115 See, e.g., Ahmad v. Ahmad, No. L-00-1391, 2001 WL 1518116, at *4 (Ohio Ct. App. Nov. 30, 2001) ("[The] antenuptial agreement was unenforceable under Ohio law because at the time the agreement was entered into, appellee was not represented by counsel, there was no disclosure of appellant's assets, and the agreement did not take into consideration the assets subsequently acquired in Ohio during the eight-year marriage.").

116 See, e.g., Zawahiri, 2008 WL 2698679, at *1-2 (holding that a $25,000 deferred mahr would not be enforced against the husband because "the parties entered the marriage contract under circumstances that rendered the contract invalid and unenforceable").

117 See, e.g., Aziz v. Aziz, 488 N.Y.S.2d 123, 124 (Sup. Ct. 1985) (enforcing a mahr contract under the New York General Obligations Law, which codifies the ordinary common law of contracts); Ahmed v. Ahmed, 261 S.W.3d 190, 194 (Tex. App. 2008) (rejecting the wife's claim that the mahr contract should be treated as a prenuptial agreement).

118 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 867-69 (Ct. App. 2001).

119 105 Cal. Rptr. 2d 863 (Ct. App. 2001).

120 Id. at 866.

121 See id. at 866-67 ("Ahmad made an offer of proof that the phrase signified a written intention by the parties to have the property relations governed by 'Islamic law,' which provides that the earnings and accumulations of each party during a marriage remain that party's separate property.").

122 See id. at 867-69.

123 See, e.g., Ahmad v. Ahmad, No. L-00-1391, 2001 WL 1518116, at *4-6 (Ohio Ct. App. Nov. 30, 2001) (rejecting husband's claim that the mahr provision barred a court from awarding equitable distribution of marital property to the wife).

124 See, e.g., Zawahiri v. Alwattar, No. 07-AP-925, 2008 WL 2698679, at *1-2 (Ohio Ct. App. July 10, 2008).

125 For cases enforcing mahr provisions against husbands, see S.I. v. D.P.I., No. CN04-09156, 2006 WL 2389260, at *3-4 (Del. Fam. Ct. Apr. 5, 2006); Odatalla v. Odatalla, 810 A.2d 93, 98 (N.J. Super. Ct. Ch. Div. 2002); Aziz v. Aziz, 488 N.Y.S.2d 123, 124 (Sup. Ct. 1985).

126 388 A.2d 1000, 1002-03 (N.J. Super. Ct. App. Div. 1978).

127 Id. at 1003-04.

128 See id. at 1006 ("The expert testimony establishes that alimony does not exist under Pakistan law and an antenuptial agreement providing therefor is void as a matter of law in that country.").

129 Id. at 1004.

130 Id. at 1002.

131 See id. (finding the husband owned substantial assets in New Jersey and intended to remain domiciled there).

132 See id. at 1006 ("It also makes it clear that the antenuptial agreement could [have] provided for the wife's having an interest in her husband's property, but no such provision was made; instead, it provided only for her receiving 15,000 rupees.").

133 Id.

134 Id.

135 Id. While the court in Chaudry did conclude that the mahr contract was a premarital agreement in which the wife had bargained away any rights to equitable distribution of property, the court's decision also rested in part on choice of law grounds; although, as I discuss in a forthcoming article on mahr contracts, the court's conflicts analysis is ultimately confused and unpersuasive. Nathan B. Oman, How To Judge Shari'a Contracts: A Guide to Islamic Mahr Agreements in American Courts, Utah L. Rev. (forthcoming) (manuscript at 28-30, on file with author).

136 464 N.E.2d 500 (Ohio 1984).

137 See id. at 505-06 (discussing the treatment of prenuptial agreements under previous Ohio cases and by courts in other states).

138 Id. at 507-08.

139 Id. at 510.

140 See Unif. Premarital Agreement Act § 6(a)(2), 9C U.L.A. 48 (2001).

141 Zawahiri v. Alwattar, No. 07-AP-925, 2008 WL 2698679, at *3-5 (Ohio Ct. App. July 10, 2008).

142 Id. at *2. On appeal, the court upheld the trial court's decision on an abuse of discretion standard by suggesting that the husband may have failed to meaningfully consent to its terms because of overreaching by family and in-laws at the time of marriage. Id. at *6. This aspect of the court's opinion is discussed below.

143 See Ahmad v. Ahmad, No. L-00-1391, 2001 WL 1518116, at *4 (Ohio Ct. App. Nov. 30, 2001).

144 Id.

145 See Gail Frommer Brod, Premarital Agreements and Gender Justice, 6 Yale J.L. & Feminism 229, 234-35, 294 (1994) (arguing that this premise of premarital agreements renders them hostile to women).

146 See Gregory et al., supra note 13, at 103 ("Premarital agreements, also called antenuptial or prenuptial contracts, are most often utilized when prospective spouses wish to contractually vary, limit, or relinquish certain marital property and support rights that they would otherwise acquire by reason of their impending marriage.").

147 See, e.g., Brian Bix, Bargaining in the Shadow of Love: The Enforcement of Premarital Agreements and How We Think About Marriage, 40 Wm. & Mary L. Rev. 145, 193 (1998) ("Premarital agreements are good examples of contracts that illustrate problems with rational judgment, as they involve long-term planning and the consideration of possible negative outcomes at a time when the parties are most likely to be optimistic that no such negative outcomes will occur.").

148 See id. at 193-95 (discussing studies that show that even well-educated people are prone to overstating the probability that their marriage will not end in divorce).

149 But see Steven L. Schwarcz, Disclosure's Failure in the Subprime Mortgage Crisis, 2008 Utah L. Rev. 1109 (arguing for the ineffectiveness of disclosure requirements in the subprime mortgage market); Omri Ben-Shahar & Carl E. Schneider, The Failure of Mandated Disclosure (Univ. of Chi. Law Sch. Olin Law & Econ. Prog., Research Paper No. 516 & Univ. Mich. Law Sch., Law & Econ. Empirical Legal Studies Ctr., Paper No. 10-008, 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567284 (arguing that mandated disclosure rules serve as poor prophylactics against misbehavior or poor decision making).

150 See Blenkhorn, supra note 75, at 200 (noting mahr provision is used as protective mechanism for Muslim women).

151 See id. at 191 (noting that Islamic family law has changed very little since the tenth century).

152 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 867-69 (Ct. App. 2001) (holding that the statute of frauds prevented the court from enforcing the mahr as a premarital agreement); Chaudry v. Chaudry, 388 A.2d 1006 (N.J. Super. Ct. App. Div. 1978) (finding that the mahr agreement in the case limited the wife's claim to the husband's assets to the specified $1500).

153 Blenkhorn, supra note 75, at 201.

154 See, e.g., Aleem v. Aleem, 947 A.2d 489, 500-02 (Md. 2008) (holding that the recognition of talaq would violate the Maryland equal rights amendment); Tarikonda v. Pinjari, No. 287403, 2009 WL 930007, at *1-3 (Mich. Ct. App. Apr. 7, 2009) (holding that recognition of talaq would violate wife's due process rights); Seth v. Seth, 694 S.W.2d 459, 463 (Tex. Ct. App. 1985) (holding that recognition of talaq would be contrary to good morals and natural justice).

155 See Hallaq, supra note 5, at 280-83.

156 See Unif. Premarital Agreement Act § 6, 9C U.L.A. 48 (2001) (noting the conditions under which a premarital agreement is not enforceable, including involuntarity, unconscionability, and nondisclosure of property or financial obligations).

157 Blenkhorn, supra note 75, at 195.

158 See Hallaq, supra note 5, at 272-73.

159 There are, of course, cases where Muslims comply with the requirements of an Islamic marriage contract without necessarily understanding its historical meaning, just as there are many Catholics who get married without understanding the intricacies of canon law. See Blenkhorn, supra note 75, at 204 (noting that today some couples deem mahr only as symbolic religious practice). Nevertheless, just as canon law should serve as the starting point for understanding the social meaning of Catholic liturgy, the classical fiqh should be the starting place for understanding Muslim social practices.

160 Nasir, supra note 12, at 49-52.

161 Id. at 50 (noting a father may conclude marriage on behalf of his minor sons).

162 See Tamilla F. Ghodsi, Note, Tying a Slipknot: Temporary Marriages in Iran, 15 Mich. J. Int'l L. 645, 664 (1994).

163 See, e.g., Eckstein v. Eckstein, 379 A.2d 757, 759-65 (Md. Ct. Spec. App. 1978) (holding an agreement voidable in which the husband sought to induce his wife, who had a history of severe emotional disturbances, to sign a separation agreement on unfavorable terms).

164 See Blenkhorn, supra note 75, at 198 ("She may never conclude a marriage contract on her own in most Islamic legal systems; instead, she must defer to her wali to bargain for the terms of the contract and even to sign the finalized agreement.").

165 See id. at 198 ("In most communities, if a bride were to protest an arranged marriage, she would be viewed as highly disrespectful and would risk permanent ostracism from her family and community and may even risk death.").

166 See Restatement (Second) of Contracts § 175(1) (1981).

167 See id. § 176(1)(a) (noting that a threat to engage in criminal or tortious behavior is improper).

168 See, e.g., Perkins Oil Co. v. Fitzgerald, 121 S.W.2d 877 (Ark. 1938) (allowing the defense of duress when the coercion was directed against the plaintiff's step-father's future employment, the loss of which would have seriously affected his family).

169 See, e.g., Mullins v. Oates, 179 P.3d 930, 937 (Alaska 2008) (defining duress as "requir[ing] a threat that arouses such a fear as to preclude a party from exercising free will and judgment").

170 See Restatement (Second) of Contracts § 177 cmt. b (1981) ("The law of undue influence...affords protection in situations where the rules on duress and misrepresentation give no relief.").

171 See, e.g., Agner v. Bourn, 161 N.W.2d 813 (Minn. 1968) (finding undue influence in a contract with elderly relative).

172 See Nasir, supra note 12, at 49-52 (describing the role of the guardian).

173 See id. at 50.

174 See, e.g., Strawbridge v. N.Y. Life Ins. Co., 504 F. Supp. 824, 829 (D.N.J. 1980) (discussing a fiduciary's responsibilities).

175 The court wrote:

> No one disputes that the marriage contract, and specifically the mahr provision, was not discussed until the day of the wedding ceremony. According to Zawahiri, the imam raised the issue of the mahr only two hours before the ceremony was scheduled to begin. At that point, family and guests had already arrived. After a hurried negotiation, Zawahiri agreed to a "postponed" mahr of $25,000 because he was embarrassed and stressed. Moreover, Zawahiri did not have the opportunity to consult with an attorney prior to signing the marriage contract. Given these facts, we conclude that the evidence demonstrates that Zawahiri entered into the marriage contract as a result of overreaching or coercion.
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> Zawahiri v. Alwattar, No. 07-AP-925, 2008 WL 2698679, at *6 (Ohio Ct. App. July 10, 2008).

45 WFLR 579

2011 Utah L. Rev. 287

Utah Law Review
2011

Article
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HOW TO JUDGE SHARI'A CONTRACTS: A GUIDE TO ISLAMIC MARRIAGE AGREEMENTS IN AMERICAN COURTS

Table of Contents

I. Introduction

For many in the West, the term shari'a conjures images of brutal punishments such as cutting off the hands of thieves or stoning adulterers to death.[1] Others associate the term with the subjugation of women and a set of misogynistic rules governing status and power within family relationships.[2] For the ever-growing ***288** Muslim minorities in Western countries, however, shari'a is a term with very different connotations. For them it gestures towards living a pious life devoted to realizing God's justice in the world. According to many pious Muslims in the West, being a good Muslim is synonymous with living, in so far as possible, in accordance with God's law, or in other words, the shari'a.[3] The intersection between this religious impulse and secular legal systems has proven to be politically charged on more than one occasion.

For example, in 2003, a group called the Islamic Institute of Civil Justice announced that it would seek to apply shari'a law under the Canadian province of Ontario's Arbitration Act, which had earlier been amended to allow for binding, faith-based arbitration.[4] The result was a firestorm of protests. A dozen separate demonstrations were held across Canada and Europe.[5] Caroline Di Cocco, head of the Ontario Liberal Women's Caucus, led a unanimous group of female provincial members of parliament in calling for a ban on shari'a-based arbitration.[6] "Some of the aspects of shari'a law put women on an unequal footing in being able to defend themselves,"[7] Di Cocco said. "We don't want any of that to be part and parcel of Ontario law because Ontario law is about equality."[8] Ultimately, the provincial government amended the Act to eliminate all faith-based arbitration rather than allow shari'a-based arbitration.[9]

***289** Likewise, in February 2008, Rowan Williams, Archbishop of Canterbury and nominal leader of the world's Anglicans, gave a lecture at the Royal Courts of Justice in London in which he called for "crafting a just and constructive relationship between Islamic law and the statutory law of the United Kingdom."[10] He later told the BBC that in some limited situations, the British courts should apply shari'a law when called upon to do so by the parties to litigation.[11] The result was a tidal wave of public outrage against England's high prelate.[12] In response, Williams issued a "clarification," insisting that he was not calling for the wholesale application of shari'a to British Muslims.[13]

The United States has yet to experience a cause célèbre on quite the scale of the explosions over the Ontario Arbitration Act or Williams's remarks. In the 2010 elections, however, shari'a law did emerge as a minor issue, with Oklahoma adopting a state referendum banning the use of Islamic law in the state's courts.[14] In part, the lower saliency of shari'a law as a political issue in the United States may be because America's Muslim population is proportionately smaller than the Muslim population of either Britain or Ontario.[15] In addition, the United States is a ***290** less secular society than either Canada or the United Kingdom, and therefore Americans may feel less threatened by highly religious minorities.[16] That said, American courts increasingly must grapple with how to treat shari'a law.[17] The overwhelming majority of cases come before American courts not as arbitral decisions--the issue that sparked controversy in Canada and Britain-- but rather as contract disputes. In particular, when Muslim couples divorce in the United States, they are increasingly invoking their rights under Islamic marriage agreements, forcing American courts to grapple with contracts whose meaning is given by Islamic law.[18]

Understanding the shari'a contract cases American courts have grappled with requires first an understanding of the place of law in Muslim thought and practice. Islam is a juristic religion. In contrast to Christianity, which places faith at the center of piety, Islam--like Judaism, the other great monotheistic tradition--is an othropraxic religion in which right conduct (conduct according to God's law) plays at least as vital a role as orthodoxy.[19] For the devout Muslim, shari'a is more than simply a set of religious rules or traditions. It represents the primal mode of rightly relating to God. Accordingly, Islam invests enormous intellectual, emotional, and spiritual energy in religious law.

***291** Over the centuries, Muslim jurists have painstakingly constructed a body of legal interpretations of the Muslim revelation, a corpus iuris known as the fiqh. Hence, there is a considerable body of Muslim religious law governing marriage and divorce, and in many Muslim countries the formal municipal law closely follows the fiqh on matters of marriage and family. In Islam, marriage is a contract rather than a sacrament.[20] Accordingly, when Muslims marry they necessarily enter into a marriage contract. One of the chief features of this contract is the so-called mahr or sadaqa, a sum of money that the husband agrees to pay to the wife.[21] Generally speaking the mahr is divided between an immediate gift to the wife and a deferred payment to be made upon divorce or the husband's death.

Both husbands and wives have invoked mahr contracts, contending that the agreements entitle them to a more favorable settlement than American divorce law provides.[22] American courts are thus faced with two difficult inquiries. The first goes to matters of interpretation. What exactly are mahr contracts? What did the parties in fact agree to? The second goes to matters of enforcement. Having interpreted the terms of the contract, should it be honored by the court? Are there reasons of public policy or traditional contractual defenses that bar enforcement? Both inquiries require that courts make sense of contracts embedded in a legal and cultural context that most American judges find foreign and bewildering.

In at least one case, an American court has reached an extremely harsh result in interpreting and enforcing a mahr contract.[23] The fear of repeating such a result has led some commentators to argue in favor of a blanket prohibition on the enforcement of mahr contracts. Others have argued that the adjudication of such contracts should be removed entirely from the ordinary courts to private, religious arbiters. This Article takes a middle ground, arguing that courts should be careful to properly understand

the meaning of such contracts on their own terms, but that current doctrines provide sufficient tools to police overreaching or unduly harsh results.

At the heart of the courts' difficulties with mahr contracts lies a failure of cultural and religious understanding. In particular, American law tends to understand both marriage and the concept of religion through a set of categories inherited from a particular religious tradition: Christianity. This is true despite the fact that the United States is a nominally secular republic, and despite the modern revolution in the conceptualization of family law. This Christian legacy reveals itself in our law's special concern with matters of religious belief, and the tripartite structure of the act of marriage as consisting of bride, groom, and an officiator *292 performing the marriage.[24] Both of these assumptions are foreign to Islam, where religion centers around law rather than theology, and where the act of marriage is conceptualized as a contract rather than the tripartite structure bequeathed to the law from the Christian sacrament of marriage.[25] These differences are key to understanding the meaning that parties ascribe to mahr contracts, and that meaning in turn is vital to the law's treatment of these agreements.

This Article thus has two goals. The first is to show how the Muslim conception of marriage diverges from the Christian-influenced norms that dominate American law and society. Understanding this divergence provides a necessary background to Islamic mahr contracts. The second goal is to provide lawyers and judges with a doctrinal framework within our current law for analyzing these contracts and reaching sensible results in concrete cases.

The remainder of this Article will proceed as follows: Part II provides an introduction to Islamic law in general, and the law of marriage and divorce in particular, as well as some discussion of how these rules function in practice. Part III summarizes the way in which American courts have dealt with mahr contracts, showing how both husbands and wives seek to deploy arguments based on contract law, the law of premarital agreements, and constitutional law. Part IV provides a framework for analyzing mahr contracts. It argues that such contracts are best dealt with using traditional contract doctrines. Indeed, once the meaning of mahr contracts are properly understood, this Article argues that the common law of contracts is capable of dealing with potential problems presented by mahr contracts without any dramatic legal innovations.

II. Islam, Shari'a, and Marriage Contracts

For a pious Muslim, marriage contracts are bargained for in the shadow of God's law, the shari'a. Islamic law both explains the motivation for entering such contracts and provides the terms and concepts used. Understanding such contracts requires an understanding of the role of law in Islam, the content of the Islamic law of marriage and divorce, and the complex social reality of Muslim marriages.

A. The Role of Law in Islam

Consciously or unconsciously, thinking about religion in American law proceeds from an analogy to Christianity. Stated in the bluntest terms, the core idea of religion is defined in terms of mainline Protestantism and, to a lesser extent, Catholicism. Other religious traditions are then understood in terms of analogies to this core. Hence, for example, Jewish rabbis are implicitly understood as being a kind of "Jewish version" of a minister.[26] Likewise, a Muslim mosque or a Mormon *293 temple is thought of as being "like" a Protestant church.[27] We talk of the problem of "church and state" rather than "mosque and state" or "synagogue and state."[28] We have a "ministerial" or "priest-penitent" privilege, rather than an "iman" or "rabbinical" privilege.[29] And so on. Of course, the task of conceptualizing religion in general, untainted by any implicit analogies, presents formidable intellectual problems of its own and may well be impossible.[30] Professor George Satayana, for example, suggested that "the attempt to have a religion that shall be no religion in particular" is as hopeless as "[t]he attempt to speak without any particular language."[31] Given the history of the United States, the persistence of the *294 subliminal Christian analogy is understandable and perhaps unavoidable.[32] It can, however, have a distorting effect on thinking about Islam.

In the Gospel of John in the New Testament, Jesus teaches, "Truly, truly, I say to you, he who believes has eternal life."[33] The saying captures one of the distinctive features of Christian spirituality: its enormous emphasis on the centrality of belief. This is not to claim, of course, that other religious traditions are unconcerned with belief. In Islam, for example, one becomes a Muslim through the recitation of a statement of belief, the shahada.[34] Nevertheless, in Christianity, faith is not only a virtue and wellspring of religious motivation, but a central aspect of salvation.[35] This emphasis, for example, accounts for the intellectual development of Christianity, where theology--rational explication of right belief (orthodoxy)--has always occupied pride of place.[36] Not surprisingly, the American law of religion has been unusually sensitive to matters of belief and theology. For example, in its earliest foray into the construction of the Free Exercise Clause, the United States Supreme Court went so far as to define freedom of religion entirely in terms of freedom of belief.[37] Likewise, the Court has taken pains to insist that ***295** the Constitution's prohibition on the establishment of religion precludes the government from adjudicating theological claims.[38]

Among the three great monotheisms, however, Christianity is notable for its emphasis on faith and theology. In contrast, both Islam and Judaism emphasize orthopraxis rather than orthodoxy.[39] To be a Christian is in large part about holding a particular set of beliefs about God, Jesus Christ, and salvation.[40] In contrast, Judaism and Islam place a greater emphasis on pious conduct. The difference can be seen in the way that medieval Christianity received Islamic thought. During the thirteenth century, Europe experienced an intellectual flowering that culminated in the philosophical synthesis of Aristotelian thought and Christian theology in the work of Thomas Aquinas.[41] A key spur to this development was the Latin translation of earlier Arabic translations of ancient Greek philosophical texts, along ***296** with Muslim commentaries on the Greek works.[42] The infusion of ideas was not simply Greek, but also Islamic. For example, the Arab thinkers Ibn Rushd and al-Ghazali, under the Latinized names of Averroes and Algazel, became important influences on scholastic debates over the relationship between faith and reason.[43] To Christian thinkers, these authors were of interest purely as philosophers and theologians, that is, as theorists of belief.[44] Within Islam, however, their reputation is different. While their philosophical acumen is acknowledged, their accomplishments as jurists of Islamic law bulks far greater than any work they did in the relative intellectual backwater of theology.[45] The legal works of both men continue to be standard references for millions of ordinary Muslims today, while their theological writings are of interest mainly to a much smaller group of professional intellectuals.[46]

The prominence of both men illustrates the extent to which Islamic spirituality is not simply orthopraxic, but also juristic. The notion of right behavior is formulated as a legal concept, the shari'a. Westerners usually translate the word shari'a as "Islamic law," but this in some ways obscures the meaning of the term. The word literally means "a path to water," and though it sometimes refers to the detailed rules of Islamic jurisprudence, there is actually a separate word in Arabic--fiqh--for this corpus.[47] Rather, for a Muslim the word has connotations much closer to those that the term "gospel" has for a devout Christian or "Torah" has for an orthodox Jew. Beyond any detailed system of belief or practice, it refers to the primal way in which humans should relate themselves to God. Working out the operational details of the shari'a is the task not of theology, but of the usul al-fiqh, Islamic legal theory.[48]

***297** Islam rests on the revelation of God to the prophet Mohammed. The core of that revelation is the Quran (or Qur'an). According to the traditional account, in 610 C.E., Mohammed, a merchant in the Hejaz city of Mecca, received a divine command to "recite."[49] This resulted in a series of sacred texts, often in verse or rhyming prose, that were later collected as the "Qur'an."[50] The Quran is not really a Muslim Bible.[51] The Bible is a collection of disparate texts, all of which claim to have human authors, although the authors are regarded as divinely inspired in some way.[52] In contrast, pious Muslims regard the Quran as having been dictated word for word in classical Arabic to Mohammed. The Prophet is in no way regarded as the book's author. Indeed, during the classical period Muslim intellectuals debated whether, strictly speaking, the Quran itself had ever been created or was rather an eternal and unchanging emanation from the mind of God.[53] In Christianity, the closest analogy to the Quran is not the

Bible, but Jesus Christ, whom the Gospel of John declares to be the Word that "was in the beginning with God."[54] As a practical matter, however, the text of the Quran was given to Mohammed over a twenty-year period, often in response to the particular situation in which the Prophet and the early Muslim community found themselves.[55] After the journey--hijrah--from Mecca to the neighboring city of Yathrib (renamed Medina), Mohammed became not only a spiritual but also a political leader.[56] The Quran thus contains many passages--suras-- from this ***298** period instructing the Prophet on the proper organization of the community.[57] These texts form the core of Islamic law.

The shari'a is also revealed in the life of the Prophet himself. In the generations after his death, Muslims began looking to the example--Sunna--of Mohammed to determine how a pious follower of Islam should live.[58] Stories, known as hadith, regarding the Prophet's life circulated. Islamic thinkers realized, of course, that many of the circulating hadith were false, and they began trying to trace the provenance--isnad--of each story, in order to sort out authentic from inauthentic hadith.[59] The Sunna of Mohammed does not have the same authority as the Quran.[60] Mohammed was merely a messenger of God. Unlike Jesus, for example, his followers never imputed to him divine status.[61] Nevertheless, as a great prophet, leader, and pious Muslim, Mohammed's actions command enormous respect.

Christianity has always acknowledged some sort of existential divide between God and Caesar.[62] Even so-called Ceasoropapism, for example, distinguished between the two swords--the spiritual and the temporal.[63] Jesus was never a political leader.[64] In contrast, Mohammed was the governor of Yathrib and the Quran assumes that part of his mission was to establish a just political order based ***299** on God's revelations.[65] Hence, law and politics are existentially intertwined with religion in Islam in a way that they are not in Christianity.

During the classical period of Islamic history, a class of legal intellectuals--the uluma--began painstakingly interpreting the Quran and the Sunna of the Prophet in order to construct a set of rules for an Islamic society.[66] They were aided by two additional sources: The first was a process of analogical reasoning from the Quran or the Sunna known as qiyas.[67] The second was an appeal to the consensus of Muslim belief and practice, on the theory that it was unlikely that any rule commanding universal assent would be mistaken.[68] This is known as ijma'.[69] Together these four sources of law--Quran, Sunna, qiyas, and ijma'--form the usul al-fiqh, the foundations of Islamic law.[70] Through a process of rigorous analysis and hermeneutic struggle known as ijtihad, the jurists produced a body of detailed rules--the fiqh--which came to define a pious Muslim life.[71]

To be sure, it is possible to overemphasize the juristic tradition in Islam to the exclusion of other important elements of Muslim spirituality, for example, the mystical tradition of Sufism.[72] Some contemporary Muslims have argued that the juristic element within Islam can be overemphasized to the detriment of its more ethical core.[73] Nevertheless, it is important to understand that for many Muslims, living a pious Islamic life is defined less in terms of holding particular beliefs than in terms of following, in so far as one can, the demands of correctly reasoned fiqh. Islamic law is therefore not the system of rules that happened to evolve within Islamic societies. It is not even analogical to the cannon law that governs the ***300** internal institutional machinery of Christian churches.[74] Rather, the shari'a is central to Islam as a spiritual system in the way that faith is central to a Protestant Christian, sacraments are central to a Catholic Christian, or Torah is central to a Jewish believer. With this background, we turn to the classical Islamic law of marriage.

B. A Brief Introduction to Islamic Marriage Law

The legal concept of marriage under American law is a lineal descendant of the Christian sacrament of marriage.[75] According to the Catholic Catechism, for example, a sacrament is an "efficacious sign[] of grace, instituted by Christ and entrusted to the Church,"[76] and the sacrament of marriage "signifies the union of Christ and the Church."[77] On this view, a wedding is more

than simply a party celebrating a new marriage.[78] Rather, at its heart it is a ceremony in which one having priestly authority performs some sacred act that results in a couple becoming married.[79] This same basic structure continues in American law.[80] A couple cannot marry themselves. Rather, they must go to some government official--or a religious leader exercising specially delegated state power--who *301 then performs the act of marrying the couple.[81] If a couple makes a contract regarding their marriage, the most common example being a premarital agreement, we understand the contract as something quite different from the marriage itself.[82] A premarital agreement does not marry a couple in the way that a magistrate marries a couple. Indeed, a couple need not enter into any contracts at all to become married, provided that one having the proper legal authority declares the couple husband and wife.

The Islamic conception of marriage is different because Islam has no concept of priesthood and it has no sacraments.[83] Rather, all believers are to relate to God immediately and without the mediation of any priestly class.[84] Of course, in Islam the shari'a may command the performance of certain ritual acts, such as the daily regime of prayer required of a Muslim believer.[85] These rituals, however, are not sacraments in the sense of constituting moments when a divine priestly authority is exercised.[86] The absence of any concept of priesthood or sacrament is key to understanding marriage under the shari'a.

Under the rules developed in the classical fiqh, marriage is a contract.[87] One does not become married through the performance of any priestly ritual. Rather, a marriage comes into existence when a man and a woman enter into a contract.[88] In other words, a Muslim marriage contract is not a premarital agreement--that is, an agreement made in contemplation of a later act that will bring the marriage into existence. Instead the marriage contract is the marriage. There is no subsequent act that constitutes a final solemnization that brings the marriage into existence.[89] A *302 couple need not even be present at the inception of their marriage; it can be formed through agents, just like any other contract.[90] An Islamic marriage contract requires two capable and eligible parties, at least two witnesses, one guardian, and the proper form of offer and acceptance.[91] In addition a virgin--that is, a woman who has never been married before--must be represented by a wali, or guardian. The wali is the bride's closest male relative, generally a father or uncle. His role is to negotiate the contract and insure that the bride's interests are protected.[92]

The chief object of negotiation is the mahr. The standard Islamic marriage contract must contain deferred dower, called a mahr or sadaqa.[93] Contrary to the way that it is sometimes discussed in non-Muslim sources, the mahr is not a "bride price."[94] Rather, it is a sum of money or some other economically valuable asset that a husband must give to a wife. Upon marriage the wife is entitled to the mahr; any delay is a matter of contractual forbearance on her part.[95] Such delays are standard, however, and the mahr is almost always divided between a nominal payment upon marriage with the bulk of the mahr due upon divorce or the husband's death.[96] The mahr is thus supposed to provide wives with some measure of financial independence, ensuring that they have some pool of property that is uniquely their own.[97]

There are three ways in which a marriage can be dissolved under Islamic law. The first method is called tafriq.[98] This is a judicial proceeding in which a wife petitions an Islamic judge, known as a qadi, for dissolution of the marriage for cause.[99] The most common reasons are abuse, a husband's failure to financially support his wife, or abandonment.[100] In addition, according to the dominant interpretations of the shari'a, a wife has a right to sexual intercourse with her *303 husband at least once every four months.[101] As a practical matter, qadis are loath to dissolve marriages in any case where they think reconciliation between the parties is possible, and hence in practice, obtaining a tafriq can be difficult for a wife.[102]

The second method by which a divorce may be dissolved is by khul'.[103] This method does not require any intervention by an Islamic court and occurs as a matter of agreement between the parties.[104] A khul' can only be obtained if the other spouse consents.[105] If the husband consents to divorce, the law requires that the wife provide consideration, known as 'iwad, equal to

the amount of mahr.[106] The 'iwad can be paid in a variety of ways.[107] Sometimes it consists of a cash payment.[108] It may also be paid if the wife provides child care for the minor children of the marriage upon divorce.[109] In the eyes of Islamic law, by caring for the children, the wife provides the husband with a service for which she may demand compensation.[110] Hence, the provision of such care gratis could constitute a proper 'iwad.[111] The most common method of paying the 'iwad, however, is for the wife to forego her claim to a deferred mahr.[112] As mentioned previously, while ***304** not required by classical fiqh, as a practical matter, most marriage contracts divide the dower between an initial, often nominal payment, and a delayed payment upon dissolution of the marriage.[113] In most khul' transactions, the wife simply forgoes this claim as the price of dissolving the marriage.[114]

The final method of dissolving a marriage is known as talaq.[115] Talaq allows a husband to unilaterally divorce his wife without cause, judicial proceeding, or her consent.[116] Divorce through talaq can occur in several ways.[117] The first way is for a man to say to his wife "I divorce thee" in three successive months during the period when his wife is not menstruating.[118] Another form of talaq, known as ila', is for a man to take an oath that he will abstain from sexual intercourse with his wife for four successive months.[119] If he keeps the oath, then talaq occurs.[120] If he fails to keep the oath, and has sexual intercourse with his wife, then he must perform penance (the oath being a breach of his marital obligation to provide sexual access to his wife) and the marriage remains valid.[121] Finally, talaq can be performed by a husband declaring, "I divorce thee" three times in succession.[122] Talaq can also be performed by proxy.[123] Indeed, a husband may confer the independent power of talaq through either a revocable (talaq tawkil) or irrevocable (talaq al-tafwid) power of attorney.[124] This power of exercising talaq is sometimes given to a wife in a marriage contract, in effect giving her the same unilateral right ***305** of divorce as her husband.[125] Some Muslim feminists have argued that such provisions should be a standard part of marriage contracts on equality grounds.[126]

The potential for the abusive use of talaq is recognized by Muslim jurists.[127] As a practical matter, the delayed mahr is meant to act as a check upon the husband's otherwise unfettered power of talaq, requiring that he pay what amounts to a fine to his wife upon divorce.[128] It is important to realize, however, that the wife's right to the dower vests upon marriage.[129] There is no other act that she must take in order to become entitled to the mahr under Islamic law.[130] Furthermore, she may only be deprived of her immediate right to mahr by her own consent, either through the voluntary delay of its payment stipulated in the marriage contract or through a subsequent contract, as in a khul' divorce.[131] Hence, while the mahr functions as a de facto penalty clause upon the husband's use of talaq, strictly speaking, talaq is not a condition precedent to its payment. Rather, it must be paid upon dissolution of the marriage, however that occurs, unless the wife otherwise consents.

Under Islamic law, there is no disability on women--married or otherwise-- holding property.[132] Indeed, the Prophet Muhammed married an older widow who held and managed considerable property.[133] Following her example, Islamic law has never included any device equivalent to the common-law doctrine of coverture ***306** or other restrictions on married women holding property.[134] Accordingly, there is no equivalent to marital property or community property under the classical fiqh.[135] Property does not belong to the couple as a married community or to the husband as the sole legal personality of the marriage.[136] Rather, any property brought to the marriage by the wife or acquired during the marriage by her remains her property.[137] Likewise, any property acquired by the husband during the marriage remains his property.[138] Upon divorce, a wife has no claim upon her husband's assets under the theory that they constitute marital property.[139] The lack of marital property means that Islamic marriage contracts are not premarital agreements in the sense of allocating the division of marital property upon divorce. Under Islamic law there is no such thing as marital property to distribute.[140]

In cases where the wife is a homemaker, and hence has not earned substantial income during the marriage, the absence of marital property can work economic hardship in the event of divorce.[141] The classical fiqh seeks to mitigate this in a couple of ways. First, a wife is entitled to maintenance from her husband during the marriage, and this right to maintenance continues for a period of a few months after divorce.[142] In addition, husbands will sometimes provide their ex-wives with mutat. This is a sum of money in addition to the mahr provided by the husband. It "is a matter of custom and goodwill,"[143] but the custom is based on a Quranic passage and is widely encouraged.[144] Finally, under Islamic law the concepts of custody and guardianship are separated.[145] While fathers are always made the guardians of their children, the law presumptively awards custody of minor ***307** children to mothers.[146] While schools of jurisprudence differ on how long the period of a mother's custody lasts, they all agree that during that period she is entitled to child support payments from the father.[147] However, the impact of this rule is limited by the fact that a father is free to transfer custody of his minor children to another woman--such as an aunt or grandmother--who is willing to provide child care gratis.[148]

C. Islamic Marriage in Practice

The rules of fiqh outlined above inform Muslim marriage as a social practice, but its actual contours are influenced by factors other than the decrees of the classical jurists. First, the rules can reinforce pre-existing disparities of power between men and women. For example, a woman's consent is nominally required for a valid marriage contract. However, the requirement that marriage contracts by virgins be made only with the consent of a guardian means that, in practice, the rules facilitate arranged and sometimes even coerced marriages.[149] Likewise, in practice, qadis can be biased against women in tafriq proceedings, by either the hope that abusive relationships can be repaired or because they do not regard certain kinds of abuse as severe enough to warrant divorce.[150] As discussed above the alternative to tafriq for a woman, khul', necessarily leaves her at her husband's mercy, not only because he must consent to a divorce but also because she must provide an 'iwad.[151] Particularly in the absence of marital property regimes, giving up a deferred dower may amount to the loss of a woman's chief economic asset.

The starkest disparity, however, comes in talaq. Despite the moral disapproval with which its abuse is regarded, talaq is nevertheless guarded as a husband's legitimate right. Coupled with the absence of any concept of marital property, it leaves women in a vulnerable position and gives husbands a potent threat against their wives.[152] The potency of the threat comes not only from the unilateral right of divorce given to the husband, but also from the fact that formal equality and ***308** independence of property rights granted to men and women within marriage means that a wife who does not work outside the home will be left with few economic resources beyond her deferred dower.[153] The husband's power is further entrenched by strong social pressure for the wife not to work outside the home, and the difficulty of remarriage for divorcees in many Muslim cultures.[154]

The classical fiqh has always been, at some level, the theoretical creation of religious scholars and intellectuals.[155] Even during the classical period it was never the sole functioning law in Muslim lands.[156] Today, with the exception of Saudi Arabia and a few other Persian Gulf states that are nominally governed solely by shari'a, it does not function as the municipal law of any jurisdiction.[157] It does, however, inform the enacted family law codes of many Muslim countries.[158] Hence, many of the Islamic marriage contracts that come before American courts are shaped not only by the classical fiqh, but also by the laws of the foreign jurisdictions in which they were contracted.[159] Likewise, among immigrant communities, perceptions of what constitutes an Islamic marriage are often ***309** influenced by the nominally secular law of their countries of origin.[160] For example, in Pakistan a marriage is contracted by going before a government official and executing a marriage "license."[161] This license, however, mirrors a traditional Islamic marriage contract, requiring that the wife's guardian consent to the marriage and that the parties name the amount of the deferred dower.[162] The pre-printed forms, however, do not provide for additional provisions in the marriage contract-- such as a talaq al-tafwid giving the wife a right of talaq equal to that of the husband--despite the fact that such provisions are allowed under the classical fiqh.[163]

Finally, and perhaps most importantly, in the vast majority of cases the classical fiqh will be only one determinant in how marriages function in practice. Claiming, as it does, approximately 1.3 billion adherents, Islam necessarily includes a huge amount of regional and cultural variation.[164] A marriage between Filipino Muslims will necessarily have a different cultural background than one contracted between Muslims at the opposite side of Eurasia, in the Atlas Mountains of Morocco.

For example, the practice of honor killings, in which male relatives will murder female relatives for fornication or even romantic involvement with non-Muslims has understandably garnered public attention.[165] Honor killings, however, are concentrated among particular ethnic and cultural groups stretching from the Kurdish regions of eastern Anatolia and east into Pakistan and Afghanistan.[166] Among women in these regions--and among immigrant women from these regions who have reason to fear such actions--honor killings clearly create strong incentives to enter only into culturally approved relationships.[167] The practice, however, is foreign to the vast majority of Muslim communities.

Less spectacularly, arranged marriage is the norm in many Muslim communities, including some immigrant communities in the United States. Such marriages are perhaps best thought of on a continuum. At one pole are coerced marriages in which a man or woman is forced to marry someone against their will.[168] At the other pole are marriages that involve substantial vetting by family ***310** members, but ultimately allow the prospective bride or groom to veto an undesirable match.[169]

To get some sense of the complexity involved, consider the following case. A young man might be attracted to a particular young woman. He would inform his parents or older siblings of this fact. They would then approach the young woman's family. A series of closely supervised meetings between the young man and the young woman would result. The young man and his parents or older siblings would then collectively decide to propose marriage to the young woman. She would be approached through her family. A similar collective deliberation would follow among her family. Provided that the woman accepts the offer and her family agrees, her parents or older siblings would then negotiate the terms of the marriage contract with the groom's family. On the day of the marriage, the prospective couple would sign the contract.

Variations on this scenario might include parents initiating the contact with a young woman of their own choosing, followed by the same closely controlled contact. Likewise, the final decision by a man or woman may be subject to greater or lesser pressure from family members, or no pressure at all. Indeed, one study in Houston revealed a wide variety of marital practices within the same families.[170] One daughter, for example, might contract a marriage under the close supervision of her family, following the traditional patterns of proxy arrangements and strong parental involvement. Her sister, however, might opt for marriage via the kind of self-directed dating and romance one finds in the wider non-Muslim culture.

In short, the rules of the fiqh are but one force determining how Muslim marriages unfold, and given the diversity of Muslim communities and practices, it would be foolish to hazard blanket generalizations about Muslim marriages. Rather, in assessing how any particular Muslim couple entered their marriage, the specific facts of the case provide a better guide than stereotypes about a "typical Muslim marriage." Despite this diversity, however, the fiqh does create certain core elements present in most Muslim marriages.

III. Islamic Marriage Contracts in American Courts

In American divorce proceedings between Muslim spouses, both husbands and wives have invoked their Islamic marriage contracts. Husbands invoke the contracts as a way of limiting their liability to ex-wives upon divorce. Those adopting the most aggressive position argue that the contracts are an agreement that every legal aspect of the couple's marriage will be governed by Islamic law. ***311** Hence, the ordinary rules of American property and family law ought not to apply to the divorce proceeding. Rather than applying the rules regarding community property or equitable distribution, a wife's claim in divorce ought to be limited to the property to which she held title at the time of marriage, and any property acquired by her during the course of

the marriage. Further, all wealth acquired by the husband during the marriage should be exempt because of the agreement that Islamic marriage law ought to apply to the couple's divorce. This aggressive reading of the marriage contract has also been invoked as a contractual backstop for husbands seeking to have a talaq valid under the laws of a Muslim country recognized by American courts.

A less aggressive claim that husbands put forward is that the marriage contract constitutes a premarital contract in which the wife agreed to receive the mahr in lieu of any claims on marital property under American law. While this reading does not seek to completely displace American family law with Islamic law in property disputes, it would have the same effect in practice: the wife would lose any claim on wealth earned by the husband during the marriage.

Wives have also sought to enforce Islamic marriage contracts. All of these actions take the form of claims for the mahr upon divorce. Wives can make the claim in two situations. First, wives may try to enforce the mahr provision as an ordinary debt, in addition to whatever distribution of marital assets they are entitled to under state divorce law. Second, in cases where the marital assets are essentially non-existent, wives seek to enforce the mahr agreement as an ordinary debt that must be paid out of the husbands' future wealth. In cases where there are no marital assets, a generous mahr provision may potentially give wives much more than they would otherwise receive under state divorce laws.

Examining how the courts have dealt with the defenses raised by both husbands and wives in enforcing the mahr illustrates the struggle to understand the meaning of these contracts and the need to understand the context in which they are made.

A. Husbands Invoking the Marriage Contract in American Courts

The most aggressive position that a Muslim husband could adopt in divorce litigation in an American court would be to claim that by executing the marriage contract the couple has agreed that the Islamic law of marriage and divorce in its entirety should govern the marriage.[171] In In re Marriage of Shaban, a couple married in Egypt by executing a traditional marriage contract, which ended with the words:

> The above legal marriage has been concluded in Accordance with his Almighty God's Holy Book and the Rules of the Prophet to whom all *312 God's prayers and blessings be, by legal offer and acceptance from the two contracting parties.[172]

The husband argued that this language excluded any law but Islamic law from governing the couple's California divorce proceeding.[173] This was more than simply a claim that the language represented a choice-of-law clause. Instead of claiming that the contract was to be construed according to Islamic law, the husband in effect claimed that the parties had agreed, as a matter of contract, to be subject to the whole of Islamic family law.[174] Obviously, the whole of Islamic law was not specified in the contract, and therefore would have to be established by parol evidence.[175] Such a contract, the California Court of Appeals concluded, could not satisfy the statute of frauds, which requires that the essential terms of agreements made in consideration of marriage be in writing.[176]

A slightly less aggressive position is for husbands to cite marriage contracts in support of their efforts to get American courts to recognize the validity of talaq divorces. When Muslim marriages in the United States break down, a husband from a country that recognizes the validity of talaq may seek to preempt American divorce proceedings by traveling to that country or to its consulate or embassy to perform talaq on his wife.[177] The husband will then claim that the American court must recognize the foreign divorce and that the wife's claim to any marital property is limited to what would be available to her in his country of origin.[178] While the Constitution requires that states give the judgments of sister states full faith and credit, American recognition of

foreign acts is a matter of comity.[179] American courts have uniformly refused to recognize such opportunistic talaqs, holding that to do so would violate state and federal constitutional provisions of *313 equal protection and due process.[180] The presence ex ante of a marriage contract conforming to the requirements of Islamic law has not persuaded them to shift their analysis.[181]

Most commonly, husbands have argued that the mahr provisions in their marriage contracts constitute premarital agreements governing the distribution of marital property upon divorce. Accordingly, they argue that their wives have no claim on the marital property beyond the sum specified as the mahr. In at least one case, this argument has been successful.[182] In Chaudry v. Chaudry, the Superior Court of New Jersey wrote:

> [W]e have concluded that the wife is not entitled to equitable distribution by reason of the antenuptial agreement [i.e. the mahr provision], which was negotiated on her behalf by her parents. It could have lawfully provided for giving her an interest in her husband's property, but it contained no such provision.[183]

The court's analysis in Chaudry, however, is confused. It did not hold that the contract intentionally bargained away the wife's rights to equitable distribution of *314 marital property in the United States.[184] Rather, the court rested its holding in part on a New Jersey conflicts analysis.[185]

The court reasoned that there was "no reason of public policy that would justify refusing to interpret and enforce the agreement in accordance with the law of Pakistan, where it was freely negotiated and the marriage took place."[186] The problem with this analysis is that, while it is true that under Pakistani law the wife's claim on the husband's assets would be limited to the mahr provision, this result arose not from the agreement of the parties but from Pakistani property law.[187] In other words, under Pakistani law, the limitation on the wife's rights arose not because she bargained those rights away, but from the fact that there was no marital property under Pakistani law upon which she might have a claim. Hence, in Chaudry, rather than interpreting the scope of the contract in light of Pakistani law, the court in effect adopted Pakistani property law as a whole under the guise of interpreting a contract and applied it to marital property in New Jersey.[188]

Other American courts have refused to enforce mahr agreements as premarital contracts bargaining away a wife's claim on marital property.[189] In Ahmad v. Ahmad, for example, the trial court held that the marriage contract failed to meet the special formation requirements for premarital agreements.[190] According to the *315 court, the "agreement was unenforceable under Ohio law because at the time the agreement was entered into, appellee was not represented by counsel, there was no disclosure of appellant's assets, and the agreement did not take into consideration the assets subsequently acquired in Ohio during the eight-year marriage."[191] In Aleem v. Aleem, rather than declaring that the contract was unenforceable, the trial court found that it was not a premarital agreement.[192] On appeal, the appellate court suggested that the mahr itself was not marital property and might be enforceable as an ordinary contract.[193] This conclusion was supported by the Maryland Court of Appeals, which stated "the Pakistani marriage contract in the instant matter is not to be equated with a premarital or post-marital agreement that validly relinquished, under Maryland law, rights in marital property."[194]

B. Wives Invoking the Marriage Contract in American Courts

Wives have also sued on marriage contracts trying to enforce the husband's obligation to pay the deferred mahr. They have adopted two slightly different strategies. Some women sue on the theory that the mahr provision constituted a prenuptial agreement setting forth the proper distribution of the marital assets.[195] Other women sue on the theory that the mahr provision is an ordinary contract.[196] On this view, rather than displacing the state-law property rules regarding the distribution of marital

property, the mahr is a simple debt owed by the husband to his wife. In cases where there are no marital assets, enforcing the mahr as an *316 ordinary contract allows wives to obtain wealth from their ex-husbands even where they would not be entitled to any property under the ordinary rules of divorce.[197] Alternatively, in some cases wives argue that the marriage agreement is an ordinary contract, and that they are entitled to the deferred mahr payment in addition to any equitable distribution in the divorce proceeding.[198] Husbands have responded with a variety of defenses.

In those cases where wives sue on the theory that the mahr provision is a premarital agreement, husbands can argue that the marriage contract failed to comply with the heightened formation requirements that most states have for contracts that alter property distributions in divorce. In Zawahiri v. Alwattar, an Ohio court concluded that a wife could not enforce a mahr provision against her ex-husband because "the parties entered the marriage contract under circumstances that rendered the contract invalid and unenforceable."[199] At the time of Zawahiri's marriage to Alwattar, he was presented with a pre-printed marriage contract by a local imam, which contained a blank space for the amount of the deferred mahr.[200] At that point Zawahiri and Alwattar's father both responded that they had not agreed on a sum for the mahr. After considering the suggestions of various witnesses, the groom and the bride's father agreed on a sum of $25,000.[201] Under Ohio law, prenuptial contracts can only be enforced where there is no fraud, duress, or overreaching, and there is full disclosure of the value of a prospective spouse's assets.[202] Presumably the court concluded that Zawahiri did not have adequate information regarding Alwattar's assets, or else that the last minute negotiations with her father constituted overreaching or coercion of some kind.[203]

Husbands have also attacked mahr provisions on public policy grounds. For instance, for a time California refused to enforce mahr provisions on the theory that they violated the state's public policy against contracts that encouraged *317 divorce.[204] The court reasoned that because payment was made to the wife upon divorce, mahr agreements created an incentive for wives to divorce their husbands.[205] The case establishing this precedent, however, was subsequently overruled by the California courts.[206]

Husbands may also object that the terms of the mahr agreement are unconscionable. For example, although the argument was unsuccessful in this case, in S.I. v. D.P.I, the couple married in Bangladesh with a deferred mahr of 10,000 Lac Taka--approximately $17,000 in American currency.[207] When the wife sued for the mahr during the couple's subsequent divorce in Delaware, the husband argued that the contract should be set aside as unconscionable.[208] In this case, the husband's sisters and the wife's relatives had arranged the marriage, and on the day of the marriage the husband was presented with a contract to sign.[209] He did so, insisting that he thought it "had no 'consequences' since the agreement is 'nothing' in his native country and divorce is rare."[210] He admitted, however, that he did expect to sign a marriage contract and that the contract would contain a promise to pay a sum of money to his wife in the event of divorce.[211] While the court did not rule out the possibility that with different evidence a mahr agreement might be unconscionable, it concluded that the "[h]usband's testimony essentially indicates that he believes the contract should not be enforced merely because he did not expect it to be. This is not adequate."[212]

Another defense is to argue that the mahr or sadaq provision is too vague to be enforced. In cases where the contract specifies a certain and liquidated sum to be paid upon divorce, such arguments have not been persuasive.[213] In Habibi- *318 Fahnrich v. Fahnrich,[214] however, the argument proved successful.[215] In that case, the mahr provision read: "The Sadaq being: a ring advanced and half husband's possessions postponed."[216] The court concluded that "[i]n the case at bar, the material terms of the SADAQ are not specific enough that a person reading it would be able to grasp the gist of the agreement," noting that the contract contained no definition of possessions, no method for determining or measuring their value, and no indication of when the possessions were to be measured.[217]

In Akileh v. Elchahal, the vagueness argument took an interesting twist. The wife instituted the divorce proceedings and asked the court to award her the $50,000 deferred mahr specified in the couple's marriage contract.[218] The husband responded by arguing that there was no "meeting of the minds" with respect to the contract because "he believed that the postponed portion of the sadaq was forfeited if a wife chose to divorce her husband,"[219] while the wife presented expert testimony that "the wife's right to receive the sadaq was not negated if the wife filed for divorce."[220] The court resolved the case in the wife's favor, characterizing the husband's reading of the terms as an undisclosed and idiosyncratic understanding.[221] In such cases, the court reasoned, the ordinary meaning (here the wife's interpretation), should control.[222]

Finally, husbands have argued that the enforcement of mahr provisions would run afoul of the First Amendment's prohibition on the establishment of religion ***319** and its state constitutional analogs.[223] These arguments have not been particularly successful.[224] Under the line of United States Supreme Court cases culminating in Jones v. Wolf,[225] courts are generally willing to enforce "religious" contracts so long as they may do so on the basis of neutral principles of contract law.[226] Accordingly, courts have rejected constitutional objections to mahr agreements, holding that they may make the award by inquiring into the expressed intentions of the parties without having to pass on questions of religious doctrine.[227]

IV. Mahr Agreements and the Law of Contracts: A Proposed Analysis

In construing mahr contracts, courts ought to be sensitive to context in understanding their terms, but I disagree with those who call for the wholesale invalidation of such contracts on the basis of the wife's status within Muslim cultures. At the heart of these criticisms is the belief that the unequal position of men and women within Islamic culture renders feminine consent to marriage contracts doubtful.[228] Furthermore, they fear that regardless of the question of ***320** consent, enforcement of marriage contracts will further entrench inequality within Muslim communities.[229] According to one commentator:

> [Muslim women] often lack true freedom to contract and bargain for themselves. Contracts are built on the presumption that there are two equally strong parties, freely bargaining for their mutual obligation to one another. The success of the contract is contingent upon the free agency of both contracting parties because both parties presumably bargain in their own best interests. Unfortunately, the current approach that Islamic family law takes toward women is far more paternalistic, routinely infantilizing the bride and rendering her virtually, if not actually, silent.[230]

The commentator concludes, "mahr agreements contracted in Muslim countries should be unenforceable because they lack the intent to function as prenuptial agreements and are frequently too vague or contracted under duress,"[231] and "courts that attempt to enforce American-made mahr agreements must be especially sensitive to cultural nuances that may affect the validity of the documents."[232]

Such arguments proceed at too high of a level of legal abstraction, attacking the notion of party autonomy without paying sufficient attention to doctrinal detail in how these contracts might be analyzed under current law. Commenting on the controversy surrounding the Ontario Arbitration Act, one scholar noted "there are costs to isolating and dissociating Islamic law from the 'informal' marital web of rights and duties within which husband and wife love each other, fight, hope, and play through the use of various strategies."[233] Likewise, there is a danger in analyzing Islamic marriage contracts independent of the web of doctrines that give "contract enforcement" its concrete meaning. Armed with an understanding of the ***321** terms of mahr contracts and their relation to contract principles, current doctrine can reach a sensible result in mahr litigation.

A. How Mahr Contracts Should Be Treated under Current Doctrine

1. Mahr Contracts Are Not Prenuptial Agreements

Since the Florida Supreme Court's celebrated decision in Posner v. Posner,[234] the trend has been for courts to discard earlier public policy concerns about encouraging divorce and to enforce prenuptial agreements. To date, twenty-seven jurisdictions have adopted the Uniform Premarital Agreement Act (UPAA) in order to facilitate such contracts.[235] While the UPAA allows parties to contract regarding "any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty,"[236] the overwhelming majority of prenuptial agreements concern the distribution of marital assets upon divorce. Most of these contracts are designed to protect the assets of a wealthy spouse from the subsequent claims of a poorer spouse.[237] According to the UPAA, however, "'premarital agreement' means an agreement between prospective spouses made in contemplation of marriage and intended to be effective upon marriage."[238]

A mahr contract's potential status as a prenuptial agreement is important because if a court deems a mahr as such, then under the UPAA as well as the common law of some states, defenses unavailable in ordinary contract cases would become available to defendants. Specifically, in addition to the ordinary requirements that a contract be voluntarily made and not be unconscionable, section 6 of the UPAA provides that a party "who was not provided a fair and reasonable disclosure of the property or financial obligations of the other party," and who "did not have . . . an adequate knowledge" of those obligations, may ***322** avoid liability under the contract.[239] Hence, a husband wishing to avoid payment of a deferred mahr can argue that he should not be held liable because of the bride's failure to provide proper disclosure at the time of the marriage, provided that the court deems the marriage contract to be a premarital agreement.[240] Likewise, if a court concludes that the parties intended by the marriage contract that the wife's claim on marital assets was to be limited to the amount of the mahr, she might raise the husband's failure to disclose information as a defense.[241]

But Islamic marriage contracts fit awkwardly into our law of premarital agreements.[242] Reading them against the background of the fiqh that clearly gives them shape, they are not intended by the parties to be contracts "made in contemplation of marriage and effective upon marriage."[243] As noted above,[244] under Islamic law, marriage is not a ceremony that occurs subsequent to the marriage contract. Rather, the contract itself is what causes the parties to become husband and wife. When operating under American law, however, the parties must necessarily avail themselves of a later civil or religious ceremony. In the eyes of the fiqh, however, this later ceremony is a mere celebration of what has already occurred at the moment of signing the contract.[245] From the point of view of Islamic law, the liability for the deferred mahr is not contingent on a subsequent marriage ceremony. Of course, Islamic law does not control the law of marriage in the United States, but it is extremely relevant for understanding the intentions of the parties in entering into Islamic marriage contracts. Read against this context, parties do not intend for their obligations under these contracts to be "effective upon marriage."[246]

More importantly, parties do not intend for the deferred mahr to be paid in lieu of a wife's claim upon marital property or for alimony upon divorce.[247] Again, in understanding the intentions of the parties we should look to the fiqh that gives rise to the marriage contract. First, under Islamic law there is no such thing as marital or community property.[248] All property belongs to one spouse or the other and is not subject to equitable distribution on divorce. Accordingly, parties do not ***323** intend for the mahr to replace a wife's claim on marital property.[249] To impute to the parties such an intention is to import foreign legal intentions into the Islamic context. To be sure, a couple that marries in Iran might expect that upon divorce the wife's claim on the husband's wealth will be limited to the mahr.[250] This expectation, however, does not arise from the content of their marriage contract. Rather, it arises from the fact that Iranian property and divorce law, following the classical fiqh, does not recognize any analogy to marital or community property.[251] Should the couple subsequently divorce in, for example, California, this expectation will be violently disappointed when the wife is able to prosecute a successful claim to community property. The

disappointed expectations, however, arise from the fact that the couple is now subject to California property and divorce law rather than Iranian property and divorce law. In other words, the expectation is not created by the marriage contract.

Even under Islamic law, the deferred mahr is not a claim (exclusive or otherwise) of the wife on the property of the husband. Rather, it is a simple debt, a promise to pay a sum of money upon divorce.[252] It is true that the background rules of Islamic law would limit the wife's claim on the husband's wealth upon divorce to the mahr. The parties, however, did not bargain for this limitation. To hold that it was part of the contract would be an innovation in contract interpretation. For example, if two parties enter into a contract in North Carolina they may have expectations about property rights based on North Carolina law. However, it would be extremely odd for a court to hold that merely making a contract in North Carolina means that the whole of North Carolina property law is an implicitly bargained for term of the contract. Likewise, even if courts use Islamic law to understand the intentions of the parties, as I discussed above, they should still confine themselves to construing the bargained for terms of the contract.

Given this analysis, courts should not treat mahr provisions as premarital agreements. The mahr provisions are not intended to alter the parties' rights to property upon divorce.[253] Because parties entering into a mahr agreement are not bargaining away claims to property of uncertain value, it does not make sense to require special disclosure of assets in order for parties to make informed decisions.[254] Nor are the special concerns regarding bargaining around marriage present in the case of mahr agreements. The special defenses available in cases involving premarital agreements are justified, in part, on the grounds that such ***324** agreements are not ordinarily a part of the culture of marriage. Accordingly, they may be sprung unexpectedly on an unsuspecting prospective spouse on the way to the altar. In contrast, because under the classical fiqh, a mahr is a formal requirement of any valid Muslim marriage, it is not sprung on an unsuspecting prospective husband at the last moment. Given that a mahr is not intended to replace the state's default property rules and is an expected part of Islamic marriage, the justification for the heightened disclosure requirements of the UPAA do not apply.[255]

2. Mahr Contracts Do Not Violate the Establishment Clause

In litigation, parties often argue that enforcing mahr contracts would violate the Establishment Clause.[256] According to the argument, because the mahr arises out of a contract whose meaning comes from the shari'a, a court construing such a contract would involve making religious determinations that it is constitutionally prohibited from making. Several courts have accepted this position and it has been urged by at least one commentator.[257] While it is conceivable that construing a mahr contract could cause the court to involve itself in unconstitutional activity, in virtually any case that is likely to actually find its way into litigation, there is no constitutional bar to interpreting and enforcing a mahr agreement.

The United States Supreme Court has never passed on the constitutionality of enforcing mahr contracts. The most relevant body of case law begins with the Court's decision in Watson v. Jones.[258] The case involved a schism among Kentucky Presbyterians over slavery and the Civil War.[259] The schism resulted in a dispute over the ownership of some church property, which ultimately made its way to the Supreme Court in 1871.[260] Although the case did not technically arise under the First Amendment, Justice Miller declared, "[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."[261] The Court went on to hold that with regard to the ownership of church property, the civil law must defer to the decision of the sect's highest ecclesiastical tribunal rather than engage in independent interpretation of church doctrine.[262] In a ***325** subsequent series of cases involving litigation over church property in the wake of ecclesiastical disputes, the Court has developed the so-called neutral principles doctrine.[263] As articulated in its most recent extensive discussion of the doctrine, the Court declared, "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice."[264] Justice Blackmun went on to acknowledge, however, that "there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property."[265] In such cases, he concluded, courts must defer to the interpretations of "the authoritative ecclesiastical body."[266]

The court's role in resolving such religious disputes must be limited to the application of neutral, nonreligious principles of law.[267]

Transposing this church-centric doctrinal framework to the Islamic context is difficult. From a Muslim perspective, Islamic law can exist in two senses. First, there is the strongly religious sense of God's actual law.[268] This is the shari'a in its purest sense. Human beings may struggle to understand this law in light of God's revelation in the Quran, but it is at times necessarily indeterminate from a human perspective. Human beings are always fallible, and their attempts to specify God's commands on the basis of his revelations may be mistaken. Islamic law, however, also exists as a corpus of scholarly elaboration with a relatively definite shape. This is law in the sense of fiqh.[269] The ultimate goal of the fiqh, of course, is to discover God's shari'a, but as a matter of Islamic understanding the fiqh exists as a social and historical fact. It is not a revelation of God, and determining the fiqh of this or that school of Islamic jurisprudence is not a matter of interpreting God's revelations. It is a matter of determining what learned but human jurists have said. Indeed, the technical vocabulary of Islam draws a distinction between these two ways of seeking Islamic law. A person who struggles to discern the will of God through a direct and unmediated interpretation of revelation engages in ijtihad.[270] *326 In contrast, the person who does not seek to directly discern God's law, but rather follows the established fiqh of some school, is engaged in taqlid.[271]

Transposing these distinctions into American constitutional law, a court that tried to engage in ijtihad would violate the Establishment Clause. Such a court would be looking directly to the revelations of Islam in an effort to distill what God actually commands as the shari'a.[272] To use the Christian-derived language in which the Supreme Court has couched its decisions, a court attempting ijtihad would necessarily be involved in the "consideration of doctrinal matters."[273] On the other hand, when a court seeks out Islamic law in the sense of taqlid, merely applying a particular fiqh rather than presuming to pronounce on the shari'a itself, it is seeking to answer a concrete historical and social question. It looks to a particular corpus iuris as a matter of fact, just as a court looking to foreign law treats the content of that law as a matter of fact.[274]

When a court is called on to construe the meaning of a mahr provision it necessarily must look to Islamic law because the intention of the parties is to include a term in their contract whose public meaning is specified by that law. The neutral principles doctrine requires that the court resolve questions of meaning according to neutral principles.[275] So long as it is being asked to construe the meaning of the mahr as a matter of social fact courts do not violate this doctrine, even if in determining social fact they must look to the fiqh. On the other hand, it is possible that the parties intended their mahr provision to encapsulate more than simply the shared public meaning of the term "mahr" as informed by a particular body of fiqh. Perhaps the parties intend for their obligations to be whatever it is that God commands when he commands that a mahr be paid as part of a marriage contract. In this case, the court could not interpret the contract without engaging in ijtihad and therefore violating the Establishment Clause. Note, however, that the *327 Establishment Clause would only be triggered if this very specific intention could be shown.[276]

It is extremely unlikely, however, that a court could be called upon to engage in ijtihad in interpreting an Islamic marriage contract. First, when parties enter contracts in the context of particular Muslim communities, the most natural interpretation of their acts is that they have the meaning generally ascribed in the community to acts of that kind.[277] Even if one of the spouses was unusually pious, and intended for "mahr" to mean what God wants it to mean rather than what it is generally accepted as meaning in his or her community, this especially devout intention would not control unless it were known by the other spouse.[278] Of course, if both spouses attached the pious meaning to the term, this would ordinarily control.[279] However, the analysis is further complicated by the fact that mahr agreements will always be in writing both because they fall within the common law statute of frauds,[280] and because as a matter of Islamic law--and therefore of Muslim social practice--they must be in writing.[281] Accordingly, the parol evidence rule will apply and the written terms will be given their natural meaning within their particular context. At this point, parties would only be able to introduce parol evidence of their especially pious intentions if they were able to show that the term "mahr" was so vague as to justify such evidence.[282] This, however, will be a difficult case to make in a situation where there is a well-established fiqh that gives the term a determinate meaning. In short, both as

a social matter and as a doctrinal matter, it is very unlikely that a court could properly conclude that a mahr contract required the judge to engage in ijtihad.

*328 3. Duress and Undue Influence Doctrines Police Overreaching

While fears about the freedom of Muslim women have motivated most of the critical commentary on the enforcement of mahr provisions, if the court properly interprets the scope of the contract, the issues of duress and undue influence are unlikely to come up in litigation. If they do, current doctrine is sufficient to police the mahr agreement. First, provided the courts reject the misguided attempt to interpret the mahr as a substitute for a wife's claim on marital property, husbands will have little or no incentive to sue on a mahr contract. If it does not displace state divorce law, then husbands have little to gain by its enforcement. Hence, we would expect that wives, rather than husbands, would be suing to enforce the mahr contract, seeking payments in addition to those to which they are entitled under state divorce laws.

We may suppose that in some cases Muslim women are pressured to marry and agree to mahr contracts. Current doctrine, however, approaches such cases with considerable subtlety. A contract made under duress or undue influence is generally not void but voidable.[283] In cases where a wife's manifestation of consent is physically coerced--for example if a father was to physically manipulate her hand into signing a document--then no contract is formed.[284] On the other hand, if a contract "is induced by an improper threat"[285] or "unfair persuasion of a party,"[286] then it is valid but voidable at the election of the coerced party. If duress and undue influence are at issue with Muslim brides, the law will allow them to use both doctrines as a shield against contractual liability. On the other hand, the doctrines will not pose a bar to her suing her husband on the contract. He will be unable to raise her coercion as a defense to his liability.[287]

*329 The most common situation in which a wife would wish to disclaim a mahr contract using the doctrines of duress or undue influence would be where a husband was using it as a sword to cut off her claims under state divorce statutes. The best response to such an argument, however, is not to invalidate the contract but rather to point out that when a Muslim couple makes a marriage contract, they are simply not bargaining over their rights to marital property in divorce. Put in doctrinal terms, the court should protect the wife via contract interpretation rather than contract invalidation. Accordingly, only in the rarest of cases should courts be required to reach the issue of duress or undue influence.

Notwithstanding the stereotype of the domineering Muslim husband, as a practical matter, questionable circumstances involving a putative wife's agreement to a mahr contract are more likely to involve a male relative acting as her wali than her husband.[288] In particular, where marriages are arranged or otherwise represent a collective family decision rather than an individual romantic one, family members may place pressure on a woman to consent to a marriage contract. This pressure can range from the power of social expectations to the threat of economic abandonment or physical abuse.[289] To show duress, a defendant must demonstrate that she assented to a contract because of an improper threat that leaves her with no reasonable alternative.[290] Physical violence can easily pass the threshold of the "improper threat" requirement and provided the threatened violence was immediate, the woman would be left with no reasonable alternatives.[291] Threats of extreme economic pressure have also been held to rise to the level of duress.[292] On the other hand, the mere pressure not to upset social expectations is unlikely to be sufficient.[293]

While successfully making a case of duress would be difficult in any but the most extreme cases, the doctrine of undue influence offers a more promising route for a woman who wishes to avoid a mahr contract because of pressure from a wali or other family member.[294] Successful cases of undue influence routinely involve *330 overreaching by family members or other intimates.[295] In the case of a mahr contract, however, a father or other male relative acting as wali is more than simply a family member. The role of the wali is to look after the interests of the woman.[296] The wali is thus a kind of fiduciary to the putative bride.[297] Like the overreaching family member, the high pressure fiduciary is another common character in successful cases

of undue influence.[298] Thus, provided that courts avoid construing mahr contracts as premarital agreements in which wives bargain away their rights in divorce, it is unlikely that a wife would wish to challenge the validity of the contract, and in the unlikely event that she has an incentive to challenge the mahr provision, the doctrines of undue influence and duress stand ready to police high pressure tactics by family members.

Finally, while it is important to acknowledge the very real possibility that a Muslim woman may be subject to undue pressure, it is equally important not to succumb to the common Western stereotype of all Muslim women as repressed and powerless. Among immigrant Muslim communities, for example, women frequently outperform their male counterparts both academically and economically.[299] Hence, while it is true that in many cases a Muslim wife is economically dependent on her family and her husband, it is also true that Muslim women are often successful participants in the workplace who have considerable bargaining power vis-à-vis their husbands. For example, the Ohio case of Mir v. Birjandi[300] involved the divorce of an Iranian couple who moved to the United States.[301] In Iran, the husband had been a successful engineer, but due to his poor language skills in the United States, he could find work only as a taxi driver.[302] In contrast, his wife enrolled in college in the United States, ultimately earned a PhD in engineering, and obtained work with a defense contractor.[303] At the time of their divorce, she was earning in excess of $100,000 a year, while her husband's salary was less than $20,000 a year.[304] Furthermore, the case reveals a wife who was extremely aggressive and savvy in using Islamic law to her advantage, having her *331 husband jailed during a visit to Iran for nonpayment of the mahr promised in her contract.[305] Given such realities, it is important that courts avoid the temptation to stereotype Muslim women.

B. Summary and Evaluation

To summarize the doctrinal analysis put forward thus far, mahr agreements should not be interpreted as premarital contracts in which the wife bargains away her rights to marital property and alimony upon divorce. Because the concepts of marital property and equitable distribution do not exist in Islamic law, it is unreasonable to suppose that, in traditional marriage, contracts the wife meant to bargain away nonexistent (from the fiqh point of view) rights. While this means that divorce proceedings in American courts may unfold in ways very different than they would under Islamic law, this is not because the courts are refusing to enforce the contract made by the parties. Rather, any disappointed expectations arise because American rather than Islamic law provides the default rules upon divorce.

Contract law does not provide a global guarantee of the parties' legal expectations. It merely provides legal recognition of the terms for which they bargain. Accordingly, the deferred mahr should be treated as a simple promise by the husband to pay a sum of money to the wife. This promise operates independent of the property law surrounding divorce. Indeed, given the strict liability of contract, the husband's obligation to the wife is legally valid even if he has no property of any kind.[306] Because mahr agreements do not occupy the same social position as prenuptial agreements--bargaining away rights under state divorce laws--they should not be treated as prenuptial agreements. Accordingly, courts should not refuse to enforce these contracts simply because the parties failed to make full financial disclosures at the time of formation. Even if a court does decide that the mahr contract should be treated as a prenuptial agreement, the deferred mahr should still be treated as a personal obligation that does not affect property distributions or alimony rights. To do otherwise is to import common-law assumptions into a contract whose meaning is defined by a very different legal tradition.

Except in the unlikely event that the parties to a contract intend for a court deciding their case to engage in ijtihad, the enforcement of a mahr agreement does not violate the Establishment Clause. Courts can decide such cases without making "theological" determinations, even if in construing the meaning of particular terms and forms, they must necessarily look to Islamic law for guidance. So long as they are using fiqh to understand the social meaning of the parties' actions rather than *332 trying to give legal effect to God's intentions as revealed in the shari'a, they do not run afoul of the Establishment Clause.

Likewise, concern for the status of women in some Muslim subcultures, however justified in the abstract, does not justify a blanket refusal to enforce mahr agreements. If courts correctly construe their meaning, women will have little or no incentive to attack the validity of the contract. In the unlikely event that they do wish to attack it, the law of duress and especially undue influence provides a way for courts to police overreaching by family members.

This proposed treatment of mahr contracts strikes me as quite sensible. It is sensitive to Muslim sensibilities by treating their religious law with seriousness and sympathy, seeking to understand the mahr provision on its own terms rather than through a series of analogies to common-law concepts (prenuptial agreements) or Christian marriage practices (a contract made before the "real" marriage, which occurs at the wedding ceremony). To be sure, it will disappoint those Muslims who believe that their marriage contracts entitle them to have the entirety of Islamic marital and property law imported into American courts. To understand deferred mahr contracts in these terms would transform them into super choice of law clauses that not only specify that Islamic law will govern the construction of the contract but the entirety of the parties' property relationships. Suffice it to say that this is not how the contracts are understood in either the classical fiqh or in the countries where the fiqh is incorporated into the formally promulgated family law. Furthermore, by providing the wife with a legally enforceable right to her mahr, a right that is not contingent on giving up her rights under state divorce laws, the marriage contract may continue to limit the abuse of the husband's power of talaq, which even if it is not recognized by secular law continues to have important religious--and therefore social--consequences for Muslim women.

This happy result is reached without dramatically rewriting the common law of contracts. It looks to the context of the contract, but only for the traditional purpose of discerning the meaning of the terms that the parties agreed to. As relational contract theorists have long pointed out, traditional contract doctrine does not seek to recreate as legal liability the whole of the parties' complex and extended relationships.[307] Rather it picks out discrete transactions, enforcing contract terms without regard to the richer social context in which those obligations operate. It is precisely this transactional approach, however, that allows *333 traditional contract doctrine to function well in the case of Islamic marriage contracts. Attempts by husbands to invoke the whole of the classical fiqh's law of divorce and property allocation rest on a highly contextual and relational understanding of contracts. In effect, they insist that one cannot separate the expectations created by the mahr provision from the totality of expectations created by the operation of the background legal rules governing property and the cultural context in which the contract is embedded. Contract doctrine, in contrast, does not to try to protect the totality of the parties' relational expectations. Rather, it protects only those expectations that result from clearly defined agreements. Other expectations are supported or disappointed by other bodies of law, but this is not ultimately a set of questions that the contract concerns itself with.

The analysis above likewise avoids the perverse result reached in Chaudry v. Chaudry,[308] where the Superior Court of New Jersey held that in signing a mahr contract, the wife had bargained away her rights to equitable distribution of marital property upon divorce.[309] This is simply not what parties to Islamic marriage contracts are bargaining over. Indeed, the main concerns underlying premarital agreement law do not apply to Islamic marriage contracts. Much of the judicial and legislative unease about premarital contracts comes from a particular vision of how they may operate in practice. Lawmakers imagine--not without justification--the prospective spouse, with a powerful bargaining position, presenting his or her weaker partner with an agreement on the way to the altar. Presented with a contract under such circumstances, we worry that prospective spouses will make inconsiderate or ill-informed decisions out of fear of the social costs and embarrassment of cancelling or delaying the wedding to engage in contract negotiations. Likewise, we worry that when prospective spouses negotiate about the disposition of assets upon divorce they are likely to be unreasonably optimistic about their chances of connubial success and accordingly, steeply discount the value of their divorce rights.

None of these concerns make sense in the Islamic context. Part of the American unease with premarital agreements is that contract negotiation is not part of the social script that American law inherits from Christianity, particularly late nineteenth-century Protestantism with its valorization of companionate marriage. Weddings are supposed to be about tuxedoes, white dresses, walking down the aisle, throwing rice, and a marriage ceremony in which someone with authority will pronounce the couple husband and wife. In this tableau, contract negotiation seems like a jarring intrusion of adversarial, commercial values, an intrusion that may well take prospective spouses by surprise. In contrast, in the Islamic context, to become married means that

one has made a marriage contract. Far from being an unexpected intrusion into the process of getting married, the contract lies at the heart of that process. Furthermore, because a mahr of some sort is a requirement for a valid marriage contract, it is unlikely that negotiation over the size of the mahr comes as a surprise to anyone involved in the process. Finally, because the ***334** mahr does not bargain away claims on marital property, the Uniform Premarital Agreement Act's requirement that prospective spouses disclose the value of their assets makes little sense. Such a requirement insures that the parties to a traditional prenuptial agreement understand the value of what they are bargaining over. Such claims on property, however, simply are not part of what the parties to an Islamic marriage contract are bargaining over. Accordingly, it makes no sense to allow husbands and wives to opportunistically invoke the failure to disclose in subsequent litigation.

V. Conclusion

The dominant paradigms for thinking about the relationship between law and religion in American jurisprudence are drawn from the Christian tradition. Increasingly, however, America is home to Muslim immigrants and citizens. As they bring their religious practices to American courts, judges will struggle to understand their meaning and police their possible abuse. Islamic mahr contracts present perhaps the most common issue of Islamic law and practice with which American courts have struggled. Islamic marriage contracts should be understood on their own terms, rather than as an idiosyncratic version of the more familiar premarital agreement. The move to conceptualize mahr contracts as premarital agreements ultimately rests on a set of analogies to norms about marriage and contract that have their origins in a very different religious tradition, namely Christianity. Treating mahr contracts as premarital agreements is not simply a misunderstanding; it can also have perverse results. Most seriously, courts may use the contract to limit a spouse's claims to equitable distribution of marital assets when those rights have not been bargained away. Less seriously, parties can opportunistically invoke the additional formation requirements for premarital contracts, despite the fact that the concerns that motivate such additional requirements are not present in the case of Islamic marriage contracts. When courts sensitively analyze mahr contracts under current doctrine, on the other hand, courts can reach sensible results that treat Islamic law--and by extension Muslim citizens--with respect, vindicate the contractual intentions of the parties, and avoid overreaching and abuse.

Footnotes

a1 © 2011 Nathan B. Oman, Associate Professor, William & Mary Law School. I would like to thank Dan Barnhizer, Brian Bix, Neal Devins, and Bob Hillman for helpful conversations and comments and participants in the Virginia Junior Faculty Forum who provided helpful criticisms and suggestions. The standard disclaimers apply. Megan Brazo, (William & Mary Law School, 2011), and Matt Sutton (William & Mary Law School, 2011) provided excellent research assistance. As always, I thank Heather.

1 See, e.g., Christopher Caldwell, Reflections on the Revolution in Europe: Immigration, Islam, and the West 220 (2009) ("For Europeans, shari'a is a frightening tabloid specter: lopping off people's hands for theft, as occurs in Saudi Arabia; [and] stoning adulteresses to death, as has been the practice in Iran since the Khomeini revolution of 1979.").

2 Zainah Anwar & Jana S. Rumminger, Justice and Equality in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform, 64 Wash. & Lee L. Rev. 1529, 1536-37 (2007) ("Such codification, however, was generally based on the classical fiqh conception of the marriage contract developed by Muslim jurists in the ninth and tenth centuries in a socio-historical context in which gender inequality and the subjugation of women were taken for granted. Therefore, modern Muslim family laws are grounded in assumptions that are centuries old and have little bearing on today's realities.").

3 For instance, this accounts for the popularity of English-language websites in which Muslims may submit questions to religious jurists and receive back a fatwa--legal opinion--on how to conform their conduct to Islamic law. See, e.g., Living Shari'ah Compliant, Living Muslim, http:// www.livingmuslim.com/living-shariah-compliant/ (last visited Mar. 7, 2011).

4 See Clifford Krauss, When the Koran Speaks, Will Canadian Law Bend?, N.Y. Times, Aug. 4, 2004, at A4. In 1991, Ontario amended its Arbitration Act to allow faith-based arbitration. See id; see also Boyd, infra note 9, at 10-12. At the time, this was done primarily to accommodate the province's Orthodox Jewish community, whose members had been turning to beit din--Jewish religious courts--to resolve disputes according to the principles of Jewish law. As amended, the Arbitration Act provided that if the parties consented,

religious courts were allowed to issue binding arbitration decisions, subject to appellate review by the province's secular courts; See Arbitration Act, S.O. 1991, c. 17 (Can.).

5 See Karen Howlett, Female MPPs Spearheaded Ban on Sharia; Unanimous Opposition by Women's Caucus Played Key Role in McGuinty's Decision, Globe & Mail (Toronto), Sept. 14, 2005, at A8.

6 Id.

7 Id.

8 Id.

9 Initially, provincial premier Dalton McGuinty commissioned Marion Boyd, a prominent female lawyer and former provincial attorney general, to conduct a study of the issue. When Boyd's report concluded that the safeguards in the present law were sufficient and suggested that Muslims should enjoy the same access to voluntary arbitration panels as other religious Canadians, McGuinty's government repealed the 1991 amendments to the Arbitration Act rather than allow shari'a courts to function. See Marion Boyd, Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion 3-6, 133 (2004), available at http:// www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/fullreport.pdf; Family Statute Law Amendment Act, S.O. 2006, c. 1 (Can.).

10 Rowan Williams, Archbishop of Canterbury, Archbishop's Lecture-- Civil and Religious Law in England: A Religious Perspective at the Royal Courts of Justice (London) (Feb. 7, 2008), available at http:// www.archbishopofcanterbury.org/1575.

11 Interview by Christopher Landau, BBC World, with Rowan Williams, Archbishop of Canterbury (Feb. 7, 2008), available at http:// www.archbishopofcanterbury.org/1573 ("That is why there is a place for finding what would be a constructive accommodation with some aspects of Muslim law as we already do with some kinds of aspects of other religious law.").

12 See John F. Burns, Top Anglicans Rally to Besieged Archbishop, N.Y. Times, Feb. 12, 2008, at A11. A columnist in the Daily Mail captured the responses of many Britons, writing:
How on earth would human rights law help protect a British Muslim woman who is exposed to manifold injustice, violence and even "honour killings" under sharia family law Dr. Williams wishes to entrench? ... Dr. Williams's prescriptions would spell the end of British identity. Until now, all minorities have set up their own communities of faith and culture under the law of the land, which binds us all as equally loyal citizens of this country.
Melanie Phillips, Seven Deadly Reasons Why the Archbishop Must Not Be Allowed to Get Away with It, Daily Mail (UK), Feb. 13, 2008, at 14.

13 See Burns, supra note 12.

14 See Nathan B. Oman, Sharia Law Poses No Threat to American Courts, Deseret News, Dec. 19, 2010, at G06 (discussing the politics behind the Oklahoma referendum).

15 See The World Factbook, Cent. Intelligence Agency, https:// www.cia.gov/library/publications/the-world-factbook (follow "Select a Country or Location" drop-down menu; then select both "Canada" and "United States") (last visited Mar. 6, 2011) (listing, as a percentage of population, the Muslim demographic of Canada as 1.9% and of the United States as 0.6%).

16 See Steve Crabtree, Analyst Insights: Religiosity Around the World, Gallup.com (Feb. 18, 2009), http://www.gallup.com/ video/114694/analyst-insights-religiosity-around-world.aspx (noting that among developed countries, the United States has by far the highest level of religiosity).

17 This is not to suggest, of course, that the appearance of shari'a law in American courts has failed to spark any controversy. See, e.g., Eric Lichtblau, After Attacks, Supporters Rally around Choice for Top Administration Legal Job, N.Y. Times, Apr. 1, 2009, at A19 ("Mr. Koh had made a 'favorable reference' to Shariah, or Islamic law, and had said it could be used to 'govern a controversy' in an American court.").

18 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 865-66 (Cal. Ct. App. 2001); In re Marriage of Dajani, 251 Cal. Rptr. 871, 871-72 (Cal. Ct. App. 1988); Akileh v. Elchahal, 666 So. 2d 246, 247-48 (Fla. Dist. Ct. App. 1996); Aleem v. Aleem, 947 A.2d 489, 494 (Md. 2008); Aleem v. Aleem, 931 A.2d 1123, 1126, 1129 (Md. Ct. Spec. App. 2007); Chaudry v. Chaudry, 388 A.2d 1000, 1003,

1006 (N.J. Super. Ct. App. Div. 1978); Odatalla v. Odatalla, 810 A.2d 93, 95, 98 (N.J. Super. Ct. Ch. Div. 2002); Habibi-Fahnrich v. Fahnrich, No. 46186/93, 1995 WL 507388, at *1 (N.Y. Sup. Ct. Jul. 10, 1995); Aziz v. Aziz, 488 N.Y.S.2d 123, 123-24 (N.Y. Sup. Ct. 1985); Zawahiri v. Alwattar, No. 07AP-925, 2008 WL 2698679, at *1 (Ohio Ct. App. Jul. 10, 2008); Mir v. Birjandi, No. 2006 CA 63, 2007 WL 4170868, at *1 (Ohio Ct. App. Nov. 21, 2007); Ahmad v. Ahmad, No. L-00-1391, 2001 WL 1518116, at *4 (Ohio Ct. App. 2001); Ahmed v. Ahmed, 261 S.W.3d 190, 193 (Tex. Ct. App. 2008).

19 See Jacob Neusner & Tamara Sonn, Comparing Religions Through Law: Judaism and Islam 5 (1999) ("But Judaism and Islam in one important way stand closer together than either does to the third companion in the trilogy of monotheism, Christianity. That way is their conviction that law embodying public policy as much as theology sets forth religious truth.").

20 See infra notes 87-89 and accompanying text.

21 The mahr is sometimes mistakenly referred to as a "bride price" or "dowery." Nathan B. Oman, Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization, 45 Wake Forest L. Rev. 579, 589-91 (2010). It is important to understand, however, that it is not a sum of money paid by the husband to the wife's family or vice-versa. Id. It is a payment from husband to wife. Id.

22 See infra Part III.

23 See Chaudry, 388 A.2d at 1007-08 (affirming the denial of alimony and equitable distribution because divorce had already been litigated and decided in Pakistan courts).

24 See infra notes 75-81.

25 See infra notes 83-89 and accompanying text.

26 See Wingo v. Comm'r, 89 T.C. 922, 932 (1987) (using a three-prong ministerial test to determine whether a rabbi fell within the category of minister for tax purposes).

27 See Islamic Ctr. of Miss., Inc. v. City of Starkville, 840 F.2d 293, 294-95 (5th. Cir. 1988) (referring to a mosque as a "church" under a city zoning requirement); see also Cyril Glasse, The New Encyclopedia of Islam 361-63 (3d ed. 2008) (discussing mosques in Islam, noting their contrast to "a Gothic Christian cathedral"); Immo Luschin, Temples: Latter-Day Saint Temple Worship and Activity, in 4 The Encyclopedia of Mormonism 1447, 1449 (Daniel H. Ludlow ed., 1992) ("After being dedicated, LDS temples are not open to the public but are restricted to Latter-day Saints. Even among themselves, Latter-day Saints do not talk about the details of the temple ceremony outside the Temple, because they are sacred.").

28 See Rayburn v. Gen. Conference of Seventh-Day Adventists, 772 F.2d 1164, 1167 (4th Cir. 1985) (discussing "the 'wall of separation' between church and state" (quoting Everson v. Bd. of Educ., 330 U.S. 1, 16 (1947))); C.F. v. Capistrano Unified Sch. Dist., 615 F. Supp. 2d 1137, 1144 (C.D. Cal. 2009) ("The Supreme Court has held that the separation of church and state mandated by the First Amendment 'rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere .... [T]he First Amendment ha[s] erected a wall between Church and State which must be kept high and impregnable.'" (alteration in original) (quoting McCollum v. Bd. of Educ., 333 U.S. 203, 212 (1948))); Connor v. Archdiocese of Phila., 975 A.2d 1084, 1091 (Pa. 2009) (citing the "underpinnings" of the "more general doctrine of separation of church and state").

29 See Trammel v. United States, 445 U.S. 40, 51 (1980) ("The priest-penitent privilege recognizes the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts and to receive priestly consolation and guidance in return."); Atwood v. Schriro, 489 F. Supp. 2d 982, 1027 (D. Ariz. 2007) (stating that the "priest penitent privilege" means that "a 'clergyman or priest' shall not be examined 'as to any confession made to the clergyman or priest in his professional character in the course of discipline enjoined by the church to which the clergyman or priest belongs' without consent of the person making the confession") (quoting Ariz. Rev. Stat. § 13-4062(3) (West 1978 & Supp. 1984)); Commonwealth v. Kebreau, 909 N.E.2d 1146, 1158 (Mass. 2009) (stating the "priest-penitent privilege" may not be invoked if the statements "were not 'motivated by a religious or spiritual purpose'" (quoting Mass. Gen. Laws ch. 233, § 20A (2009))).

30 See, e.g., Jonathan Z. Smith, Religion, Religions, Religious, in Critical Terms for Religious Studies 269, 269 (Mark C. Taylor ed., 1998) (discussing the immense difficulties that scholars of religion have faced in defining "religion").

31 George Santayana, The Philosophy of Santayana 141-42 (Irwin Edman ed., 1953).

32 See, e.g., Jon Butler, Awash in a Sea of Faith: Christianizing the American People 1-6 (1990) (discussing the central place of Christianity in American religious history).

33 John 6:47 (Revised Standard Version).

34 Shahada means "to testify" or "to bear witness." Sachiko Murata & William C. Chittick, The Vision of Islam 10 (1994). The shahada is: "There is no God but Allah; Muhammad is His Prophet." Id. at 45; cf. The Meaning of the Holy Qur'an 392 (Abdullah Yusuf Ali trans. 2004) ("Say: He is Allah, the One and Only; Allah, the Eternal, Absolute; He begetteth not, nor is He begotten; And there is none like unto Him." (citations omitted)).

35 See Saint Augustine, On Free Choice of the Will 69 (Anna S. Benjamin & L.H. Hackstaff trans., Hackett Publ'g Co. 1993) (395) ("But since we cannot pick ourselves up voluntarily as we fell voluntarily, let us hold with confident faith the right hand of God--that is, our Lord Jesus Christ--which has been held out to us from on high."); Martin Luther, On Christian Liberty 7 (Harold J. Grimm ed., W.A. Lambert trans., Fortress Press 2003) (1520) ("Faith alone is the saving and efficacious use of the Word of God.").

36 See Avihu Zakai, The Rise of Modern Science and the Decline of Theology as the 'Queen of Sciences' in the Early Modern Era, 9 Reformation & Renaissance Rev. 125, 126 (2007).

37 See Reynolds v. United States, 98 U.S. 145, 166-67 (1878) ("Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? ... To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.").

38 See, e.g., Watson v. Jones, 80 U.S. 679, 733 (1871) (stating unequivocally that the Court has no jurisdiction over a matter which is "strictly and purely ecclesiastical in its character ... a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them").

39 See Malise Ruthven, Islam: A Very Short Introduction 4 (1997) ("Muslims who dissented from the majority on issues of leadership or theology were usually tolerated provided their social behaviour conformed to generally accepted standards. It is in enforcing behavioural conformity (orthopraxy) rather than doctrinal conformity (orthodoxy) that Muslim radicals or activists look to a 'restoration' of Islamic law backed by the power of the state."); Samuel Belkin, A Democratic Theocracy, in The Judaic Tradition 580, 580-83 (Nahum N. Glatzer ed., 1969) ("Many attempts have been made to formulate a coherent and systematic approach to Jewish theology. All such attempts, however, have proved unsuccessful, for Judaism was never overly concerned with logical doctrines. It desired, rather, to evolve a corpus of practices, a code of religious acts, which would establish a mode of religious living.... In Judaism, articles of faith and religious theories cannot be divorced from particular practices.... The ... theology[] of Judaism is contained largely in the Halakhah [Jewish law]--in the Jewish judicial system--which concerns itself not with theory but primarily with practice.").

40 For example, the Nicene Creed, one of the earliest documents seeking to define orthodox Christianity does so in terms of belief:
We believe in one God, the Father, the Almighty, maker of heaven and earth, of all that is, seen and unseen. We believe in one Lord, Jesus Christ, the only Son of God eternally begotten of the Father, God from God, Light from Light, true God from true God, begotten, not made, one in Being with the Father. Through him all things were made.
Catechism of the Catholic Church 56 (2d ed. 2003) (emphasis added).

41 See Renaissance and Renewal in the Twelfth Century, at xxv (Robert L. Benson & Giles Constable eds., 1982) ("[W]hat marked the twelfth-century renaissance most distinctively was the consciousness of its position in history, its sense of time and of times, of change and innovation.").

42 See id. at xxii (noting the "important influence of non-Latin cultural traditions on particular developments--of the Arabic translations").

43 See 2 Frederick Copleston, A History of Philosophy 186-200 (Edmund F. Sutcliffe ed., 1950) (discussing the influence of the Islamic philosophers, particularly Algazel and Averroes, on medieval Christendom).

44 See id. at 186 (noting that the interpretation of Aristotle "was incompatible with the Christian theology and faith").

45 See Frank Griffel, Al-Ghazali's Philosophical Theology 31-36 (2009) (describing Al-Ghazali's rise as a famous jurist); Dominique Urvoy, Ibn Rushd (Averroes) 30 (Olivia Stewart trans., Routledge 1991) (noting that Ibn Rushd is a "recognized specialist in the field of juridical methodology and the study of the various legal solutions put forward by the major schools of Law (Ikhtilaf)").

46 See 1 Ibn Rushd, The Distinguished Jurist's Primer, at xxix (Imran Ahsan Khan Nyazee trans., 1994) (noting that "Ibn Ruchd's works on philosophy are well known").

47 See Joseph Schacht, An Introduction to Islamic Law 1 n.1 (1964) (distinguishing between "shari'a, shar', the sacred Law" and "fikh, the science of the shari'a").

48 Irshad Abdal-Haqq, Islamic Law: An Overview of Its Origin and Elements, in Understanding Islamic Law: From Classical to Contemporary 1, 14 (Hisham M. Ramadan ed., 2006) (describing usul al-fiqh).

49 See Daniel C. Peterson, Muhammad: Prophet of God 51 (2007).

50 See id.

51 See Gary Miller, The Difference Between the Bible and the Quran, Qur'anic Studies (Dec. 9, 2003), http:// www.quranicstudies.com/pdf/articles/the-quran-and-the-bible/the-difference-between-the-bible-and-the-quran.pdf (describing the fundamental differences between the Quran and the Bible). But see Peterson, supra note 49, at 54 (making the comparison that "[a]s with Jesus, the earliest writing of the teachings of the Prophet of Islam came from his followers and disciples").

52 See The New Jerome Biblical Commentary 1024 (Raymond E. Brown et al. eds., 1990) ("Those divinely revealed realities which are contained and presented in sacred Scripture have been committed to writing under the inspiration of the Holy Spirit.... In composing the sacred books, God chose men and while employed by him they made use of their powers and abilities, so with him acting in them and through them, they, as true authors, consigned to writing everything and only those things which He wanted.").

53 See Henry Corbin, History of Islamic Philosophy 108-09 (Liadain Sherrard trans., 1993) (discussing the Mu'tazilite controversy over the nature of the Quran). During the ninth century this controversy took on political overtones, with successive caliphs suppressing first one position and then the other. Id. at 10.

54 John 1:2 (Revised Standard Version).

55 See generally Peterson, supra note 49 (describing the life of Muhammad, including the beginning of revelations around age forty and their cessation with his death around age sixty-one).

56 See id. at 91 ("Muhammad became a prophet-statesman, the founder of a political order and eventually of an empire that would change the history of the world.").

57 See id. at 93 ("The ideal Islamic paradigm, however, is Muhammad, who ruled a state for nearly half his prophetic ministry and received numerous revelations instructing him how to do it.").

58 See Schacht, supra note 47, at 17-18 (describing the rise of the idea of "sunna of the Prophet" as a theological as well as political theory).

59 See Kimberly Yonce Schooley, Comment, Cultural Sovereignty, Islam, and Human Rights--Toward a Communitarian Vision, 25 Cumb. L. Rev. 651, 663 n.62 (1994) (describing how the reliability of hadith is judged by examining whether the "chain of narrators (isnad) is consistent and continuous" as traced back to Mohammed); cf. Schacht, supra note 47, at 34-36 (describing how various false hadith, supported by fabricated isnad, were circulated among practitioners of Islam, and that "[h]ardly any of these traditions ... can be considered authentic").

60 See Abdal-Haqq, supra note 48, at 13 ("[T]he Prophet establishes in Islam the supremacy of the Qu'ran and then his Sunnah.")

61 See id. at 8 ("[P]romulgation of the concept of man as God, or woman as God, or the incarnation of God through a created thing, whether material or spiritual, is an anathema in Islam.")

62 See Luke 20:20-26 (King James) ("And he said unto them, Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's.").

63 See Harold J. Berman, Law and Revolution: The Formation of the Western Legal Tradition 88 (1983) (describing Caesaropapism as distinguishing between political leaders and priests, or spiritual leaders, while noting that in the eleventh century kings and emperors were considered to be "deputies of Christ" and spiritual leaders of their subjects).

64 But see generally John Dominic Crossan, The Historical Jesus: The Life of a Mediterranean Jewish Peasant (1992) (arguing that Jesus should be seen as the leader of a political protest movement); John Dominic Crossan, Jesus: A Revolutionary Biography (1994) (same).

65 See generally Peterson, supra note 49, at 90-98 (discussing Mohammed's time as the leader of the Islamic community in Yathrib).

66 See generally 1 Marshall G. S. Hodgson, The Venture of Islam: Conscience and History in a World Civilization (1974) (discussing the rise of the classical schools of Islamic jurisprudence).

67 See Abdal-Haqq, supra note 48, at 5-6.

68 See id.

69 See id.

70 See id. at 5-6, 14.

71 See generally Bernard G. Weiss, The Spirit of Islamic Law 88-112 (1998) (discussing the role of ijtihad in dealing with uncertainty about the scope of divine law); Bernard Weiss, Interpretation in Islamic Law: The Theory of Ijtihad, 26 Am. J. Comp. L. 199 (1978) (describing the methods of Islamic legal interpretation); see also Frank Vogel, The Closing of the Door of Ijtihad and the Application of the Law, 3 Am. J. Islamic Soc. Sci. 396 (1993) (discussing the decline of independent ijtihad and the increasing reliance on classical legal commentaries in applying the shari'a).

72 See generally Corbin, supra note 53, at 187-203 (describing Sufism as Islam's attempt to live according to the Prophet's message by purifying one's inner heart and turning towards God through asceticism, mysticism, and transcendence); Hodgson, supra note 66, at 393-409 (discussing the mystical traditions of the Sufis).

73 See generally Ali A. Allwali, The Crisis of Islamic Civilization (2009) (criticizing contemporary Islamic religious and political thought).

74 Imad-ad-Dean Ahmad, American and Muslim Perspectives on Freedom of Religion, 8 U. Pa. J. Const. L. 355, 364 (2006) (stating that Islam has "no 'Church' in the Christian sense of the term").

75 See generally John Witte, Jr., From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition (1997) (discussing the religious origins of the legal concept of marriage).

76 Catechism of the Catholic Church, supra note 40, at 320.

77 Id. at 463.

78 See id. ("[The sacrament of marriage] gives spouses the grace to love each other with the love with which Christ has loved his Church; the grace of the sacrament thus perfects the human love of the spouses, strengthens their indissoluble unity, and sanctifies them on the way to eternal life.").

79 Within Catholicism, the issue is slightly more complicated. The official Catechism of the Catholic Church states, "[According to Latin tradition], the spouses, as ministers of Christ's grace, mutually confer upon each other the sacrament of Matrimony by expressing their consent before the Church." Id. at 405. Since the time of the Protestant Reformation, however, the Catholic Church has required a public ceremony for the sacrament of matrimony. See id. at 407 ("The priest (or deacon) who assists at the celebration of a marriage receives the consent of the spouses in the name of the Church and gives the blessing of the Church. The presence of the Church's minister (and also of the witnesses) visibly expresses the fact that marriage is an ecclesial reality."). The Lutheran theology of marriage, perhaps ironically, places less emphasis on the contractual aspect of marriage, emphasizing the social authority of the

marriage officiator and with it the social basis of marriage. See generally Harold Berman, Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition 184-85 (2003) (discussing the effect of the Lutheran reformation on the legal conceptualization of marriage).

80 See, e.g., Va. Code Ann. § 20-13 (2008) (directing that every marriage in Virginia "be under a license and solemnized" according to the dictates of Virginia law).

81 See, e.g., id. § 20-23 (setting out the requirements for a minister to celebrate marriages in Virginia); id. § 20-25 (permitting a judge to issue an order authorizing a person to celebrate the rites of marriage).

82 See Lieberman v. Lieberman, 587 N.Y.S.2d 107, 109 (N.Y. Sup. Ct. 1992) ("[A premarital] agreement does not become effective until the parties marry.").

83 Jamal J. Nasir, The Status of Women Under Islamic Law and Under Modern Islamic Legislation 1 (1990) (noting one difference between Islam and Christianity is the absence of a clerical hierarchy).

84 See Hodgson, supra note 66, at 318 (noting that in Islam "every person, as such, with no exceptions, was summoned in his own person to obey the commands of God: there could be no intermediary, no group responsibility, no evasion of any sort from direct confrontation with the divine will").

85 See Wael B. Hallaq, Shari'a: Theory, Practice, Transformations 227-31 (2009) (outlining the prayer requirement in Islamic law).

86 See id. at 225 ("These performative works are constructionist, in that they are constituted and created by the believers as devotional acts for the purpose of fulfilling a covenant with God.").

87 See id. at 271 ("[M]arriage as nikah [is] a contract with a narrow scope ....").

88 See, e.g., Nasir, supra note 83, at 9-12 (outlining the two forms of guardianship recognized in shari'a law, one that has a right of compulsion exercised over minors or others with limited legal capacity and one that does not have this right of compulsion but instead is chosen in deference to social custom).

89 See Hallaq, supra note 85, at 272-73 (discussing the minimum requirements for an Islamic marriage contract).

90 See id. at 274 ("Either of the two contracting parties could be represented by a person acting on his/her behalf as a legally empowered agent.").

91 See Nasir, supra note 83, at 3-16 (discussing in detail the requirements of an Islamic marriage contract); see also Hallaq, supra note 85, at 271-78 (also describing the necessary provisions of a marriage contract).

92 See Lindsey E. Blenkhorn, Note, Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptuals and Their Effect on Muslim Women, 76 S. Cal. L. Rev. 189, 197-98 (2002).

93 See Hallaq, supra note 85, at 277 ("The delayed dower was normally stipulated as protection, becoming due to the wife from the husband if he repudiated her through talaq or if either of them died.").

94 See supra note 21.

95 See Nasir, supra note 83, at 48-49 (discussing how dower is treated as part of the marriage contract).

96 See Hallaq, supra note 85, at 277.

97 Blenkhorn, supra note 92, at 200-02.

98 See Hallaq, supra note 85, at 279-80 (discussing the requirements and function of tafriq).

99 See id. at 280 (stating that "a judicial order known as tafriq" is literally translated in Arabic to mean "to separate the spouses from each other").

100 See Nasir, supra note 83, at 90-95 (outlining the reasons a wife petitions a court for dissolution of marriage).

101 See Hallaq, supra note 85, at 278-79 (noting the requirement of sexual pleasure as part of Islamic marriages).

102 See Nasir, supra note 83, at 87-90 (detailing tafriq and its application in Islamic law countries); see also Sylvia Brooks & Felix Hoover, Religions Have Rules for Dealing with Divorce, Columbus Dispatch (Ohio), June 5, 1998, at 1E (describing the Quran's preference for reconciliation over divorce); M. Rafique Goraya, Jamaat-I-Islami Demands Reconstitution of IICP, Business Recorder (Pakistan), Feb. 25, 2009 (recommending that the government not adopt a law requiring a husband to grant a wife's request for a divorce because "[t]he Holy Quran advises reconciliation between the spouses"); Ruqaiyyah Waris Maqsood, Women and Islam, Telegraph (Nov. 15, 2001, 12:00AM GMT), http:// www.telegraph.co.uk/news/uknews/1399889/Women-and-Islam.html ("In good Islamic practice, before divorce can be contemplated, all possible efforts should be made to solve a couple's problems.").

103 See Hallaq, supra note 85, at 283-86 (discussing the application of khul').

104 See Nasir, supra note 83, at 78 ("[M]arriage may be dissolved by mutual consent by the wife giving the husband something for her freedom under the Quranic ruling ....").

105 See id. at 78-81 (providing a general description the requirements of khul').

106 See Hallaq, supra note 85, at 285-86 (discussing the five required elements of a khul' contract, including consideration).

107 See Nasir, supra note 83, at 79 ("The consideration for the khula [i.e., khul'] may be pecuniary, advanced or deferred, or may be the nursing, maintenance, and custody of their child.").

108 See supra note 94-95 and accompanying text.

109 See Hallaq, supra note 85, at 286 ("The consideration may consist of ... a usufruct, including her work/service in suckling their children for a specified duration ....").

110 See id. at 279 ("As in the case of dower, [a wife] is under no obligation to spend any of this support or any portion of her own property on others, including her own children whose needs are, in their entirety, looked after by the father.").

111 See supra note 109 and accompanying text.

112 See Hallaq, supra note 85, at 286 (noting the amount of consideration required for khul' will not exceed the amount of the dower).

113 See id. at 277 (discussing the two types of dower present in Islamic marriages).

114 See supra notes 103-105 and accompanying text.

115 See Hallaq, supra note 85, at 280-83 (outlining the requirements and procedure of talaq).

116 See Nasir, supra note 83, at 70-78 (discussing talaq and noting that many countries have begun to curb this nearly unlimited power of the husband).

117 See Hallaq, supra note 85, at 280-83 (noting the different ways to effect talaq); see also Nasir, supra note 83, at 73-75 (comparing how talaq is treated in various Islamic law countries).

118 Under Islamic law, sexual intercourse during menstruation is forbidden. The logic of the talaq rule is that the husband must demonstrate his seriousness by declaring "I divorce thee" during successive periods of sexual access. According to the classical fiqh, an important element of marriage is that both husbands and wives are required to provide their spouse with sexual access. See Hallaq, supra note 85, at 281-82.

119 See id. at 286 ("Should the period of ila lapse without resumption of sexual intercourse, the oath will have the force of a final talaq.").

120 See id.

121 See id. at 286 ("The latter penalty is imposed on the grounds that the husband has caused his wife undue hardship by depriving her of sexual enjoyment without having intended or succeeded in effecting the dissolution of the marriage.").

122 See id. at 281 (This form of talaq "terminates the [marriage] contract once and for all").

123 See id. at 282-83 (discussing the delegation of authority to a proxy).

124 See Nasir, supra note 83, at 76-78 (discussing the difference between the two forms).

125 See id. at 72.

126 A man may dissolve his marriage by pronouncing that he has dissolved the marriage, whereas Islamic law limits the ability of a wife to divorce her husband. John L. Esposito, Women in Muslim Family Law 30-33 (1982). Female Muslim activists propose that women also have a contractual right to pronounce divorce by talaq-i-tafwid. See Talaq-i-Tafwid: The Muslim Woman's Contractual Access to Divorce: An Information Kit (Lucy Carroll & Harsh Kapoor eds., 1996), available at http:// www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/misc/talaq-i-tawfid-eng.pdf; Michèle Alexandre, Big Love: Is Feminist Polygamy an Oxymoron or a True Possibility?, 18 Hastings Women's L.J. 3, 26 (2007) (suggesting that Islamic polygamists should grant each wife a right to instigate a unilateral divorce); L. Elizabeth Chamblee, Rhetoric or Rights?: When Culture and Religion Bar Girls' Right to Education, 44 Va. J. Int'l L. 1073, 1112n.252 (2004).

127 See Hallaq, supra note 85, at 282 ("The message the jurists wished to urge upon men was that they should not resort to talaq unless there is a compelling cause, and even when such a cause appears to exist, they should proceed with caution.").

128 Id. at 282 (noting that husbands "stood to lose most from marital dissolution" by exercising talaq).

129 See Nasir, supra note 83, at 45 ("[T]he dower ... shall be the right of the wife once the valid contract is made.").

130 See supra notes 94-95 and accompanying text.

131 See Nasir, supra note 83, at 49-52 (describing how a wife is entitled to the dower specified in the contract).

132 See Nasir, supra note 83, at 2 (claiming that a Muslim woman enjoys "full autonomy as far as her property is concerned").

133 Peterson, supra note 49, at 44-46 (describing Muhammad's relationship with his older widowed wife).

134 See Hallaq, supra note 85, at 279 (describing the historic property rights given to Muslim women).

135 See id. at 279 ("Marriage does not create community property.").

136 See id. ("Any inheritance or gift she may receive before or during the marriage remains hers exclusively, and so does her dower and all property that accrues to her.").

137 See id. at 279 ("But the wife, like her husband, maintains an independent financial status throughout the marriage.").

138 See id.

139 See supra note 135 and accompanying text.

140 Id.

141 See supra notes 135-139 and accompanying text.

142 See David Pearl & Werner Menski, Muslim Family Law 182 (1998) (discussing a wife's maintenance rights). The period, known as an iddat, extends for three-months after a revocable divorce. The purpose of the iddat is to "avoid confusion over paternity in the event that the wife is pregnant" at the time of divorce. Id. at 183.

143 Id. at 184.

144 See Hafiz Nazeem Goolam, Gender Equality in Islamic Family Law: Dispelling Common Misconceptions and Misunderstandings, in Understanding Islamic Law: From Classical to Contemporary, supra note 48, at 117, 122 ("It is stated in the Koran: 'For divorced women maintenance (should be provided) on a reasonable (scale).'").

145 See Pearl & Menski, supra note 142, at 410-11 (discussing guardianship and custody).

146 See Nasir, supra note 83, at 187; Pearl & Menski, supra note 142, at 411; Goolam, supra note 144, at 127.

147 See Pearl & Menski, supra note 142, at 430.

148 See Nasir, supra note 83, at 196-97 (discussing a mother's right to child support payments).

149 See id. at 49 ("'Guardianship with the right of compulsion' (al-wali al-Mujber) is exercised over a person of no or limited legal capacity, wherein the guardian may conclude a marriage contract which is valid and takes effect without the consent or acceptance of the ward.").

150 Yvonne Yazbeck Haddad et al., Muslim Women in America: The Challenge of Islamic Identity Today 84 (2006) ("Most Muslims ... consider divorce a last and most undesirable alternative. The Prophet himself is often quoted as having said that of all hateful things in the world, divorce is among the worst.").

151 See Hallaq, supra note 85, at 286.

152 Id. at 114 ("[W]omen are vulnerable in marriage to the man's privilege to execute a 'talaq' divorce.").

153 See supra notes 135-139, 141 and accompanying text.

154 Aminah Beverly McCloud, Transnational Muslims in American Society 70-71 (2006) (stating that "once a female divorces she is no longer eligible for marriage inside the community," whereas "[i]f men get divorced there is no stigma" (internal quotation marks omitted)); Azizah Yahia al-Hibri, Muslim Women's Rights in the Global Village: Challenges and Opportunities, 15 J.L. & Religion 37, 37-38 (2000-01) (discussing that "divorce and remarriage have been rendered much easier for men" in Muslim culture); Kathryn J. Webber, The Economic Future of Afghan Women: The Interaction Between Islamic Law and Muslim Culture, 18 U. Pa. J. Int'l Econ. L. 1049, 1066 (1997) ("Husbands effectively possess the power to prevent their wives from working. Under the obedience doctrine, if a woman wants to work and gain access to economic resources, her husband may turn to the courts for recourse. He can stop supporting his wife and even physically punish her with little restriction.").

155 Anver M. Emon, Toward a Natural Law Theory in Islamic Law: Muslim Juristic Debates on Reason as a Source of Obligation, 3 UCLA J. Islamic & Near E.L. 1, 2 (2003) (discussing the theoretical debates among Muslim jurists as to which fiqh "ruling was 'right' or could authoritatively be considered 'God's law'").

156 See Asifa Quraishi, On Fallibility and Finality: Why Thinking Like a Qadi Helps Me Understand American Constitutional Law, 2009 Mich. St. L. Rev. 339, 343-44 (discussing the different functioning laws in classical Muslim lands).

157 The World Factbook, supra note 15 (follow "Select a Country or Location" drop-down menu, then select the names of the countries in the following parenthetical) (stating that the legal system of Saudi Arabia is based on shari'a law and that the legal systems of the United Arab Emirates, Yemen, and Oman are influenced by Islamic law).

158 See Sameer Ahmed, Recent Developments: Pluralism in British Islamic Reasoning: The Problem with Recognizing Islamic Law in the United Kingdom, 33 Yale J. Int'l L. 491, 492 (2008) ("While many of the twentieth-century postcolonial Muslim states adopted European criminal and commercial laws, most developed their own family law codes inspired by Islamic legal rulings.").

159 See, e.g., cases cited supra note 18.

160 See Aleem v. Aleem, 947 A.2d 489, 492 (Md. 2008) (reproducing a marriage license issued in Pakistan containing provisions for dower, the consent of the wife's guardian, and limits on divorce).

161 Id.

162 Id.

163 Id.

164 See Nasir, supra note 83, at 211.

165 See Caldwell, supra note 1, at 217 (discussing cases of honor killings).

166 See id. at 217-18 (discussing the geographic origins of the practice of honor killings).

167 See id. at 217-19 (discussing honor killings among Muslim immigrants in Europe).

168 See Blenkhorn, supra note 92, at 198.

169 See id. at 231.

170 See Denis Al-Johar, Muslim Marriages in America: Reflecting New Identities, 95 Muslim World 557, 562-572 (2005) (discussing arranged marriages in Muslim communities in Houston, Texas and offering some empirical data); see also Arshia U. Zaidi & Muhammad Shuraydi, Perceptions of Arranged Marriages by Young Pakistani Muslim Women Living in a Western Society, 33 J. Comp. Fam. Stud. 495 (2002) (discussing the changing perception of young women toward arranged marriages and the different ways they may approach the situation with their parents).

171 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 865 (Cal. Ct. App. 2001) (rejecting the claim that the execution of an Islamic marriage contract in Egypt meant that a couple's divorce should be governed by Islamic law).

172 Id. at 866.

173 See id. at 866-67 (outlining the husband's argument).

174 See id. ("Ahmad made an offer of proof that the phrase signified a written intention by the parties to have the property relations governed by 'Islamic law,' which provides that the earnings and accumulations of each party during a marriage remain that party's separate property.").

175 See id. at 868 n.4 (noting the difficulties of using parol evidence to find the Islamic law referred to in the contract).

176 Id. at 869 (describing the references to Islamic law in the contract as "too attenuated a relationship to any actual terms or conditions of a prenuptial agreement to satisfy the statute of frauds").

177 See, e.g., Aleem v. Aleem, 947 A.2d 489, 490 (Md. 2008) (husband performed talaq in the Pakistani embassy); Tarikonda v. Pinjari, No. 287403, 2009 WL 930007, at *1 (Mich. Ct. App. 2009) (husband traveled to India in order to perform talaq).

178 See, e.g., Aleem, 947 A.2d at 490 (arguing that on the basis of talaq the wife was not entitled to distribution of marital property); Tarikonda, 2009 WL 930007, at *2 (same).

179 See, e.g., U.S. Const. art. IV, § 1 (Full Faith and Credit Clause); Hilton v. Guyot, 159 U.S. 113, 163-203 (1895) (discussing comity and the recognition of foreign judgments).

180 See, e.g., Aleem, 947 A.2d at 502 (holding that the recognition of talaq would violate the Maryland equal rights amendment); Tarikonda, 2009 WL 930007, at *3, *4 (holding that recognition of talaq would violate the wife's due process rights); Seth v. Seth, 694 S.W.2d 459, 463 (Tex. Ct. App. 1985) (holding that recognition of talaq would be contrary to justice).

181 See, e.g., Chaudry v. Chaudry, 388 A.2d 1000, 1006 (N.J. Super. Ct. App. Div. 1978).

182 The holding in this case has been subject to a great deal of commentary and criticism since it was decided. See Ann Laquer Estin, Toward a Multicultural Family Law, 38 Fam. L.Q. 501, 512 (2004) (using Chaudry as an example of a case where the "husband's divorce by talaq, made at the Pakistani consulate in New York, could be given respect as a matter of comity because it was later confirmed by trial and appellate courts in Pakistan in a proceeding for which the wife had notice and an opportunity to be heard"); J. Thomas Oldham & David S. Caudill, A Reconnaissance of Public Policy Restrictions upon Enforcement of Contracts between Cohabitants, 18 Fam. L.Q. 93, 104 n.44 (1984) (using Chaudry as an example of when a court enforced a premarital contract in spite of public policy); David S. Rosettenstein, Comity, Family Finances, Autonomy, and Transnational Legal Regimes, 23 Int'l. J.L. Pol'y & Fam. 192, 194 (2009) (discussing how a Maryland court distinguished Chaudry and concluded it would violate public policy to apply Pakistani law to the couple divorcing in Maryland); Tracie Rogalin Siddiqui, Interpretation of Islamic Marriage Contracts by American Courts, 41 Fam. L.Q. 639, 647, 656 (2007) (citing Chaudry as an example of the harm that arises when courts treat Islamic marriage contracts as being identical to prenuptial agreements); Edward S. Snyder, Premarital Agreements Reflect Society's

Changes, 134 N.J. L.J. 919, 919 (1993) (using Chaudry as an example of a case that lead the legislature to codify an act to deal with premarital agreements).

183 Chaudry, 388 A.2d at 1006.

184 Id.

185 Id. at 1005, 1007.

186 Id. at 1006.

187 See Rajni K. Sekhri, Aleem v. Aleem: A Divorce from the Proper Comity Standard--Lowering the Bar that Courts Must Reach to Deny Recognizing Foreign Judgments, 68 Md. L. Rev. 662, 672 (2009) ("Under Pakistani law, property follows the possessor of its title upon divorce. Spouses may inherit property from each other, but neither acquires a marital interest in the other spouse's property.").

188 To give a domestic analogy illustrating the Chaudry court's error, if Jane Doe makes a contract in State A, which the courts of State B determine, as a matter of State B's conflicts law, to be governed by the law of State A, it hardly follows that all of Doe's property, including property acquired and held in State B, is subject to State A's property law simply because State B's conflicts rules require the application of State A's law to the contract Doe made in State A. This is true even if the subject of the Doe's contract in State A potentially includes property in State B. In Chaudry, the court in effect held that because Pakistani contract law should be used to interpret the marriage contract, Pakistani property law should also govern the treatment of the marital property in New Jersey. As discussed below, the court fell into this error because it failed to understand the meaning of a mahr agreement under Islamic law, wrongly concluding that its purpose is to allocate ownership rights to property acquired after marriage.

189 See, e.g., Aleem v. Aleem, 947 A.2d 489, 490 (Md. 2008) (rejecting the claim that "the performance by him [i.e., the husband] of talaq ... and the existence of a 'marriage contract,' deprived the Circuit Court for Montgomery County of jurisdiction to litigate the division of the parties' marital property situate in this county"); Ahmad v. Ahmad, No. L-00-1391, 2001 WL 1518116, at *6 (Ohio Ct. App. 2001) (rejecting the husband's claim that the mahr provision bars the court from awarding equitable distribution of marital assets).

190 Ahmad, 2001 WL 1518116, at *6.

191 Id. at *4 (summarizing the lower court's holding, with which the appellate court ultimately agreed).

192 See Aleem, 947 A.2d at 491 (discussing the trial court's holding).

193 See id. at 502 ("[T]o accept the silence of the 'contract' signed by the wife on the day of her marriage in Pakistan, as a waiver of her rights to marital property acquired during the marriage, is, in direct conflict with our public policy."); see also id. at 502 n.16 ("The mahr, deferred in the marriage certificate, would not normally be classified under Maryland law as marital property in any event, as it may not have been 'acquired' during the marriage."). While the court suggests that the contract lacked consent on the part of the wife, it does so in the context of deciding whether to construe the agreement as a prenuptial waiver of claims to marital property, concluding that the contract should not be construed in this way. On the other hand, if the wife's consent to the contract was in fact coerced or otherwise defective, as the court suggests, this would not keep her from suing on the contract as duress generally makes a contract voidable rather than void. See Restatement (Second) of Contracts § 175 (1981) ("If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.").

194 Aleem v. Aleem, 931 A.2d 1123, 1134 (Md. Ct. Spec. App. 2007).

195 See, e.g., Ahmed v. Ahmed, 261 S.W.3d 190, 194 (Tex. Ct. App. 2008) (rejecting the wife's claim that the mahr provision ought to be enforced as a prenuptial contract or as a post-nuptial division of marital property).

196 See, e.g., Aziz v. Aziz, 488 N.Y.S.2d 123, 124 (N.Y. Sup. Ct. 1985) (enforcing the mahr provision under the New York General Obligations Law codifying the ordinary common law of contracts).

197 See, e.g., Zawahiri v. Alwattar, No. 07AP-925, 2008 WL 2698679, at *1 (Ohio Ct. App. July 10, 2008) ("Due to their largely separate lives, the parties did not acquire any marital property or debts. Therefore, the enforceability of the mahr provision of the marriage contract became the central controversy of the divorce proceedings.").

198 See Mir v. Birjandi, No. 2006 CA 63, 2007 WL 4170868, at *7 (Ohio Ct. App. Nov. 21, 2007) (describing a case where the wife claimed rights to property in a divorce proceeding notwithstanding the husband's payment of the mahr as the result of a separate legal action in Iran; the court ultimately used its equitable power in the distribution of the marital property to adjust the husband's obligations in light of the mahr payment in Iran).

199 Zawahiri, 2008 WL 2698679, at *2 (summarizing the trial court's findings).

200 Id. at *1.

201 Id.

202 See id. at *3 (setting forth the requirements to form a prenuptial agreement under Ohio law).

203 See id. at *1-2. Because the wife was trying to argue a new theory on appeal--namely that the mahr provision was an ordinary contract--the published opinion in this case focuses on issues of waiver rather than revisiting the unreported trial court's analysis of the prenuptial argument.

204 See In re Marriage of Dajani, 251 Cal. Rptr. 871, 872-73 (Cal. Ct. App. 1988) (holding that prenuptial agreements that facilitate divorce are unenforceable).

205 See id. at 872 ("The contract clearly provided for [the] wife to profit by a divorce, and it cannot be enforced by a California court.").

206 See In re Marriage of Bellio, 129 Cal. Rptr. 2d 556, 559 (Cal. Ct. App. 2003) (noting that Dajani was wrongly decided due to the relatively low amount of the dowry owed to the wife due upon dissolution of the marriage).

207 No. CN04-091562006, WL 2389260, at *1 (Del. Fam. Ct. 2006).

208 See id. at *2 (setting forth the husband's testimony at trial and on appeal).

209 Id.

210 Id.

211 Id.

212 Id. at *3. One may speculate at this point that one of the reasons he may have had this expectation is because in some Muslim countries sometimes wives do not pursue their mahr rights and other claims against ex-husbands because of fear and/or intimidation. See Blenkhorn, supra note 92, at 220-21 (2002) (discussing the fear and intimidation of a wife prior to the mahr agreement).

213 See, e.g., Akileh v. Elchahal, 666 So. 2d 246, 248 (Fla. Dist. Ct. App. 1996) (enforcing a mahr with a deferred value of $50,000); Odatalla v. Odatalla, 810 A.2d 93, 98 (N.J. Super. Ct. Ch. Div. 2002) ("This Court finds that all of the essential elements of a contract are present. Thus, this Court rules that the defendant owes to the plaintiff the sum of $10,000.").

214 No. 46186/93, 1995 WL 507388 (N.Y. Sup. Ct. July 10, 1995).

215 See id. at *3 (holding that a mahr contract was too vague to enforce).

216 Id. at *1.

217 Id. at *2.

218 See Akileh, 666 So. 2d at 247 (describing the course of the litigation).

219 Id. at 248. He went on to testify that he believed that an abused wife who institutes a divorce was nevertheless entitled to payment of the sadaqa. Id.

220 Id. at 247.

221 See id. at 249 ("At no time did the husband make known his unique understanding of a sadaq either during his negotiations with his wife's father or prior to signing the certificate of marriage.").

222 See id. While the court's opinion does not discuss the issue, it is interesting to speculate on the possible source of the husband's understanding in the case. He may have been thinking of the case of a khul', where the divorce may be dissolved at the wife's instigation through mutual consent and by the wife giving up her deferred mahr. See Hallaq, supra note 85, at 285-86 (discussing the requirements of khul'). Likewise, his expressed opinion with regard to the availability of the mahr when a wife institutes a divorce for cause may be explained by the treatment of the mahr in tafriq, where a qadi dissolves a marriage for cause most commonly for abuse. See Nasir, supra note 83, at 87-88 (discussing tafriq's role in Islamic law countries). Even conservative Muslim jurists in the United States, however, have argued that because a mahr is the wife's property upon marriage, the deferred portion being delayed only because of her forbearance, she cannot be deprived of the mahr except through her own consent. Even if the filing of divorce is wrong as a matter of Muslim morality, the wife's right to the mahr remains absolute. See Nasir, supra note 83, at 53 ("[T]he dower becomes an exclusive right of the wife under a valid marriage contract.").

223 See, e.g., Odatalla v. Odatalla, 810 A.2d 93, 95 (N.J. Super. Ct. Ch. Div. 2002) (describing the husband's argument that the mahr contract violated both the First Amendment and that it was not a valid contract under New Jersey law); Zawahiri v. Alwattar, No. 07AP-925, 2008 WL 2698679, at *1 (Ohio Ct. App. Jul. 10, 2008) (describing the husband's argument that the mahr contract violated both the First Amendment and the Establishment Clause of the Ohio Constitution).

224 But see Zawahiri, 2008 WL 2698679, at *2 ("[T]he trial court refused to enforce the mahr provision on two grounds: (1) the Establishment Clause of the Ohio Constitution prohibited court-ordered enforcement of a contractual provision requiring performance of a religious act, i.e. the payment of the mahr.").

225 443 U.S. 595 (1979).

226 See Erwin Chemerinsky, Constitutional Law: Principles and Policies 1217-19 (2d ed. 2002) (discussing the neutral principles line of cases).

227 See, e.g., Odatalla, 810 A.2d at 97 ("Enforcement of this Agreement will not violate the First Amendment proscriptions on the establishment of a church orthe free exercise of religion in this country.").

228 See Blenkhorn, supra note 92, at 218 ("Treating a mahr provision as a valid prenuptial agreement that is 'freely negotiated [when] the marriage took place' overlooks a central, sad fact of life for many women in Muslim countries: They often lack true freedom to contract and bargain for themselves." (alteration in original) (citing Chaudry v. Chaudry, 388 A.2d 1000, 1006 (N.J. Super. Ct. App. Div. 1978))); cf. Sameer Ahmed, Pluralism in British Islamic Reasoning: The Problem with Recognizing Islamic Law in the United Kingdom, 33 Yale J. Int'l L. 491, 496 (2008) ("[T]he British government should be wary of establishing a system in which Islamic family law is legally enforceable by the state."); Robin Fretwell Wilson, The Overlooked Costs of Religious Deference, 64 Wash. & Lee L. Rev. 1363, 1379 (2007) ("[S]ome religious authorities preclude payment of the mahr to a wife if she initiates the divorce. Other authorities go further, requiring a wife to waive her right to alimony before they will grant a divorce. Now, if society defers to religious authorities, divorce on these terms could impoverish the wife and her child." (citations omitted)).

229 See Carol Weisbrod, Universals and Particulars: A Comment on Women's Human Rights and Religious Marriage Contracts, 9 S. Cal. Rev. L. & Women's Stud. 77, 90 (2000) ("Nevertheless, contract as an idea raises its own problems. If some clauses are good for women, then others might be not so desirable. Such clauses might involve the waiver of rights rather than the expansion of rights.").

230 Blenkhorn, supra note 92, at 218.

231 Id. at 227.

232 Id. at 229. One commentator has argued that such cultural sensitivity is beyond the constitutional capacity of secular courts. See generally Charles P. Trumbull, Note, Islamic Arbitration: A New Path for Interpreting Islamic Legal Contracts, 59 Vand. L. Rev. 609 (2006). Because Islamic marriage contracts are religious documents, he argues, they cannot be enforced by secular courts without running afoul of the Establishment clause and accordingly all litigation on such matters must be referred to Islamic tribunals for resolution. Id. As discussed below, I regard this conclusion as mistaken.

233 Pascale Fournier, In the (Canadian) Shadow of Islamic Law: Translating Mahr As a Bargaining Endowment, 44 Osgoode Hall L.J. 649, 677 (2006).

234 233 So. 2d 381 (Fla. 1970).

235 See Myron E. Sildon, Dealing with Divorce and Non-traditional Relationships in the Family Business, ALI-ABA Course of Study, July 22-24, 2009, at app. A ("The UPAA has been adopted by 27 states: Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Texas, Utah, Virginia, and Wisconsin.").

236 Unif. Premarital Agreement Act § 3(a)(8) (1983). According to the official commentary this section is designed to make clear "that the parties may also contract with respect to other matters, including personal rights and obligations .... [A]n agreement may provide for such matters as the choice of abode, the freedom to pursue career opportunities, the upbringing of children, and so on." Id. cmt.

237 See Gail Frommer Brod, Premarital Agreements in Gender Justice, 6 Yale J.L. & Feminism 229, 234-35 (1994) (discussing the purpose of premarital agreements as changing the impact of state laws that govern the distribution of property at the end of a marriage).

238 Unif. Premarital Agreement Act § 1(1).

239 See Unif. Premarital Agreement Act § 6(a)(2)(i)-(iii).

240 See, e.g., Zawahiri v. Alwattar, No. 07AP-925, 2008 WL 2698679, at *3 (Ohio Ct. App. Jul. 10, 2008) (noting that full disclosure of a prospective spouse's property is a required element under Ohio law).

241 As I explain in detail below, it would be a mistake for courts to construe mahr provisions as agreements to limit a wife's claim on marital assets.

242 See generally Oman, supra note 21 (discussing the relationship between Islamic marriage contracts and the specialized law of premarital agreements).

243 Unif. Premarital Agreement Act § 1(1).

244 See supra notes 80-81, 87-89 and accompanying text.

245 Many classical jurists also insisted that until the marriage was consummated by sexual intercourse, the marriage contract was voidable without divorce, i.e. tafriq, khul', or talaq. See e.g., Nasir, supra note 83, at 52-53.

246 Unif. Premarital Agreement Act § 1(1).

247 See Oman, supra note 21, at 605.

248 See supra note 135 and accompanying text.

249 Id.

250 See Alison E. Graves, Women in Iran: Obstacles to Human Rights and Possible Solutions, 5 Am. U. J. Gender Soc. Pol'y & L. 57, 67-68 (1996) (discussing mahr provisions in Islamic marriages in Iran).

251 See id. at 68-69 (noting the limited property rights of women after divorce in Iran).

252 For example, the husband's obligation to pay the mahr under Islamic law is not tied to his wealth. Indeed, the debt continues to exist even if at the time of divorce the husband has no assets. In Iran, for example, a husband who is unable or unwilling to pay his wife's mahr can be imprisoned. Oman, supra note 21, at 591.

253 Id. at 580-81.

254 See id. at 602-03.

255 See id.

256 See supra notes 223-224 and accompanying text.

257 See Blenkhorn, supra note 92, at 214-18.

258 80 U.S. 679, 735 (1871).

259 See id. at 683-87 (describing the conflict between pro-slavery and abolitionist sectors within the church, culminating in the marshal taking possession of the church).

260 Id. at 717.

261 Id. at 728. Watson v. Jones was a diversity case that applied the pre-Erie "general common law." Id. at 737 (Clifford, J., dissenting) (arguing that the majority's application of the general common law was inappropriate because "there were two courts of common law exercising the same jurisdiction between the same parties in respect to the same subject-matter, within the same territorial limits, and governed by the same laws").

262 See id. at 733 (stating that the civil courts do not exercise jurisdiction over theological matters).

263 See Jones v. Wolf, 443 U.S. 595, 597 (1979); Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696, 733-34 (1976); Md. & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 370 (1970); Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969); Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1, 16 (1929).

264 Jones, 443 U.S. at 602.

265 Id. at 604.

266 Id.

267 See id. at 603 ("The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity.").

268 See Abdal-Haqq, supra note 48, 1, 4 (noting that "Shari'ah refers to the canon law of Islam and includes the totality of Allah's commandment").

269 See id. at 5-7.

270 Id at 5-6.

271 Sherman A. Jackson, Islamic Law and the State: The Constitutional Jurisprudence of Shihab al-Din al-Aarafi 74 (1996).

272 This is arguably what the Indian Supreme Court did in the controversial case of Mohammed Ahmed Khan v. Shah Bano Begum, A.I.R. 1985 S.C. 945 (India). Under Indian law, family law issues among Muslims are to be resolved according to shari'a. In seeking to limit the authority of a husband to engage in talaq, the court offered its own interpretation of the Quran in support of its rejection of the fiqh position. This is the kind of ijtihad that the Establishment Clause should foreclose. See generally Josh Goodman, Divine Judgment: Judicial Review of Religious Legal Systems in India and Israel, 32 Hastings Int'l & Comp. L. Rev. 477, 494-506 (2009) (discussing the place of Islamic family law in Indian jurisprudence and the furor that greeted the Indian Supreme Court's decision in the Shah Bano case).

273 Md. & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 368.

274 Cf. Ganem v. Heckler, 746 F.2d 844, 854 (D.C. Cir. 1984) ("Foreign law is thus proved essentially as a matter of fact.").

275 See supra note 267 and accompanying text.

276 Note also that this analysis does not suggest that courts are unable to enforce contracts whose meaning is given by the own ijtihad of the parties, provided that their conclusions can be determined. The Establishment Clause would only be triggered if in interpreting the contract the court was itself called upon to engage in ijtihad.

277 See Restatement (Second) of Contracts § 200 cmt. b (1981) ("[T]he meaning of the words or other conduct of a party is not necessarily the meaning he expects or understands."), id. § 201 cmt. a ("Words are used as conventional symbols of mental states, with standardized meanings based on habitual or customary practice. Unless a different intention is shown, language is interpreted in accordance with its generally prevailing meaning.").

278 See id. § 201(2).

279 See id. § 201(1) ("Where the parties have attached the same meaning to a promise or agreement or a term thereof, it is interpreted in accordance with that meaning.").

280 See Pascale Fournier, Muslim Marriage in Western Courts: Lost in Translation 61 (2010).

281 See Oman, supra note 21, at 589.

282 See, e.g., In re Marriage of Shaban, 105 Cal.Rptr.2d 863, 869 (Cal. Ct. App. 2001) ("It is enough to remark that the need for parol evidence to supply the material terms of the alleged agreement renders it impossible to discuss any public policy issues.").

283 See Restatement (Second) of Contracts § 174 cmt. b ("The distinction between 'void contract' and voidable contract has important consequences. For example, a victim of duress may be held to have ratified the contract if it is voidable, but not if it is 'void.'").

284 See id. § 174 ("If conduct that appears to be a manifestation of assent by a party who does not intend to engage in that conduct is physically compelled by duress, the conduct is not effective as a manifestation of assent.").

285 See id. § 175(1) ("If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.").

286 See id. § 177(1) ("Undue influence is unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that that person will not act in a manner inconsistent with his welfare.").

287 This would be the case unless he can show that the duress or undue influence was exerted by a third party, such as a father acting as wali, and that he relied in good faith and without reason to know of the undue influence or duress. See id. § 175(2) (setting forth the limitation on the duress defense when duress was exerted by someone not a party to the contract); id. § 177(3) (setting forth the limitation on the undue influence defense when the influence was exerted by someone not a party to the contract).

288 See Blenkhorn, supra note 92, at 198 ("She may never conclude a marriage contract on her own in most Islamic legal systems; instead, she must defer to her wali to bargain for the terms of the contract and even to sign the finalized agreement.").

289 See id. ("In most communities, if a bride were to protest an arranged marriage, she would be viewed as highly disrespectful and would risk permanent ostracism from her family and community and may even risk death.").

290 See Restatement (Second) of Contracts § 175(1).

291 See id. § 176(1) (setting forth a threat to engage in criminal or tortious behavior is improper).

292 See, e.g., Perkins Oil Co. of Del. v. Fitzgerald, 121 S.W.2d 877, 885 (Ark. 1938) (enlarging defense of duress when the coercion was directed against the plaintiff's step-father's future employment, the loss of which would have seriously affected his family).

293 See, e.g., Mullins v. Oates, 179 P.3d 930, 937 (Alaska 2008) (stating that duress "requires a threat that arouses such a fear as to preclude a party from exercising free will and judgment" (citing Crane v. Crane, 986 P.2d 881, 887 (Alaska 1999))).

294 See Restatement (Second) of Contracts § 177 cmt. b ("The law of undue influence therefore affords protection in situations where the rules on duress and misrepresentation give no relief.").

295 See, e.g., Agner v. Bourn, 161 N.W.2d 813, 818-19 (Minn. 1968) (dealing with a contract obtained from an elderly relative by undue influence).

296 See, e.g., Nasir, supra note 83, at 9-12 (describing the role of the guardian).

297 See id.

298 See, e.g., Strawbridge v. N.Y. Life Ins. Co., 504 F. Supp. 824, 829 (D.N.J. 1980) (discussing a fiduciary's responsibilities).

299 See Report on Muslim Americans Chips Away at Myths About Islam, Daily News Egypt, Mar. 3, 2009, available at PROQUEST, Document ID 1656442371 ("Muslim women stand out, both compared to their global counterparts and women from other religious groups in the United States, in that they are statistically as likely as their male counterparts to have earned a university degree or higher. Forty-two percent of Muslim women had degrees compared with 39 percent of Muslim men in the United States.").

300 No. 2006 CA 63, 2007 WL 4170868 (Ohio Ct. App. Nov. 21, 2007).

301 Id. at *1.

302 Id.

303 Id.

304 Id. at *4.

305 Id. at *7.

306 Black's Law Dictionary 921 (9th ed. 2009) (defining judgment proof as "unable to satisfy a judgment for money damages because the person has no property, [or] does not own enough property within the court's jurisdiction to satisfy the judgment").

307 See Ian Macneil, The Relational Theory of Contract: Selected Works of Ian Macneil 6 (2001) ("[A]ll the standard texts on English law reflect a notion that the law of contract litigation is a relatively neat and logical structure of rules. [I] believe[] this idea to be inaccurate .... Contract law is hardly a neat and logical structure of rules, but like all law a social instrument designed to accomplish the goals of man." (alteration in original) (citing previous writing of author)); Stewart Macaulay, Non-contractual Relations in Business: A Preliminary Study, 28 Am. Soc. Rev. 55, 64 (1963) ("Some businessmen object that in such a carefully worked out relationship one gets performance only to the letter of the contract. Such planning indicates a lack of trust and blunts the demands of friendship, turning a cooperative venture into an antagonistic horse trade.").

308 388 A.2d 1000 (N.J. Super. Ct. App. Div. 1978).

309 Id. at 1006.

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98 Cornell L. Rev. 493

Cornell Law Review
January, 2013

Note
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FORESEEABLE ISSUES AND HARD QUESTIONS: THE IMPLICATIONS OF U.S. COURTS RECOGNIZING AND ENFORCING FOREIGN ARBITRAL AWARDS APPLYING ISLAMIC LAW UNDER THE NEW YORK CONVENTION

*494 Introduction

International commercial arbitration's rising popularity as a mode of dispute resolution increasingly forces arbitral tribunals to reconcile the friction created when foreign parties bring divergent legal cultures to a single legal proceeding.[1] Ironically, international commercial arbitration's pervasiveness is partly due to the fact that foreign parties can agree to apply multiple legal codes to a single legal dispute.[2] When a party petitions a particular country's court to recognize and enforce an award rendered using another country's law, friction arises. As this Note will explain, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and several judicial decisions have helped guide U.S. courts when parties seek to recognize and enforce arbitral awards rendered using non-U.S. and contradictory law. No court decision or scholarly piece, however, has addressed the course of action a court should take if asked to recognize and enforce a foreign arbitral award rendered using Islamic law. Yet U.S. courts will have to develop a satisfactory response to such requests, as the rapid growth of Islamic finance will undoubtedly lead parties dealing in Islamic financial instruments to seek recognition and enforcement of foreign awards rendered using Islamic law (particularly Islamic financial law) in the United States.

This Note will examine how a U.S. court should approach recognition and enforcement of a foreign arbitral award under the New York Convention where the parties chose Islamic law as the governing law. A court's chosen course of action will necessarily implicate issues such as the state action doctrine, due process, equal protection, the political question doctrine, and the First Amendment's Establishment Clause. This Note aims to prescribe the most effective approach a court may take when dealing with an award rendered in the international commercial arbitration setting that uses Islamic and other religious law, advancing a three-step process. First the court should use the doctrine of separability to determine exactly which parts of the ***495** arbitration applied religious law (e.g., the procedural law, the evidentiary law, the arbitral law, or the substantive law). Second, the court should institute a waiver rule at the recognition and enforcement stage regarding objections relating to procedural, evidentiary, or arbitral law issues. In limited cases, a U.S. court should undertake due process and equal protection analyses to determine if any constitutional violations occurred during the arbitral proceedings or if recognizing and enforcing the foreign arbitral award would contravene U.S. constitutional rights.

This Note is divided into seven parts. Part I describes the New York Convention. Part II explains certain aspects of Islamic law that would be relevant at the recognition and enforcement stage. Part III provides a brief overview of views toward Islamic law in the United States. Part IV describes the increasing popularity of Islamic finance as a mechanism for conducting financial transactions, which implicates the importance of Islamic commercial law. Part V outlines the particular facets of Islamic law that would create tensions and dilemmas at the recognition and enforcement stage in a U.S. court. Part VI explores three possible, but ultimately flawed, approaches a U.S. court could use when confronted with a foreign arbitral award rendered using Islamic law. Lastly, Part VII prescribes a three-step approach that could minimize many of the problems associated with recognizing and enforcing a foreign arbitral award rendered using Islamic or other religious law.

I

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is an international treaty that the vast majority of countries have signed.[3] Signatories to the treaty include the United States and most countries in the Muslim world.[4] The treaty allows parties seeking to enforce an arbitral award rendered in one member country to have that award recognized and enforced in another member country.[5] Arbitration is the preferred method for settling international disputes that involve parties from different nations ***496** because awards are easily recognized and enforced abroad, especially when compared to the more uncertain and cumbersome process of seeking recognition and enforcement of a judgment rendered in a foreign country's domestic courts.[6] If a party seeks recognition and enforcement of an arbitral award rendered by a New York Convention country in another New York Convention member-country tribunal, that party can be sure that the latter country will apply the New York Convention.[7] However, if the same party seeks recognition and enforcement of a foreign judgment, an agreement between the judgment-rendering country and the country where recognition and enforcement is sought will dictate whether the award will be recognized and enforced; if no such agreement exists, the domestic law of the country where the party seeks recognition and enforcement will dictate whether the award is recognized and enforced.[8] The latter approach is less streamlined and creates more uncertainty for parties seeking to resolve a dispute with an international dimension.[9]

Article V of the New York Convention includes a limited number of exceptions that allow a foreign court to vacate an award.[10] For example, Article V(1)(b) provides that a court can withhold recognition and enforcement of an award if a party was "unable to present his case" during the arbitral proceedings.[11] Courts interpret this provision to withhold recognition and enforcement when parties were denied the opportunity to present their case (e.g., material evidence was not allowed to be introduced).[12] Article V(1)(d) states that a court can vacate an award if the "arbitral procedure was not in accordance with the agreement of the parties."[13] This provision allows a court to ***497** vacate an award where the parties chose a specific law to govern the dispute

but the arbitrator based his or her decision on another legal code.[14] Also under this provision, a court may refuse recognition and enforcement where the composition of the arbitral tribunal was inconsistent with the parties' agreement.[15]

Article V(2)(b) provides an additional exception that either the parties or the court can raise.[16] This exception allows the court to vacate an arbitral award when "recognition or enforcement of the award would be contrary to the public policy of [the forum] country."[17] U.S. courts have interpreted the public policy exception to apply when an award's recognition and enforcement would offend "the forum state's most basic notions of morality and justice."[18] The public policy exception is unavailable in situations where the award's recognition and enforcement is merely contrary to the forum state's "national political interests."[19]

Parties who raise the public policy exception are seldom successful because U.S. policy generally favors arbitration.[20] Several U.S. cases go so far as to suggest that it is contrary to U.S. public policy for a court to fail to recognize and enforce a valid foreign arbitral award.[21] In the context of international financial disputes, the Supreme Court, in Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., stated that there is an "emphatic federal policy in favor of arbitral dispute resolution."[22] Hence, U.S. courts' interpretation of the New York Convention calls for virtually automatic recognition and enforcement of foreign arbitral awards.

***498 II**

Islamic Law

A. Islamic Arbitral Law

Arbitration has been the preferred method of dispute resolution since the beginning of Islam.[23] Anyone qualified to be a qadi (Islamic judge) is also qualified to arbitrate a dispute involving Islamic law.[24] Conversely, an arbitrator must also qualify as a qadi, which means that in some schools of Islamic law, women and minorities cannot serve as arbitrators.[25] Additionally, Islamic arbitral law discourages parties from using attorneys or representatives to argue their cases.[26]

Particular aspects of Islamic arbitral law might force a U.S. court to confront uncomfortable issues. If the arbitral tribunal was composed in accordance with an interpretation of the qadi arbitrator rule that prohibits women and minorities from serving as arbitrators, a U.S. court may feel uncomfortable enforcing its award, despite the New York Convention's instruction that an arbitral tribunal must be composed in manner consistent with the parties' agreement.[27] A U.S. court may feel similarly uncomfortable enforcing an award where the tribunal discouraged the parties from retaining counsel.[28]

Although arbitration has been prevalent throughout Islamic history for settling legal disputes,[29] Muslim states and other entities have only recently embraced international arbitration as a means to settle commercial disputes.[30] Former President of the International Court of Justice Mohammed Bedjaoui explains the Arab world's recent acceptance of international arbitration as follows:

> [T]he Arab world does not merely submit passively to [international] arbitration, as imposed by its western partners in their contracts, ***499** but is rather an active proponent of the system, freely adopting it in its intra-regional commercial relations. In such cases, there is no external economic power which has imposed its will and choice on Arab partners.[31]

Charles Brower and Jeremy Sharpe persuasively argue that Muslims are now eager to embrace international commercial arbitration when a financial dispute arises because it is a tool that provides the freedom to choose the procedural and substantive law.[32] In light of Islamic finance's increasing popularity as a means to conduct international business,[33] the international community must ensure that Muslim states and their nationals continue to embrace international commercial arbitration.

B. Islamic Evidentiary Law

Certain facets of Islamic evidentiary law will create issues in U.S. courts' enforcement of arbitral awards rendered using this law. For example, according to many Islamic interpretations, legal testimony is only acceptable from a witness who is classified as "religious."[34] An arbitral tribunal must determine whether a witness is an "upright" individual, whether that witness follows Sharia, and whether that witness "abstains from sin."[35] A witness's testimony is unacceptable if the witness stands to benefit from the outcome of the case or if the witness has an interest in the case.[36] Thus, a problem would arise at the recognition and enforcement stage if a U.S. court were asked to vacate a foreign award under Article V(1)(b) because the arbitrator did not allow the party to introduce material evidence and consequently denied the party an opportunity to present its case.[37]

Another issue emerges if the parties chose Islamic law as the applicable evidentiary law and adopted an interpretation that holds a woman's testimony to be equal to half of a man's testimony.[38] In cases involving financial disputes, Islamic law requires the testimony of two ***500** men to establish a fact as proven.[39] Following the above-described interpretation of Islamic law would mean that four women would have to testify to establish a fact in a case involving an Islamic financial dispute. If an arbitrator accepts such an interpretation, then the arbitrator, by default, accepts the notion that the testimony of one person is inferior to others on the sole basis of sex. In the United States, this acceptance would constitute an equal protection violation,[40] meaning that a foreign tribunal's application of this interpretation would be contrary to U.S. public policy.[41] Various interpretations of the Quran, however, state that adjudicators should treat male and female testimony as equal.[42] But, as explained below, a court would violate the Establishment Clause by accepting one of these "liberal" interpretations.[43]

III

Public Perception of Islamic Law in the United States

Islamic law's apparent encroachment into the U.S. legal order is continually pushed to the forefront of American political discourse. In 2010, for example, those who opposed the proposed construction of two mosques, one in lower Manhattan and one in Murfreesboro, Tennessee, partially justified their opposition on the grounds that the mosques would further the prevalence of Islamic law in the United States.[44] In a suit seeking to block the mosque's construction, the residents of Murfreesboro stated that their community would be "irreparably harmed by the risk of terrorism generated by proselytising for Islam and inciting the practices of [S]haria law."[45] The residents claimed that such a mosque would establish "Constitution-free zones" where Islamic tribunals would exclusively apply Islamic law and impose Islamic law penalties.[46]

Any politician or religious leader who suggests that Islamic law has some role to play in resolving disputes between willing parties is quickly rebuked for facilitating Islamic law's intrusion into his or her country's secular legal order. For example, Archbishop Rowan Williams, leader of the Anglican Church, faced harsh criticism at home ***501** and abroad for implying that Islamic law has a place in Britain's faith-based dispute resolution system when parties voluntarily choose it.[47] Similarly, in Canada, Ontario's Premier rejected, after strong public outcry, a 2005 proposal to incorporate Islamic faith-based arbitrations into the already existing framework of faith-based arbitrations, which includes Jewish and Christian mediation centers.[48] Journalists and scholars suggest that the mere mention of Islamic law creates such knee-jerk reactions because Islamic law evokes images

of beheadings and stonings and conjures notions of a legal code that is fundamentally incompatible with the rights of women and minorities.[49]

Such notions concerning Islamic law might help explain why Oklahoma voters passed State Question 755 (also known as the Sharia Amendment) by a vote of 70.08% to 29.9% in a November 2008 ballot measure.[50] Although the Sharia Amendment has not gone into effect, it forbids Oklahoma courts "from considering or using international law" and explicitly forbids the use of Islamic or Sharia law.[51] Lawmakers in six other states have proposed similar legislation.[52] In South Carolina, a legislator proposed a law that would prohibit courts from "consider[ing] Sharia Law . . . and [enforcing] decisions of courts or tribunals" using Sharia law.[53]

Although the probability that the Sharia Amendment or similar laws would pass constitutional muster is very small,[54] "the xenophobic spirit of th[[[ese] amendment[s] . . . is quite depressing."[55] The public's view of Islamic law in the American legal system is indeed "depressing," because the debate focuses almost exclusively on the invented threats posed by Islamic law overtaking the secular legal order and does not focus on the real issues posed by accommodating parties who voluntarily wish to apply Islamic law to their disputes. For example, instead of examining whether a court should enforce a foreign arbitral award where an arbitrator applying Islamic law denied a party the opportunity to present a witness because the witness had an ***502** interest in the outcome, the public is concerned with whether enforcing a judgment that used Islamic law will lead to stoning for adultery and cutting off hands for theft.[56] The latter concern is purely imagined because it is impossible to fathom a U.S. court recognizing and enforcing a foreign arbitral award imposing the type of Islamic corporal penalties that only a few Muslim countries sanction.[57] This Note will focus on the real and foreseeable dilemmas posed when a party asks a U.S. court to recognize and enforce a foreign arbitral award rendered using Islamic law.

IV

The Growing Importance of Islamic Finance and Banking in International Commerce

Recent trends indicate that Islamic finance is becoming an increasingly popular alternative to traditional or "Western" forms of investment and financial trading.[58] Today, Sharia-compliant assets equal "almost one trillion U.S. dollars globally."[59] Financial experts estimate that "[t]he potential market for Islamic financial products could be as high as four trillion U.S. dollars."[60] This growth is not just limited to countries with overwhelmingly large Muslim populations, but it also extends to Western countries such as the United States.[61] Scholars suggest that Islamic finance's growing popularity may be due to its emphasis on "responsible management"[62] and "aversion to excessive risk."[63]

At its most basic, there are four principle rules that distinguish Islamic commercial law from Western commercial law.[64] Under Islamic law, financial deals must not involve interest (riba), the parties must not undertake "excessive risk-taking" (gharar), the parties must not treat money as a commodity (i.e., a commodity cannot be sold before it is delivered, and speculation is discouraged), and the value of money cannot change with the passage of time.[65]

***503** Islamic banking and financial transactions are often cross border.[66] As such, parties to these transactions often turn to international commercial arbitration as the principle means to resolve disputes, given that this is the easiest method to enforce awards across national borders.[67] Many of the assets related to these disputes will be in the United States, and parties will therefore undoubtedly seek recognition and enforcement of awards in the United States.[68] Accordingly, Islamic finance's expansion will inevitably force U.S. courts to grapple with the question of whether recognizing and enforcing awards where Islamic law provided the procedural and substantive law violates U.S. public policy or qualifies for any of the other relevant exceptions enumerated in the New York Convention.

V

Difficulties in Using Islamic Law in the International Commercial Arbitration Context

A. Determining Islamic Law

If an agreement calls for an arbitrator to simply apply Islamic law, the arbitrator will face certain challenges regardless of whether the arbitrator is an expert on Islamic law. Difficulties will inevitably arise during the arbitration because multiple schools of Islamic law exist and each of these schools has many interpretations.[69] Islamic law is essentially 1,400 years of jurisprudential analysis of Islam's sacred texts--mainly the Quran and Sunna (Prophet Muhammad's recorded actions and sayings).[70] Today, Islamic law is divided into two main categories: the Sunni and Shi'a schools of law.[71] Four Sunni schools also continue to interpret Islamic law: Maliki, Hanbali, Hanafi, and Shafi.[72]

Another problem arbitrators will confront when asked to apply Islamic law is that the concept of binding precedent does not exist in Islamic law.[73] Islamic scholars, whose writings make up Islamic law, constantly debate and change their opinions on the law.[74] Furthermore, ***504** Islamic law has no real choice-of-law concept.[75] Therefore, parties who choose Islamic law will face uncertainty during the arbitral proceedings, as Islamic law not only has many interpretations, but these varying interpretations are also in constant flux.

B. The "Laws of a Country" Versus "Rules of Law" and Proceedings "Not in Accordance with the Agreement of the Parties"

A British case, Shamil Bank of Bahrain E.C. v. Beximco Pharmaceuticals Ltd., raises an interesting choice-of-law issue in commercial arbitral proceedings where the arbitrator applied Islamic law.[76] In Shamil Bank, the court held that an agreement calling for the application of Islamic law was invalid because Islamic law is not the law of any one country.[77] The court based its decision on the 1980 Rome Convention on the Law Applicable to Contractual Obligations (the Rome Convention),[78] which requires parties to choose the law of a particular country.[79] The following question is raised: Should an arbitrator refuse to honor the parties' choice of Islamic law on the basis that Islamic law is a religious code and not the legal system of any one nation? Many nations have incorporated Islamic law into their legal systems, but it is difficult to single out any one of these countries and hold it as a true example of Islamic law.[80]

The Rules of Arbitration Article 17 of the International Chamber of Commerce (ICC) and Article 28 of the United Nations Commission on International Trade Law's Model Law on International Arbitration (Model Law) provide an alternative approach to the Rome Convention.[81] The ICC and Model Law take the "rules of law" approach, allowing parties to choose to apply a body of law that is not necessarily codified by any governing body or state.[82] Nevertheless, even if the parties to an arbitration adopt the ICC and Model Rules approach, the difficult problem of recognizing and enforcing an arbitral award ***505** applying a religious law with contradictory and evolving interpretations still lies before the court.

The fact that Islamic law consists of many schools of thought creates another vulnerability for a foreign arbitral award using Islamic law at the recognition and enforcement stage. Article V(1)(d) of the New York Convention states that a court may refuse recognition and enforcement of an arbitral award where the law used during the proceedings "was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place."[83] Hence, if at the recognition and enforcement stage the losing party objected to recognition and enforcement on the basis that the version of Islamic law chosen was not the law the parties intended, then the U.S. court may hold the arbitral award invalid on Article V(1)(d) grounds under two justifications. First, the U.S. court might find that the law the arbitral

authority applied was not the version of Islamic law chosen by the parties, such that the law applied "was not in accordance with the agreement of the parties."[84] Second, the U.S. court might decide that the parties' choice of Islamic law was too vague to constitute an agreement regarding the governing law. The court may instead choose to apply the law of the country where the arbitration occurred.

VI

Three Alternatives a Reviewing U.S. Court May Employ When Confronted with a Foreign Arbitral Award Rendered Using Islamic Law

A. Per Se Ban on Recognition and Enforcement

Under a per se ban, U.S. courts would automatically refuse to recognize or enforce a foreign arbitral award rendered using Islamic law for the procedural, substantive, evidentiary, or arbitral law.[85] Proponents of a per se ban might justify such a rule on the basis that Article V(2)(b) of the New York Convention allows a court to set aside an award if "recognition or enforcement of the award would be contrary to the public policy of [the forum] country"[86] or, in other words, if the award offends the "forum state's most basic notions of morality and justice."[87] The proponents of such a ban would contend that a court's recognition and enforcement of such an award is against U.S. public policy and against the United States' "most basic notions of ***506** morality and justice" because Islamic law is fundamentally inconsistent with American principles of secularism, due process, and equal protection.[88]

The argument that such an award is automatically contrary to U.S. public policy is unpersuasive. In Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RAKTA), the U.S. Court of Appeals for the Second Circuit read the New York Convention's public policy exception "narrowly" and held that it is not "a parochial device protective of national political interests."[89] The U.S. Court of Appeals for the D.C. Circuit further elaborated on the public policy standard by explaining that a foreign arbitral award is contrary to U.S. public policy when enforcement "tends clearly to undermine the public interest, the public confidence in the administration of the law, or security for individual rights of personal liberty or of private property."[90] According to these standards, a foreign arbitral award rendered using Islamic law will not contravene U.S. public policy by the mere choice of Islamic law. The fact that certain aspects of Islamic law might be wholly contrary to U.S. ideals concerning individual rights and the administration of law (e.g., a woman's testimony equaling half of a man's testimony) does not necessarily imply that any award applying Islamic law is automatically contrary to U.S. public policy. Indeed, substantive Islamic financial law seems entirely compatible with U.S. public policy.[91] Islamic substantive financial law emphasizes that parties to a commercial transaction should not charge interest (riba) nor undertake excessive risk (gharar).[92] Such pronouncements seem far ***507** from offending any of the United States' "basic notions of morality and justice."[93] Hence, a per se ban would be extremely overbroad.

Christian and Jewish legal codes also contain certain laws contrary to U.S. public policy, but courts and politicians have recognized that despite some areas of tension,[94] arbitrations that employ religious law have a very important purpose: they provide willing participants a binding dispute resolution mechanism that employs a legal code consistent with the participants' religious beliefs.[95] The same logic applies to arbitrations rendered using Islamic law. Even though certain aspects of Islamic law are contrary to U.S. public policy, allowing willing parties to choose Islamic law as the applicable arbitration law encourages these parties to resolve their disputes civilly and in accordance with their beliefs.

Problematically, a per se ban would contravene the political question doctrine, the Free Exercise Clause, and the Equal Protection Clause. A state court would also violate the Supremacy Clause and the federal foreign affairs doctrine if it were to impose a per se ban on foreign arbitral awards rendered using Islamic law.[96]

If a court were to institute a per se enforcement ban on arbitral awards rendered using Islamic law, the court would violate the political question doctrine. Montré Carodine argues convincingly about the political question doctrine in regards to recognition and enforcement of foreign judgments (as opposed to foreign arbitral awards--the focus of this Note).[97] She asserts that when a U.S. court contemplates enforcing a foreign court's decision, the court engages in an "international due process analysis," which entails judging whether the foreign nation's judicial system is "fundamentally fair."[98] Using this analysis, the court decides whether the country's judicial system is ***508** so "bad" that its judgments are per se unenforceable.[99] Carodine argues that a court undertaking this analysis violates the political question doctrine because such an analysis requires the judge to conduct foreign policy.[100] Foreign relations questions trigger the political question doctrine.[101] The Supreme Court, in Baker v. Carr, agreed with this position.[102] In Baker, the Court held that questions involving foreign relations are inherently political and beyond a court's province.[103] Similarly, if a court were to institute a per se rule disallowing enforcement of arbitral awards rendered using Islamic law, the court would violate the political question doctrine. Such a violation would occur because the court would have conducted foreign affairs by judging an entire foreign legal code's validity rather than the validity of the single proceeding in regards to a specific disputant.

One might argue that a court would not violate the political question doctrine if it declared that Islamic law is contrary to U.S. public policy because Islamic law is a religious code, not exclusively the law of any one country. This argument follows the British court's logic in Shamil Bank,[104] but it is misleading because Islamic law is still a foreign legal code and several countries use Islamic law as the foundation of their legal system.[105] As such, if a U.S. court imposed a per se ban on arbitral awards because the arbitrator applied Islamic law, the court would essentially declare that several countries' legal codes are fundamentally contrary to U.S. public policy. This declaration contravenes the political question doctrine.

A per se ban would also violate the Free Exercise Clause of the First Amendment. Any law similar to the one passed in Oklahoma, which forbids courts from enforcing judgments rendered using Islamic law, would violate the Free Exercise Clause.[106] Such a per se ***509** ban "singl[es] out" Islamic law for disparate treatment in violation of the Free Exercise Clause.[107]

Similarly, a state court would violate the federal foreign affairs doctrine by imposing a per se ban on the enforcement of foreign awards rendered using Islamic law.[108] In Zschernig v. Miller, the Supreme Court held that a state court cannot apply state laws which have the effect of managing relations with another country because foreign relations is the exclusive province of the federal government--specifically the President and Congress.[109] Consequently, a state court's per se recognition and enforcement ban would amount to a state passing judgment on an entire foreign legal code.

A state court that applies a state law imposing a per se ban on recognition and enforcement of an arbitral law would violate the Supremacy Clause. Such a court would be refusing recognition and enforcement on a ground not listed as an exception under the New York Convention.[110] Under the Supremacy Clause, federal law controls when state law contradicts federal law.[111] The state court's declaration that the mere use of Islamic law is grounds for refusal would violate the Supremacy Clause because the New York Convention is federal law incorporated into the U.S. Federal Arbitration Act,[112] and a foreign arbitral award that merely uses Islamic law is not an enumerated ground for withholding recognition and enforcement.[113]

B. Per Se Enforcement or Minimal Review

Under a per se enforcement or minimal review approach, a court would simply enforce an arbitral award or conduct a very limited review of the award. In practice, courts take this approach when recognizing and enforcing a foreign award under the New York Convention.[114] When a party seeks to enforce a foreign arbitral award under the New York Convention, the court does not examine the merits of the dispute and can only refuse recognition and enforcement on a few grounds.[115]

*510 The per se enforcement or minimal review approach gives rise, however, to a number of issues. For example, many scholars argue that a court's recognition and enforcement of an arbitral award amounts to state action.[116] If state enforcement of an arbitral award is truly state action, then enforcing an arbitral proceeding that lacked due process protections would create constitutional violations under the Fifth or Fourteenth Amendments.[117] Thus, if parties chose Islamic procedural law to govern a dispute and if the arbitrator excluded several witnesses with material testimony because they had an interest in the outcome, then state enforcement of the award might be unconstitutional given that the parties did not have a full opportunity to present their case.[118] Similarly, if the parties agree that only Muslims can serve as arbitrators, then a simple per se enforcement of the award would violate constitutional protections such as the Equal Protection Clause.[119] Another problem would stem from some interpretations of Islamic law stating that the testimony of a woman is half that of a man's.[120] This interpretation creates issues under the Equal Protection Clause and Article V(1)(b) of the New York Convention, under which a state court would likely note that material evidence was disallowed and the arbitration failed to provide an adequate opportunity to present the case.[121]

A British court directly confronted the problem of enforcing a domestic arbitral award that resolved a financial dispute where the arbitration agreement stipulated that the arbitrator must be a member of a specific sect of Shi'a Islam.[122] In Jivraj v. Hashwani, the losing party objected to enforcement on the grounds that the award's recognition *511 and enforcement would violate the English Equality Regulation (EER), which prohibits private parties from discriminating on the basis of religion in the employment context.[123] The English Court of Appeals held that the award violated the EER and was invalid.[124] This case, however, should not be held up as a paradigmatic example of the incompatibility of an arbitral proceeding's incorporation of Islamic law and call for a Muslim arbitrator with Western notions of dispute resolution and equal protection.[125] The EER includes an exception permitting religious discrimination where "being of a particular religion or belief is a genuine occupational requirement."[126] Additionally, the Jivraj Court decided the dispute under English substantive financial law; the parties did not need a Muslim arbitrator proficient in Islamic law because the dispute did not involve issues relating to substantive Islamic financial law.[127] When an arbitral clause calls upon an arbitrator to apply Islamic commercial law, the issue remains open as to whether the arbitral award is invalid because the parties did not allow non-Muslims to act as arbitrators.

Nevertheless, the per se enforcement or limited review approach might be inconsistent with the state action doctrine. In Shelley v. Kraemer, the Supreme Court famously held that the enforcement of a racially discriminatory covenant amounted to state action and constituted a violation of the Fourteenth Amendment.[128] Although the Court's state action jurisprudence is not entirely clear or consistent, in Georgia v. McCollum, the Court attempted to enunciate a standard for determining when private acts constitute state action.[129] Under this McCollum standard, the right that a plaintiff claims the state infringed upon must be a right provided by the government,[130] and the alleged infringer must be "properly described as a state actor."[131] Richard Reuben argues that a court's enforcement of an arbitral award is state action because the government is highly involved in encouraging the growth and effectiveness of the dispute resolution process, of which arbitration is a part.[132] He also posits that arbitrators perform a traditional government function: they resolve disputes involving the application of law to facts.[133] Reuben analogizes a *512 court's enforcement of an arbitral award to a private attorney's use of preemptory challenges during voir dire.[134] In Batson v. Kentucky, the Supreme Court found that a private attorney's use of preemptory challenges to dismiss jurors on the basis of race amounted to state action and a violation of the Equal Protection Clause.[135] State recognition and enforcement of an arbitral award, however, involves at least just as much state action because an award rendered by a private arbitrator is in effect approved by the state, and the state will use its authority to recognize and enforce the award.[136]

If a court's recognition and enforcement of a foreign arbitral award is correctly classified as state action, then per se enforcement of foreign arbitral awards rendered using Islamic law becomes problematic.[137] For instance, if an arbitration excluded material evidence because a party's key witness has some interest in the outcome of the arbitration, a U.S. court's recognition and enforcement of the award would violate that party's due process rights. If the parties ask an arbitrator to apply Islamic law and

the arbitrator then interprets Islamic law as denying the right to representation during the arbitral proceedings, a U.S. court's recognition and enforcement of such an award might violate the due process rights of the party who sought representation. Furthermore, if the parties ask the arbitrator to apply Islamic law and the arbitrator interprets Islamic law as dictating that a woman's testimony equals half of a man's testimony, then a U.S. court's recognition and enforcement of such an award might violate the Equal Protection Clause.[138] A similar equal protection problem would exist if the parties chose their arbitrator on the basis of religion and a U.S. court recognized and enforced such an award. In sum, a ***513** U.S. court's per se ban on recognition and enforcement of an arbitral award, depending on the interpretation of Islamic law used, may lead to equal protection or due process violations.[139]

C. Intermediate Level of Reviewability

Another approach U.S. courts can take is an intermediate level of review for constitutional violations. If a court reviewed an arbitral award rendered using Islamic law for due process or equal protection violations, the court could easily violate the First Amendment's Establishment Clause. Some scholars argue that one advantage of using Islamic law is that it has many interpretations, meaning that a court could adopt an interpretation that would uphold an award without violating the forum country's public policy or fundamental notions of justice.[140] Yet, if a U.S. court employs this intermediate level of reviewability, it would effectively be choosing a specific interpretation of a religious legal code as correct, which U.S. courts are not permitted to do under the First Amendment.

In Lemon v. Kurtzman, the Supreme Court held that state action is permissible only if it "has a secular purpose," "does not have a primary effect of promoting or inhibiting religion," and "does not excessively entangle the government with religion."[141] Thirty-two years later, in Jones v. Wolf, the Court established the neutral principles test for the religious question doctrine.[142] In Jones, the Court stated that a court can make "no inquiry into religious doctrine" when confronted with a dispute involving religious issues;[143] a court can decide a dispute that involves religious elements, but if the court must examine religious issues to resolve the dispute, the court should not hear the case.[144] Thus, when a party asks a U.S. court to withhold recognition and enforcement because the arbitrator excluded material evidence by adopting a putatively wrongful interpretation of Islamic evidentiary law, the court should refuse to inquire into whether the interpretation was wrong under Islamic law. This approach avoids a First Amendment violation. Apparently, a court must either examine Islamic law ***514** to determine if a constitutional violation occurred during the arbitration stage and, in so doing, violate the First Amendment's Establishment Clause, or refuse to examine Islamic law and possibly violate the objecting party's constitutional rights.

VII

A Three-Step Approach for Recognizing and Enforcing Foreign Arbitral Awards Rendered Using Religious Law

The next Part of this Note suggests an approach that U.S. courts ought to take when asked to recognize and enforce a foreign arbitral award rendered using religious law, as distinguished from the approaches discussed above that they may be authorized to take. The suggested approach focuses on Islamic law but applies to all religious law, not just Islamic law, as a court's application of the suggested approach to only Islamic law would constitute a violation of the Equal Protection Clause.

A. Separability

Separability is a familiar arbitration doctrine that the Supreme Court adopted in Prima Paint Corp. v. Flood & Conklin Manufacturing Co.[145] Under the doctrine of separability, an arbitral clause is separate from the container contract in which it appears.[146] According to this doctrine, a contract as a whole may be invalid, but the arbitral provision in the same contract can

still be valid and enforceable (and vice versa).[147] The separability doctrine allows an arbitrator to apply separate legal codes to the container contract and the arbitral clause.[148]

Although developed in the context of preserving the validity of arbitral clauses,[149] a court could also use the separability doctrine to confront the issues involved in enforcing an arbitral award rendered using Islamic law (or any other religious law). Arbitral proceedings may employ different laws for different aspects of the dispute. Theoretically, the parties can choose a different law for the merits of the dispute, the procedure and evidence, the arbitration clause, and the arbitral law.[150] Given this wide latitude, an enforcing court must first consider the part of the arbitration to which Islamic law applied. If the parties chose Islamic law to govern the merits of the dispute, the court should not review the arbitrator's application of Islamic law. Reviewing ***515** courts generally do not review the merits of disputes (the facts and the application of law to facts),[151] and there is little in Islamic financial substantive law that would create due process or equal protection concerns.[152]

B. Waiver

If Islamic law was the law chosen to govern the procedure, evidentiary rules, or arbitral law, then the reviewing court should ask whether the party objecting to recognition and enforcement has waived its right to object.[153] If a party did not object to the arbitration's use of Islamic or any other religious law for evidentiary rules, arbitral rules, or procedural rules, then the enforcing court should not permit that party to raise these issues during the enforcement stage.

A possible counterargument to this waiver approach is that it ignores the state's interest in ensuring that enforcement of arbitral awards does not violate constitutional law or U.S. public policy. The New York Convention has seven exceptions under which a court can refuse recognition and enforcement of a foreign award.[154] A court, however, can only raise an exception on its own motion under two circumstances: the public policy exception and the nonarbitrability of subject matter exception.[155] Therefore, one can argue that a private party does not have the exclusive right to waive its constitutional protections because allowing a court to enforce an award that offends notions of due process and equal protection contravenes U.S. public policy.[156]

U.S. courts, however, have been comfortable allowing parties to waive constitutional rights in arbitral proceedings. In ***516** Barnes v. Logan,[157] the U.S. Court of Appeals for the Ninth Circuit took the view that "a party [can] waive[ ] any claims based on its right to due process of law under . . . the United States Constitution."[158] Additionally, in the international commercial arbitration context, parties are typically sophisticated entities.[159] Michael Grossman's duress argument--that parties might be coerced into accepting arbitration where religious law is applied because of community pressure--is inapplicable in the international commercial arbitration context where parties are generally state actors or other corporate entities familiar with the legal process.[160] Therefore, international commercial arbitration will likely not infringe upon the constitutional rights of a vulnerable or unknowing party.

C. Procedural Due Process and Equal Protection Analysis in Limited Cases

When an arbitration employs Islamic law (or any other religious law) for the procedural, evidentiary, or arbitral laws and the party fighting enforcement has objected during the arbitral proceedings, then the court should conduct a due process analysis to determine whether the arbitration provided the objecting party a full and fair opportunity to be heard and whether notions of equal protection rights were honored. This approach would require courts to closely examine the procedures applied during the arbitral proceedings. Peter Hoffman and Lindsee Gendron offer a list of criteria that an arbitral proceeding must satisfy in order for courts to recognize and enforce domestic arbitral awards consistent with due process.[161] Hoffman and Gendron posit that an arbitral tribunal must give adequate notice to the parties, must allow the parties to "defend and present" their cases, must let the parties confront opposing witnesses, and must ensure that the parties have the right to an arbitral proceeding that is "free

of racial or other actionable prejudice."[162] Although Hoffman and Gendron's criteria concern domestic arbitral awards and not foreign ***517** ones, a court can employ the same criteria when deciding whether a foreign arbitral award that uses religious law meets basic constitutional requirements.

One might argue that conducting a due process analysis of foreign arbitral awards is exactly the type of "international due process analysis" that violates the political question doctrine.[163] Yet, because a U.S. court engaging in a due process analysis would not examine Islamic law as a legal system to determine if it is consistent with notions of due process or equal protection, but would instead examine the individual arbitral proceeding to determine if due process and equal protection rights were met, this kind of analysis of foreign arbitral awards would not violate the political question doctrine.

Critics of this approach might argue that a U.S. court's due process analysis of a foreign arbitral award is contrary to the New York Convention. The critics might also argue that the New York Convention enumerates specific exceptions to recognition and enforcement, and inconsistency with a country's constitution is not one such exception. Furthermore, critics can challenge this approach by pointing out that conducting due process and equal protection analyses of foreign arbitral proceedings is absolutely contrary to the purpose of the New York Convention and will impose costs on international commercial transactions. The purpose of the New York Convention is to facilitate cross border transactions by allowing courts of member countries to recognize and enforce resolutions of commercial disputes of an international character regardless of national boundaries.[164] Furthermore, critics may contend that if U.S. courts take an approach that scrutinizes foreign arbitral awards rendered using Islamic law, they will discourage Muslim states and other Muslim entities from investing their Islamic financial assets in the United States. The critics will assert that a court's constitutional analysis is essentially relitigation of the case--the very outcome the New York Convention and arbitration mean to avoid.[165]

Critics of the due process and equal protection analysis approach are correct in pointing out that it is somewhat inconsistent with the New York Convention. These critics, however, ignore the Supreme Court's finding that the U.S. Constitution trumps international treaties ***518** and international laws when these sources of law conflict.[166] Therefore, because enforcement of an arbitral award is state action,[167] if enforcement of a foreign arbitral award will infringe on constitutional due process or equal protection rights,[168] a U.S. court should not enforce the foreign arbitral award. Furthermore, if a U.S. court were to find that a foreign arbitral award rendered using Islamic procedural, evidentiary, or arbitral law violated U.S. notions of due process or equal protection, then, in most instances, this finding would qualify as contrary to U.S. public policy--an exception under New York Convention Article V(b)(2).

The criticism that the due process and equal protection analysis approach will impose costs on cross border transactions involving Islamic financial assets and discourage Muslim states and entities from investing these assets is unnecessarily alarmist. The constitutional analysis approach will not impose costs on international commercial transactions involving Islamic financial assets because two conditions must be satisfied before a court will even conduct the due process and equal protection analysis.[169] First, the U.S. court has to find that the arbitration employed Islamic law for the procedural, evidentiary, or arbitral law.[170] Second, the court must find that the party raising the objection to the use of Islamic law in regards to the procedural, evidentiary, or arbitral law at the recognition and enforcement stage raised the same objection during the arbitral proceedings.[171] Only after these two requirements are met will a court determine if the arbitral proceeding was consistent with due process and equal protection.

Still, an uncomfortable dilemma exists with this approach: How can a U.S. court decide whether Islamic law, as applied during a foreign arbitration, is consistent with due process and equal protection without implicating the First Amendment's Establishment Clause? Grossman implies that courts have two mutually exclusive options in regards to recognition and enforcement of domestic arbitral awards where religious law is applied. The court can choose to "examine some religious doctrine" for constitutional violations (and thereby contravene the Establishment Clause by interpreting religious doctrine) or recognize and enforce an award without examining it for constitutional violations (in order to avoid violating the Establishment Clause).[172]

Grossman concludes that courts should pass judgment on *519 the constitutionality of arbitral proceedings where religious law is applied in order to protect individual due process rights, and he accepts that in so doing, a court would technically violate the Establishment Clause.[173]

Grossman, however, creates a false dichotomy. It is unnecessary to concede that protecting individual due process rights at the recognition and enforcement stage of an arbitral proceeding where religious law is used and preserving the First Amendment's Establishment Clause are mutually exclusive. Under the neutral principles test established in Jones v. Wolf, a court cannot inquire into religious issues in order to resolve a dispute.[174] Under step three of my suggested approach, a court would not inquire into the workings of Islamic law to see if the arbitral proceeding was consistent with due process and equal protection; the court would merely ask whether the arbitral proceeding itself, which used Islamic law, was consistent with due process and equal protection. In other words, the court would not ask whether Islamic law is consistent with due process and equal protection or whether the arbitrator(s) applied Islamic law correctly; instead, the court would ask whether the actual procedure used was consistent with due process and equal protection.

For example, if an arbitrator interpreted Islamic evidentiary law to hold that a party's material witness could not testify because the witness had an interest in the outcome and at the recognition and enforcement stage a U.S. court found that denying a party the ability to present a material witness is a violation of the party's due process rights, then refusing to recognize and enforce the foreign arbitral award would not contravene the Establishment Clause. By contrast, in the same scenario, the court would contravene the Establishment Clause by holding that the arbitrator's interpretation of Islamic evidentiary law led to a due process violation. Similarly, the court would also contravene the Establishment Clause by holding that Islamic evidentiary law's principle concerning a witness's interest in the outcome of a dispute is contrary to due process. In the first example, the U.S. court examines the arbitral proceeding and the actions of the arbitrator for due process violations without inquiring into Islamic law. In the latter two examples, the court analyzes the arbitrator's interpretation of Islamic law and whether a certain aspect of Islamic law is contrary to due process, respectively. Both of these latter two examples violate the neutral principles test and consequently the Establishment Clause. In the first example, even though the arbitrator justifies his decision on the basis of religious law, the U.S. court does not examine the arbitrator's rationale for his decision or use of religious law, just *520 the arbitrator's decision itself. In the latter examples, the U.S. court examines the arbitrator's rationale for his decision, which in this case is based on religious law, and analyzes whether the religious law used is consistent with the Constitution, respectively. As long as a court can distinguish between an arbitrator's decisions and the effects of those decisions (even if those decisions and effects resulted from an arbitrator's application of religious law) from the religious law that led an arbitrator to make those decisions, the court would not violate the neutral principles test. Under this application of the neutral principles test, it is possible to protect a party's due process rights while at the same time preserving the Establishment Clause's prohibition on courts' religious inquiry.

Conclusion

International commercial arbitration is not simply just another dispute resolution device. With the help of the New York Convention, international commercial arbitration is a cross border mechanism that connects people, nations, and business entities. It can facilitate trade between private entities from countries that have little or no formal relations with each other. A party from Israel and a party from the Islamic Republic of Iran can arbitrate in the United Kingdom, and a U.S. court can recognize and enforce the award rendered under the New York Convention's enforcement-friendly rules.[175]

Uniquely, not only does international commercial arbitration help increase the interconnectivity of parties from around the world with little concern for national boundaries, but it also allows parties to retain a sense of cultural, national, and religious identity by allowing the parties to choose the law applied to the arbitration. Thus, international commercial arbitration is a force that encourages globalization but still respects cultural, religious, and national attachments. If this duality is understood, international commercial arbitration can indirectly ease global tensions that stem from national, cultural, and religious misunderstandings by harnessing commercial relations between states and private entities from around the globe.

The issue of recognition and enforcement of foreign arbitral awards rendered using Islamic law in U.S. courts is sure to arise in the near future. The growth of Islamic finance as an alternative to more traditional forms of finance in the global marketplace will inevitably lead parties to seek U.S. recognition and enforcement of foreign arbitral awards rendered using Islamic law. When confronted with such ***521** questions, U.S. courts must take a meticulously nuanced approach in order to avoid a myriad of constitutional dilemmas.

In an attempt to avoid these constitutional dilemmas, this Note offers a three-step approach for U.S. courts with regards to recognition and enforcement of foreign arbitral awards rendered using religious law. First, courts should use the doctrine of separability to determine whether the arbitration applied religious law to the substantive law of the dispute or to the procedural, evidentiary, or arbitral law of the dispute. Second, if the arbitration employed Islamic or any other religious law for the procedural, evidentiary, or arbitral law, then the court should examine whether the objecting party at the recognition and enforcement stage also objected during the arbitral proceedings. Third, if the party did object during the arbitral proceedings, the court should conduct a due process and equal protection analysis of the arbitral proceedings. During the third step, the court should be mindful not to pass indictment on any aspect of Islamic or religious law or evaluate the arbitrator's interpretation of Islamic or religious law. Instead, the court must merely evaluate whether the arbitral proceedings violated due process or equal protection. This approach will allow a U.S. court to protect the due process and equal protection rights of the parties and simultaneously advance the dual advantages of international commercial arbitration: facilitating interconnectivity between private parties regardless of nationality and allowing parties to retain their national, cultural, and religious identities during the dispute resolution process.

Footnotes

d1 B.A., Boston University, 2009; J.D. Candidate, Cornell Law School, 2013; Notes Editor, Cornell Law Review, Volume 98. I owe many thanks to Shrutih Tewarie for providing me with research support on Islamic law and Professor John J. Barceló III for introducing me to the study of international commercial arbitration. I also owe gratitude to the Cornell Law Review associates and editors for spending countless hours improving this Note. Finally, I am most indebted to my mom, Sameera, and sister, Marvi, for unconditionally supporting me throughout my academic career.

1 See Tibor Várady et al., International Commercial Arbitration: A Transnational Perspective 6-12 (4th ed. Supp. 2009).

2 See Int'l Chamber of Commerce, Arbitration and ADR Rules art. 21 (2011) ("The parties shall be free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute."); Várady et al., supra note 1.

3 See Várady et al., supra note 1.

4 See id.; Charles N. Brower & Jeremy K. Sharpe, Note, International Arbitration and the Islamic World: The Third Phase, 97 Am. J. Int'l L. 643, 647 (2003) (observing that as of 2003 roughly two-thirds of the Organization of Islamic Countries' nation-members are parties to the New York Convention).

5 See generally United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517 [[[hereinafter New York Convention] (providing procedures, exceptions, and conditions under which signatories agree to enforce foreign arbitral awards).

6 See Elana Levi-Tawil, Note, East Meets West: Introducing Sharia into the Rules Governing International Arbitrations at the BCDR-AAA, 12 Cardozo J. Conflict Resol. 609, 612-16 (2011) (detailing the history of international commercial arbitration and the enforceability of foreign arbitral awards); Kristin T. Roy, Note, The New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defense to Refuse Enforcement of Non-Domestic Arbitral Awards?, 18 Fordham Int'l L.J. 920, 926-28 (1995) (noting the advantages of international arbitration as compared to litigation in foreign domestic court).

7 New York Convention, supra note 5, art. I.

8 See J. Noelle Hicks, Note, Facilitating International Trade: The U.S. Needs Federal Legislation Governing the Enforcement of Foreign Judgments, 28 Brook. J. Int'l L. 155, 165-66 (2002); Roy, supra note 6, at 926-28 (exploring the public policy exception to the recognition and enforcement of foreign judgments under the Brussels Convention).

9 See Charles Platto & William G. Horton, Preface to Enforcement of Foreign Judgments Worldwide, at xi, xi (Charles Platto & William G. Horton eds., 2d ed. 1993) ("[T]he enforcement of foreign judgments remains one of the few fields in which there is no international governing convention."). For example, in the United States, "state law governs the enforcement of foreign judgments, thus creating a sense of uncertainty for foreigners." Hicks, supra note 8, at 160.

10 See New York Convention, supra note 5, art. V.

11 See id. art. V(1)(b).

12 See id.

13 See id. art. V(1)(d).

14 See id.

15 See id.

16 See id. art. V(2)(b).

17 Id.

18 Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RAKTA), 508 F.2d 969, 974 (2d Cir. 1974); Hicks, supra note 8, at 166-67.

19 Parsons & Whittemore, 508 F.2d at 974.

20 See Michael C. Grossman, Is This Arbitration?: Religious Tribunals, Judicial Review, and Due Process, 107 Colum. L. Rev. 169, 176 (2007) (noting the "current policy ... that courts should favor arbitration over litigation" (quoting Jean R. Sternlight, Rethinking the Constitutionality of the Supreme Court's Preference for Binding Arbitration: A Fresh Assessment of Jury Trial, Separation of Powers, and Due Process Concerns, 72 Tul. L. Rev. 1, 17 (1997)) (internal quotation marks omitted)).

21 See, e.g., In re Chromalloy Aeroservices, 939 F. Supp. 907, 913 (D.D.C. 1996) (noting that a decision failing to enforce a foreign arbitral award "would violate ... clear U.S. public policy").

22 473 U.S. 614, 631 (1985).

23 See Brower & Sharpe, supra note 4, at 643; Faisal Kutty, The Shari'a Factor in International Commercial Arbitration, 28 Loy. L.A. Int'l & Comp. L. Rev. 565, 589-96 (2006) (describing the Middle East's long history of arbitration, dating back to the pre-Islamic period).

24 See David S. Powers, Islamic Procedure Readings 55 (Sept. 21, 2009) (unpublished manuscript) (on file with author).

25 See id.

26 See Caryn Litt Wolfe, Note, Faith-Based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction with Secular Courts, 75 Fordham L. Rev. 427, 464 (2006).

27 See New York Convention, supra note 5, art. V.

28 See Lee Ann Bambach, The Enforceability of Arbitration Decisions Made by Muslim Religious Tribunals: Examining the Beth Din Precedent, 25 J.L. & Religion 379, 394 n.69 (2009-2010) (describing state arbitration statutes that make the right to an attorney a nonwaivable statutory right).

29 See Mona Rafeeq, Note, Rethinking Islamic Law Arbitration Tribunals: Are They Compatible with Traditional American Notions of Justice?, 28 Wis. Int'l L.J. 108, 113-14 (2010) (describing how arbitration has been preferred to litigation from the start of Islamic history).

30 See Brower & Sharpe, supra note 4, at 656.

31 See Mohammed Bedjaoui, The Arab World in ICC Arbitration, in The ICC Int'l Court of Arbitration Bulletin, International Commercial Arbitration in the Arab Countries 7, 13 (Supp. May 1992). Although the Bedjaoui quotation refers to the Arab embrace of international commercial arbitration, the quotation is equally applicable to the rest of the Muslim world considering that the non-Arab Muslim world had a similar experience with external economic domination. See Karen Armstrong, Islam: A Short History 141-55, 178-80 (2000); Brower & Sharpe, supra note 4, at 647.

32 See Brower & Sharpe, supra note 4, at 655.

33 See infra Part IV.

34 David S. Powers, Islamic Evidence Readings 2 (Sept. 21, 2009) (unpublished manuscript) (on file with author).

35 Id.

36 See id. at 3.

37 See New York Convention, supra note 5, art. V(1)(b).

38 See Powers, supra note 34, at 4-5.

39 See id. at 5.

40 See Reed v. Reed, 404 U.S. 71, 77 (1971) (finding that discrimination on the basis of sex violates the Equal Protection Clause).

41 See New York Convention, supra note 5, art. V(2)(b).

42 See Powers, supra note 34, at 8.

43 See infra Part V.C.

44 See Islam in Tennessee: An Uncivil Action, Economist, Nov. 20, 2010, at 39, 39; see also Muslims and McCarthyism, Economist, Mar. 12, 2011, at 42, 42 (critiquing an "Islamophobi[c]" decision of a House committee to hold security hearings that would focus exclusively on Muslim Americans).

45 Islam in Tennessee: An Uncivil Action, supra note 44.

46 Id.

47 See Sharia in the West: Whose Law Counts Most?, Economist, Oct. 16, 2010, at 71, 71.

48 See Wolfe, supra note 26, at 428.

49 See Islamic Law and Democracy: Sense About Sharia, Economist, Oct. 16, 2010, at 16, 16.

50 See Symeon C. Symeonides, Choice of Law in the American Courts in 2010: Twenty-Fourth Annual Survey, 59 Am. J. Comp. L. 303, 320 (2011).

51 See id.

52 See id.

53 See id. at 321.

54 Cf. Amanda Bronstad, 10th Circuit Blocks Enforcement of Sharia Ban, Nat'l L.J., Jan. 10, 2012, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp? id=1202538005267&10th_Circuit_blocks_enforcement_of_Sharia_ban (subscription required) (reporting that the U.S. Court of Appeals for the Tenth Circuit has maintained the injunction blocking the application of the Oklahoma amendment but that the district court has yet to reach a decision on the merits).

55 See Symeonides, supra note 50, at 323.

56 See, e.g., Blake Farmer, Fears About Shariah Law Take Hold in Tennessee, NPR (Sept. 3, 2012), http://www.npr.org/2012/09/03/159378918/fears-about-shariah-law-take-hold-in-tennessee (recounting a recent incident of irrational fear of Sharia law in Tennessee).

57 See Islamic Law and Democracy: Sense About Sharia, supra note 49.

58 See Bashar H. Malkawi, Financial Derivatives in the West and in Islamic Finance: A Comparative Approach, 128 Banking L.J. 50, 58 (2011); Julio C. Colón, Note, Choice of Law and Islamic Finance, 46 Tex. Int'l L.J. 411, 412-13 (2011).

59 See Colón, supra note 58, at 412.

60 See id.

61 See id.

62 See id.

63 See Holly E. Robbins, Note, Soul Searching and Profit Seeking: Reconciling the Competing Goals of Islamic Finance, 88 Tex. L. Rev. 1125, 1149 (2010).

64 See Malkawi, supra note 58, at 61.

65 See id.

66 See Colón, supra note 58, at 411 (suggesting that the emergence of international Islamic financial instruments may create conflict-of-law issues).

67 See Levi-Tawil, supra note 6.

68 See Colón, supra note 58, at 412 (referencing U.S. providers of Islamic financial products).

69 See Charles P. Trumbull, Note, Islamic Arbitration: A New Path for Interpreting Islamic Legal Contracts, 59 Vand. L. Rev. 609, 626-28 (2006).

70 See id.

71 See Arthur J. Gemmell, Commercial Arbitration in the Islamic Middle East, 5 Santa Clara J. Int'l L. 169, 172 (2006).

72 See Trumbull, supra note 69, at 627-28.

73 See id.

74 See Kutty, supra note 23.

75 See id.

76 [2004] EWCA (Civ) 19, [2004] 1 W.L.R. 1784 (appeal taken from Eng.).

77 See Colón, supra note 58, at 414.

78 June 19, 1980, 19 I.L.M. 1492.

79 See Colón, supra note 58, at 414-15.

80 For example, Iran and Saudi Arabia have applied Islamic law to "all areas of law." Fatima Akaddaf, Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG Compatible with Islamic Law Principles?, 13 Pace Int'l L. Rev. 1, 22 (2001). Nevertheless, Iran and Saudia Arabia's national laws differ: the former adheres

to Shi'a Islamic law and the latter to Sunni Islamic law. See Abdulaziz H. Al-Fahad, Ornamental Constitutionalism: The Saudi Basic Law of Governance, 30 Yale J. Int'l L. 375, 386 n.45 (2005) (stating that Sunni Islam influences the Saudi order).

81 See Várady et al., supra note 1, at 652-54 (4th ed. 2009).

82 See id.

83 See New York Convention, supra note 5, art. V(1)(d).

84 Id.

85 See Várady et al., supra note 1, at 654-55, 657 (4th ed. 2009).

86 See New York Convention, supra note 5, art. V(2)(b).

87 See Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RAKTA), 508 F.2d 969, 974 (2d Cir. 1974).

88 See, e.g., Saudi Arabia Execution of "Sorcery" Woman Condemned, Telegraph (U.K.), Dec. 13, 2011, http://www.telegraph.co.uk/news/worldnews/middleeast/saudiarabia/8952641/Saudi-Arabia-execution-of-sorcery-woman-condemned.html (discussing international condemnation of Saudi Arabia's execution of a woman convicted of "sorcery" under Sharia law).

89 See Parsons & Whittemore, 508 F.2d at 974. In regards to foreign judgments rendered by foreign courts, Karen Minehan explains that U.S. courts have applied the public policy exception to only a few unique classifications of cases. See Karen E. Minehan, The Public Policy Exception to the Enforcement of Foreign Judgments: Necessary or Nemesis?, 18 Loy. L.A. Int'l & Comp. L.J. 795, 804-08 (1996). These cases include: (i) a foreign judgment that awarded damages incurred as a result of wrongdoing by the party seeking enforcement from a U.S. court, where a wrongdoer or fugitive asks for enforcement, (ii) a foreign libel judgment that is inconsistent with the U.S. Constitution, and (iii) penal foreign judgments. See id.

90 TermoRio S.A. E.S.P. v. Electranta S.P., 487 F.3d 928, 938 (D.C. Cir. 2007) (quoting Ackermann v. Levine, 788 F.2d 830, 841 (2d Cir. 1986)) (internal quotation marks omitted).

91 See generally Akaddaf, supra note 80 (explaining how the United Nations Convention on Contracts for International Sale of Goods--to which the United States is a party--and Islamic commercial law are compatible).

92 See Robbins, supra note 63, at 1127 (discussing the basic principles of Sharia finance).

93 See Parsons & Whittemore, 508 F.2d at 974.

94 See Grossman, supra note 20, at 178, 181 & n.111, 189 (providing examples of such tension, including the Institute for Christian Conciliation, which retains the power to deny parties their right to an attorney, and "strict Jewish law," which does not allow women, non-Jews, relatives of the parties, or the disabled to act as witnesses); Sharia in the West: Whose Law Counts Most?, supra note 47 (implying that the presence of arbitral centers applying Jewish law or Christian law in the United States is not as controversial as the prospect of Islamic arbitral centers in the United States).

95 See Michael A. Helfand, Religious Arbitration and the New Multiculturalism: Negotiating Conflicting Legal Orders, 86 N.Y.U. L. Rev. 1231, 1276-77 (2011); Sharia in the West: Whose Law Counts Most?, supra note 47.

96 Cf. Zschernig v. Miller, 389 U.S. 429, 440 (1968) (striking down an Oregon statute that limited foreign citizens' inheritance of U.S. citizens' property to those who could prove that their country provided reciprocal rights to U.S. citizens).

97 See Montré D. Carodine, Political Judging: When Due Process Goes International, 48 Wm. & Mary L. Rev. 1159, 1193-1207 (2007).

98 See id. at 1177, 1183-84 (explaining that the system under which the foreign decision was rendered need only be "'compatible with' American notions of due process" (quoting Soc'y of Lloyd's v. Ashenden, 233 F.3d 473, 477 (7th Cir. 2000))).

99 See id. at 1170-89 (comparing court decisions that find a country's judicial system to be "bad" without examining particular due process concerns of the case at hand with court decisions that find a country's judicial system to be "good").

100 See id. But see Unif. Foreign Money-Judgments Recognition Act § 4(a) (1962) (implying that it should not matter whether the individual process provided by a foreign court to a party in rendering a single foreign judgment was unfair but whether the foreign legal system, as a whole, is unfair).

101 See Carodine, supra note 97, at 1197-1203 (noting that the Supreme Court recognizes that questions involving foreign relations are inherently political).

102 See 369 U.S. 186, 217 (1962) (arguing that cases involving foreign relations provide traditional indicators of political questions).

103 See id.

104 See supra Part V.B.

105 See generally Akaddaf, supra note 80 (citing Saudi Arabia and Iran as countries that universally apply Sharia law).

106 See Symeonides, supra note 50, at 321-22 (citing Awad v. Ziriax, 670 F.3d 1111 (10th Cir. 2012)).

107 See id. The law is facially discriminatory because although it forbids courts from referencing any foreign law, it mentions only Sharia as an example.

108 See Carodine, supra note 97.

109 389 U.S. 429, 432 (1968).

110 See New York Convention, supra note 5, art. V.

111 Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372 (2000).

112 See Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1970 (Federal Arbitration Act), Pub. L. No. 91-368, 84 Stat. 692 (codified as amended at 9 U.S.C. §§ 201-208 (2006)).

113 See New York Convention, supra note 5, art. V.

114 See supra Part I.

115 See Fertilizer Corp. of India v. IDI Mgmt., Inc., 517 F. Supp. 948, 960 (S.D. Ohio 1981) (agreeing that the court, acting under narrow powers of judicial review, cannot substitute its judgment for that of the arbitrators); Mark Wakim, Public Policy Concerns Regarding Enforcement of Foreign International Arbitral Awards in the Middle East, 21 N.Y. Int'l L. Rev. 1, 24-25 (2008) (listing the grounds for refusal of an award under the New York Convention and noting that an exception based on the erroneous application of substantive law is not listed as a reason for withholding recognition and enforcement).

116 See, e.g., Grossman, supra note 20, at 199-202; Richard C. Reuben, Public Justice: Toward a State Action Theory of Alternative Dispute Resolution, 85 Calif. L. Rev. 577, 579 (1997).

117 See Grossman, supra note 20, at 202-03.

118 The test for procedural due process examines whether a court deprived a party of his or her constitutionally guaranteed right to life, liberty, or property without due process. See id. To determine whether a due process right exists, the court must balance the party's interest affected by the procedure in question with the possibility of an "erroneous deprivation" of using the procedure in question against the government's interest in keeping the current procedure in place. See Matthews v. Eldridge, 424 U.S. 319, 335 (1976).

119 The state's discrimination on the basis of religion, without a compelling government interest, amounts to an equal protection violation. See Powers v. Ohio, 499 U.S. 400, 434-35 (1991).

120 See supra Part II.B.

121 See Reed v. Reed, 404 U.S. 71, 77 (1971) (finding that discrimination on the basis of sex is a violation of the Equal Protection Clause).

122 Jivraj v. Hashwani, [2011] UKSC 40, [1] (appeal taken from Eng.); Pierre M. Gaunaurd et al., Islamic Finance, 45 Int'l Law. 271, 271-72 (2011).

123 Jivraj, [2011] UKSC 40, [1], [6]-[7].

124 See Gaunaurd et al., supra note 122, at 272.

125 See id.

126 See id.

127 See id. at 271-72.

128 334 U.S. 1, 20 (1948).

129 See 505 U.S. 42, 50 (1992) (questioning whether the defendant's use of a peremptory challenge constituted state action).

130 Id. at 51.

131 See Grossman, supra note 20, at 199.

132 See Reuben, supra note 116, at 579, 628-29.

133 See id. at 619-25.

134 See id. at 626.

135 See 476 U.S. 79, 89 (1986).

136 See Reuben, supra note 116, at 627-29 (discussing the various roles a court plays in the arbitration process).

137 If recognition and enforcement of arbitral awards is correctly considered state action, then all faith-based arbitrations might be in jeopardy. In the education context, the Supreme Court stated that "a State may not delegate its civic authority to a group chosen according to a religious criterion" and that "[a]uthority over public schools belongs to the State ... and cannot be delegated to a local school district defined by the State in order to grant political control to a religious group." Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet, 512 U.S. 687, 690-96, 698 (1994). An interesting question to ask is whether the same logic applies to binding arbitration where the dispute resolution function of the government is turned over to a religious institution.

138 The question of whether a losing party would have standing, on equal protection grounds, to challenge an award rendered where the losing party's female witness's testimony was given half the weight of a male's testimony is irrelevant at the recognition and enforcement stage. The losing party's standing to challenge on equal protection grounds would be irrelevant because the losing party would challenge the finding that a female witness's testimony given half the weight of a male witness's testimony violates the Equal Protection Clause, which is U.S. public policy. See New York Convention, supra note 5, art. V(2)(b).

139 A court attempting to find an interpretation of Islamic law that would avoid a due process or equal protection violation would be violating the First Amendment's Establishment Clause. See infra Part VI.C.

140 See Kutty, supra note 23, at 618-21 (explaining how certain aspects of Islamic law, which might be contrary to "modern institutions and customs," can be interpreted differently); Almas Khan, Note, The Interaction Between Shariah and International Law in Arbitration, 6 Chi. J. Int'l L. 791, 794-97 (2006).

141 Trumbull, supra note 69, at 616 (citing Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971), aff'd, 411 U.S. 192 (1973)).

142 See 443 U.S. 595, 602-05 (1979).

143 Id. at 603 (quoting Md. & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 368 (1970) (per curiam)).

144 See id. at 602-05.

145 388 U.S. 395, 403-04 (1967); see Várady et al., supra note 1, at 95-96.

146 See Várady et al., supra note 1, at 101.

147 See id.

148 See id.

149 See Prima Paint Corp., 388 U.S. at 402-04; Várady et al., supra note 1, at 95-96.

150 See Várady et al., supra note 1, at 654-55, 657 (4th ed. 2009).

151 See Fertilizer Corp. of India v. IDI Mgmt., Inc., 517 F. Supp. 948, 960 (S.D. Ohio 1981); Wakim, supra note 115, at 21-22, 24-25.

152 See generally Peter M. Hoffman & Lindsee Gendron, Judicial Review of Arbitration Awards After Cable Connection: Towards a Due Process Model, 17 UCLA Ent. L. Rev. 1, 3-4 (2010) (noting that U.S. courts have upheld arbitration awards even when they violate American principles of due process); Laura Belkner, Note, The Secular and Religious Legal Framework of Afghanistan as Compared to Western Notions of Equal Protection and Human Rights Treaties: Is Afghanistan's Legal Code Facially Consistent with Sex Equality?, 20 Cardozo J. Int'l & Comp. L. 501, 534-35 (2012) (arguing that provisions regarding the protection of women in Afghanistan's constitution, a legal document largely influenced by Islam, are facially consistent with U.S. notions of equal protection). Substantive Islamic law is distinguished from Islamic procedural, evidentiary, and arbitral law on the basis that the latter types are where the tension exists between Islamic law and Western notions of due process and equality. See supra Parts II, VI.A.

153 See supra Part V.B.

154 See New York Convention, supra note 5, art. V.

155 See id. art. V(2).

156 See Grossman, supra note 20, at 204.

157 122 F.3d 820 (9th Cir. 1997).

158 See Hoffman & Gendron, supra note 152, at 3.

159 See Khan, supra note 140, at 792. See generally Brower & Sharpe, supra note 4 (discussing nation-states and corporate entities as the participants in international commercial arbitration).

160 See Khan, supra note 140, at 798-99.

161 Hoffman & Gendron, supra note 152, at 36-37.

162 See id. Hoffman and Gendron also suggest that the defending party has the right to have the complaining party carry the burden of proof. See id. at 37. This requirement is inconsistent with Islamic procedural law. Under Islamic procedural law, the claimant is not always the party with the burden of proof. Instead, the party deemed to have the weaker case is the claimant and the party with the stronger claim is the defendant. See Helfand, supra note 95, at 1265-66. Whether Islamic procedural law's method of assigning the burden of proof is consistent with basic notions of due process in the United States is beyond the scope of this Note.

163 See Carodine, supra note 97, at 1190-91.

164 See Levi-Tawil, supra note 6, at 612-14; see also Kutty, supra note 23, at 570 (discussing additional benefits of international commercial arbitration, including the parties' freedom and flexibility regarding choice of arbitrators, location of arbitration, procedural rules, and governing substantive law).

165 Southland Corp. v. Keating, 465 U.S. 1, 7 (1984) ("Such a course could lead to prolonged litigation, one of the very risks the parties, by contracting for arbitration, sought to eliminate.").

166 See Reid v. Covert, 354 U.S. 1, 17 (1957) (plurality opinion) ("This Court has regularly and uniformly recognized the supremacy of the Constitution over a treaty.").

167 See supra Part VI.B.

168 See supra Parts II, VI.A.

169 See supra Part VI.A.

170 See supra Part VI.A.

171 See supra Part V.B.

172 See Grossman, supra note 20, at 208-09.

173 See id.

174 See supra Part VI.C.

175 See Várady et al., supra note 1, at 6-12 (listing Israel, Iran, the United Kingdom, and the United States as countries belonging to the New York Convention).

98 CNLLR 493

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35 Cardozo L. Rev. 1881

Cardozo Law Review
June, 2014

Article

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RELIGION, WOMEN, AND THE HOLY GRAIL OF LEGAL PLURALISM

Table of Contents

Introduction

One of the most challenging questions the United States has faced throughout its history is how much space should be provided to religious minorities to govern themselves. Religious tribunals including Christian organizations such as Peacemaker Ministries and Beth Dins (Jewish courts) routinely resolve doctrinal disagreements, as well as commercial and family law disputes,[1] and there are now also a growing ***1882** number of forums for Islamic Arbitration.[2] While it is hard to find fault in the basic idea that parties should be permitted to structure their relationships, and adjudicate their disputes, based on shared values, the question this Article poses is whether unfettered religious autonomy runs the risk of excluding parties to religious contracts from the civil courts, thereby potentially compromising important individual liberties. This question embodies two main inquiries: first, whether a misreading of the Supreme Court's constitutional guidelines on the Religion Clauses has unnecessarily deprived the civil courts of any meaningful authority to resolve religious disputes; and second, even if courts were deemed to have the constitutional authority to review religious disputes, under what circumstances would it be appropriate for the judiciary to defer to the holdings of religious arbitral forums.

The answer to the first question is contextual and certainly depends on the specific area of dispute. However, because the push for legal pluralism is often expressed in terms of family law where the ideal of religious autonomy may come into conflict with potential violations of other important rights, this Article examines the issues of judicial authority to review religious disputes, as well as deference to religious arbitration, through the prism of a diverse selection of Jewish and Islamic divorce cases.

The second question relates to the practice of arbitration where, based on the Supreme Court's interpretation of the Federal Arbitration Act (FAA),[3] many civil courts (applauded by a growing number of scholars) readily accede to the holdings of religious arbitral bodies without paying much attention to the underlying substantive issues that shaped the original dispute. Critics of deference to religious arbitration worry that authorizing autonomous religious governance could lead to the violation

of the civil rights of individual group members through what one scholar calls "odious discrimination,"[4] and potentially impact "substantial public and third-party interests"[5] by reinscribing into law ***1883** through a back door "discrimination that has only recently been ameliorated."[6]

Part I of this Article provides a broad overview of the Supreme Court's general guidelines for evaluating the constitutionality of government actions under the Religion Clauses of the First Amendment. The inquiry under the Establishment Clause is whether resolution of disputes emanating out of a religious agreement constitutes an establishment of religion by the government. Although the landscape of Establishment Clause jurisprudence is unsettled, it seems likely that, based on the Court's latest rulings in Salazar v. Buono,[7] McCreary County, Kentucky v. American Civil Liberties Union of Kentucky,[8] and Van Orden v. Perry,[9] religious divorce cases would probably be subject to a mix of the Lemon and endorsement tests.[10] Under the Free Exercise Clause, the question boils down to whether the civil courts' resolution of religious disputes interferes with the defendant's constitutional right to exercise freely his religion.

Many of the lower courts' decisions focus on the third prong of the Lemon test and struggle with how they may resolve a religious dispute without "entanglement in questions of religious doctrine."[11] The Supreme Court offers two options for overcoming this dilemma. First, under the deference approach, courts, when reviewing internal church disputes, may defer to the holdings of the highest authority within the religious institution where the disagreement arose.[12] Second, pursuant to the neutral-principles approach, civil courts may resolve religious disputes using secular legal rules circumventing the need to rely on theological standards.[13] While the Supreme Court may have intended ***1884** that the two standards operate harmoniously, Part I.B examines whether the deference and neutral-principles approaches give rise to conflicting guidelines and cause considerable confusion and inconsistency in the lower courts. As a result, many courts may unnecessarily choose to abstain from hearing any kind of religious dispute,[14] and some scholars view the slightest cleavage in what they refer to as the Court's church autonomy doctrine with alarm.[15]

Parts II.A and II.B examine a broad cross-section of Jewish and Islamic divorce cases. The Jewish divorce cases center on the husband's refusal to grant a get, a Jewish divorce, thereby denying his wife the option of remarrying and having children within the parameters of her faith. In reviewing the get cases, this Article evaluates both whether courts may resolve these disputes and whether the remedies awarded in the get decisions, which typically entail an order of specific performance to grant a get or appear before the Beth Din, pass constitutional muster. In the Islamic divorce cases, this Article explores whether courts correctly apply the neutral-principles approach to identify a suitable secular tool with which to intervene in the parties' dispute concerning the mahr provision.[16] The mahr decisions show that when lower courts do not understand the precise nature of a religious provision, they often reach for a secular tool that bears very little resemblance to the religious article, resulting in interpretations that do not reflect the parties' intent.[17]

In Part III, having established that courts may substantively review religious disputes, this Article circles back to the task of evaluating the degree of autonomy religious arbitration forums should enjoy free of oversight from the civil judiciary. What is the big deal? One may ask. Even outside the religious paradigm, parties' rights are continuously compromised in arbitral proceedings. Surely, this is a small price to pay for an efficient system of binding arbitration. While the superficial symmetry of this argument may be appealing, the roots of the comparison are in fact rather skewed. Secular arbitration standards ***1885** share the same spirit as general civil law, whereas religious arbitration is grounded in sectarian rules that in certain areas, such as family law, profoundly conflict with civil law. Handicapping courts' oversight of a radically different and potentially discriminatory legal regime means that the individual rights of the party challenging the religious arbitration award may be compromised under rules that violate equity norms and diverge dramatically from civil standards by which he or she would ordinarily be judged in a secular forum. One possible solution to this dilemma is to permit deference to religious arbitration when there is convergence between the goals and standards of the applicable religious and secular laws, but otherwise to limit

deference and require courts to apply the neutral-principles approach when norms underpinning sectarian and secular rules diverge dramatically.[18]

The sheer scope of this topic invariably limits this Article's ambitions to raising some of the more critical issues rather than definitively resolving the contours of the law in this area. Inevitably, important questions, including the potential impact of community pressure on members to subscribe to religious norms when confronted with an opt-out scheme, will remain unexplored. Nevertheless, identifying the extent of the judiciary's authority to resolve religious disputes is not only critical to the successful implementation of a plural legal system, but also vital to everyday concerns of many Americans who use religion as an anchor for their personal relationships.

I. Supreme Court Guidance

The Religion Clauses of the Constitution provide two seemingly conflicting mandates. The Establishment Clause states, "Congress shall make no law respecting an establishment of religion," while the Free Exercise Clause forbids the passage of laws which "prohibit[] the free exercise thereof."[19] Evaluating the judiciary's authority to address religious disputes raises both Establishment and Free Exercise concerns, although Establishment Clause issues typically loom larger. This Part broadly surveys the Supreme Court's general guidelines for evaluating the constitutionality of government actions under the Religion Clauses of the First Amendment. The inquiry under the Establishment Clause is whether resolution by the judiciary of disputes emanating out of a religious agreement constitutes an establishment of religion by the government. Under the Free Exercise Clause, the question boils down to ***1886** whether civil courts' adjudication of religious disputes interferes with the defendant's constitutional right to exercise freely his religion.

A. Supreme Court Guidance on the Establishment Clause

There is no settled Supreme Court test pursuant to which the constitutionality of government actions may be evaluated under the Establishment Clause. The latest collection of Supreme Court decisions suggests, however, that Establishment Clause challenges in family law disputes would probably be subject to a mix of the Lemon and endorsement tests.[20] Some readers may object that in fact the correct standard to apply is the court's coercion test, after all what is more coercive than a court order commanding a party to engage or not engage in what some may deem purely religious acts? While this is an important observation, I propose that the Court may be willing to limit the coercion test's application to cases where the state is directly sponsoring a religious act, such as a religious prayer or the display of religious symbols. Before addressing the limitations of the coercion test in greater detail, this Article first briefly describes the Lemon and endorsement tests.

In its 1971 Lemon v. Kurtzman decision, the Supreme Court outlined a three-pronged test for evaluating whether a government action passes muster under the Establishment Clause of the First Amendment.[21] Pursuant to the Lemon test: first, the government action must "have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion;" and third, it "must not foster an excessive government entanglement with religion."[22] In Lemon, the Court struck down two state statutes that provided government funding to non-public (mostly Catholic) schools, because the statutes fostered "an impermissible degree of entanglement" between government and religion.[23]

However, since its inception in 1971, the Lemon test has come under consistent criticism as inadequate for ascertaining the constitutionality of government action under the Establishment Clause. Much of the criticism has focused on the second and third prongs of the test, prompting the Supreme Court in its subsequent decisions to attempt a synthesis of the effect and entanglement analysis by making ***1887** entanglement "an aspect of the inquiry into a statute's effect."[24] The resulting "endorsement test," pioneered primarily by Justice O'Connor, asks whether the government acted "in ways that are reasonably perceived as endorsing (or disapproving of) religion, or that are intended to endorse (or disapprove of) religion."[25] In other words, government practice must "not have the effect of communicating a message of government endorsement or disapproval of religion" to a reasonable

observer.[26] Moreover, Justice O'Connor has clarified that the endorsement test's reasonable observer is "more informed than the casual passerby," such that the test creates a more collective standard to measure "the objective meaning of the [government's] statement in the community."[27] As a result, under the endorsement test, courts are required to consider the context and "unique circumstances" of each case[28] and to treat believers and non-believers on an equal footing such that an objective observer would not think the government is endorsing any particular form of religious orthodoxy.[29]

While, the shift from the Lemon to the endorsement test has not eliminated all the inconsistency in the Court's Establishment Clause decisions, it has brought to the fore the importance of evaluating the context of a government action in its Establishment Clause analysis. In Lynch v. Donnelly, where Justice O'Connor first proposed the endorsement test in a concurring opinion, the Court upheld the constitutionality of the city of Pawtucket's display of a crèche because, "[w]hen viewed in the proper context of the Christmas Holiday season, . . . there [was] insufficient evidence to establish that the inclusion of the crèche is a purposeful or surreptitious effort to express some kind of subtle governmental advocacy of a particular religious message."[30] Five years later, when faced with another governmental display of the nativity scene, the Court's holding seemed to contradict Lynch's outcome.[31] In County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, the Court held the city's display of a crèche to be unconstitutional because, unlike the Pawtucket display, ***1888** which stood next to secular items including a plastic reindeer and a Santa Clause, Allegheny County's crèche was not juxtaposed against secular symbols and, consequently, "nothing in the context of the display detract[ed] from the crèche's religious message."[32] By contrast, the Court upheld the constitutionality of Allegheny County's display of a Hanukkah menorah in part because it was positioned under a massive Christmas tree ("a secular symbol of the Christmas holiday season"[33]), emphasizing that the display had both a "religious and secular" message, thereby minimizing the likelihood that a reasonable member of the community would believe the menorah symbolized government endorsement of Judaism.[34] The lack of consensus in the Court's Lynch and Allegheny opinions has caused deep confusion in the lower courts,[35] but suggests that the Court is more likely to uphold the constitutionality of a religious display if it is accompanied by a secular artifact.

While the Supreme Court's latest decisions in the Ten Commandment cases[36] continue to support the premise that the religious divorce disputes should be evaluated pursuant to a mix of the Lemon and endorsement tests, the Court's tepid application of the endorsement test in Salazar v. Buono[37] may prompt some observers to propose that the no-coercion principle, which deems unconstitutional any government sponsored program found to coerce religious observance, would be a more appropriate test to apply. I believe, however, that the Court may be willing to limit the coercion test's ***1889** application to cases where the state is directly sponsoring a religious act, such as a religious prayer or the display of religious symbols.

In Lee v. Weisman,[38] the Court held that clergy-led prayer at a public school graduation ceremony was "inconsistent with the . . . . Establishment Clause of the First Amendment"[39] and stated that the appropriate inquiry turned on whether "the machinery of the State" was used to "coerce" those present at the prayer event.[40] The Justices differed greatly in their understanding of what constitutes coercion, with Justice Kennedy, writing for the majority, defining coercion very broadly to include indirect psychological pressure,[41] while Justice Scalia's dissent considered only behavior that results in a direct penalty to be coercive.[42] Justice Kennedy's broad interpretation of coercion places far greater constraints on the government's use of religious symbols and worship than Justice Scalia's much narrower definition.

Several distinctions can be drawn between the types of cases the coercion test has been applied to (mostly worship and symbol cases) and religious family law disputes. First, worship and symbol cases often involve sponsorship by a state official or entity of a religious activity.[43] In Lee, as Justice Kennedy noted, the choice to include an invocation or a benediction was directly "attributable to the State," and without the state making such a selection, there would have been no such religious ceremony.[44] By contrast, in the mahr and get cases, the state plays no role in forcing the parties to enter into a religious agreement or in bringing the disputes to the courts. Instead, private individuals decide voluntarily to litigate their personal disagreements that emanate

out of religious arrangements. This distinction is important because Justice Kennedy found the "pervasive" "involvement with religious activity" by "[s]tate officials [who] direct the performance of a formal religious exercise at . . . graduation ceremonies" to be a critical element because it meant that even students who objected to the religious ceremony felt that their attendance was "in a fair and real sense obligatory."[45]

***1890** Second, Justice Kennedy's opinion in Lee strongly implies that the coercion standard embodies an element of intent in undertaking the government action: he states that the inspiration for the Establishment Clause comes from a desire to prevent the execution of policies that "indoctrinate and coerce . . . [a] state-created orthodoxy [which] puts at grave risk that freedom of belief and conscience."[46] One may reasonably extrapolate that for a majority of the Justices on the Court, in order for government action to be deemed coercive, it must have been made with the intent to promote a certain religious viewpoint. In mahr and get cases specifically, courts are not driven to issue orders of specific performance because of their support for a particular religious orthodoxy; instead they merely wish to enforce the parties' original contractual arrangement.

This points to the final distinction between the impact of applying the coercion standard to the worship and symbol cases versus the religious family law cases. In the former group, the debate principally centers on whether the government is violating the Religion Clauses of the First Amendment, but does not directly implicate the denial of other important rights to individuals allegedly coerced to participate in the state sponsored religious activity. In the religious divorce cases, however, any concern about whether judicial review of religious decisions violates the Religion Clauses needs to be balanced against a converse worry regarding whether the denial of judicial review could result in loss of other compelling interests, such as gender equality. Courts' abstention from adjudicating religious family law decisions may implicitly put the government in the position of rubber-stamping religious decisions (especially religious arbitral awards), which often times may be grounded in theological rules granting women substantially fewer rights, or at least vastly different rights, than men.[47]

For the above reasons, I propose that both Justice Kennedy's and Justice Scalia's versions of the coercion test would be inappropriate for evaluating the constitutionality of government actions in religious family law disputes. I believe that the Supreme Court's guidance continues to call for an evaluation of the lower courts' get and mahr decisions according to a mix of the endorsement test and a truncated Lemon test. However, because many lower courts focus on the third prong of the Lemon test and struggle with how religious disputes may be resolved without "entanglement in questions of religious doctrine,"[48] Part I.B offers a brief examination of the Supreme Court's guidance on ***1891** how this dilemma may be addressed. In addition, prior to turning specifically to the religious divorce cases, Part I.C will address the High Court's guidance on the Free Exercise Clause to determine whether a plausible range of remedies ordered in religious family law cases could potentially violate defendants' constitutional rights to freely practice their faith.

B. The Deference Approach vs. The Neutral-Principles Approach

The Supreme Court's Religion Clauses jurisprudence limits the judiciary's ability to decide whether religious beliefs make sense,[49] are true,[50] or are consistent with the teachings of a particular religious doctrine,[51] but permits courts to use "neutral principles of law" to interpret religious agreements in "purely secular terms."[52] The Court first prohibited intrusion into religious belief in Watson v. Jones,[53] in what eventually came to be known as the deference approach, and reiterated its position in some of the modern church-dispute cases.[54] Subsequently, the Court articulated the neutral-principles doctrine, which empowers the judiciary to intervene in religious disputes that reach beyond issues of belief by using secular legal standards without recourse to theological doctrine.[55] In Jones v. Wolf, the Supreme Court held that the neutral-principles-of-law approach is "consistent" with constitutional restrictions and will "free civil courts completely from entanglement in questions of religious doctrine, polity, and practice."[56] The Jones majority acknowledged that the use of neutral principles "requires a civil court to examine certain religious documents," but stressed that this could be done by evaluating "the document in purely secular terms."[57] Overall, the Jones majority concluded that "the promise of nonentanglement and neutrality inherent in the neutral-principles ***1892**

approach more than compensates for what will be occasional problems in application."[58] In this way, the Court clarified that its earlier decisions did not advocate a blanket non-justiciability approach to Religion Clauses jurisprudence.

Although the Supreme Court has drawn the line of non-interference at belief, some lower courts have misunderstood these guidelines and have adopted the position that the Court's Religion Clauses jurisprudence gives the judiciary the option to choose between the deference and neutral-principles approaches to ascertain whether they could intervene in a religious dispute.[59] This has prompted a number of courts to expand the deference approach beyond internal church disagreements concerning belief and apply it to any dispute emanating out of a religious agreement. Courts that reject the neutral-principles doctrine feel obligated to either recuse themselves from adjudicating a religious dispute or to defer to the holdings of the highest authority within the parochial institution where the disagreement arose (including any related arbitral body).[60] This has impacted a very broad range of disputes including family law matters,[61] tort cases,[62] and employment practices.[63]

Proponents of the deference approach allude to judicial incompetence and separation of church and state as the key reasons for prohibiting courts from intervening in religious disputes. Characterizing religion as a private matter, beyond the grasp of civil authorities, might be convincing if such a charge is limited solely to ***1893** matters of belief[64] (such as the divinity of Christ) but it quickly raises concerns when it is expanded to include religious practices that result in harm to others or in some manner violate the rights of another party.[65] These polar-opposite positions are well reflected in the exchanges between the Justices in some of the church property disputes. Writing in support of deference for the majority in Serbian Eastern Orthodox Diocese v. Milivojevich, Justice Brennan observed: "ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of 'fundamental fairness' or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance."[66]

The facility with which Justice Brennan strips church members of their legal rights is not lost on Justice Rehnquist, who, in his dissent warns against the judiciary's "blind deference" to church hierarchy, thereby becoming "handmaidens of arbitrary lawlessness."[67] Justice Rehnquist declares:

> [s]uch blind deference, however, is counseled neither by logic nor by the First Amendment. To make available the coercive powers of civil courts to rubber-stamp ecclesiastical decisions of hierarchical religious associations, when such deference is not accorded similar acts of secular voluntary associations, would, in avoiding the free exercise problems petitioners envision, itself create far more serious problems under the Establishment Clause.[68]

In addition to the issue of competency, proponents of deference also argue that their approach protects the separation of government and religion. Implicit in this argument is the notion that the secular sanctity (and thereby political viability) of our republic would somehow be threatened if civil courts intervened in religious disputes. The premise that permitting the judiciary a foray into religious disputes would somehow imperil our democracy merits two observations. First, as already discussed, the Supreme Court has sanctioned the use of the neutral-principles doctrine precisely to facilitate judicial intervention in most religious practice cases by using civil legal tools to avoid the charge ***1894** of entanglement or of "establishing churches."[69] As Justice Rehnquist succinctly summarized, while "[t]here are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intra-church disputes. . . . [the] Court never has suggested that those constraints similarly apply outside the context of such intraorganization disputes."[70]

Second, on a practical level, any alarm at the consequences of entanglement may, to some extent, be mitigated by the reality that courts have historically, on occasion, addressed religious questions in choice-of-law decisions, which are concerned with identifying which state's or country's laws apply at the time of dispute resolution. Religious choice-of-law questions often

involve the judiciary in substantive examination of religious issues, with frequent use of experts to help a court decide between various religious standards and interpretations.[71]

Perhaps one may distinguish choice-of-law decisions on the basis that, unlike interpretations of the Torah and the Koran, examination of foreign laws does not run the risk of endorsing a particular view of religion because it can be achieved through the use of experts who practice in that system or scholars who study the particular country's laws. This is a fair point and certainly will be relevant to any evaluation of the constitutionality of a government action under the endorsement test. It does not, however, detract from the comfort the choice-of-law decisions may provide by highlighting that the courts have an established tradition of addressing rules emanating from religious standards without raising concerns about excessively entangling the government with religion. Moreover, foreign choice of law questions involving religious standards often do oblige courts to select from amongst competing doctrinal interpretations, whereas in the mahr and get cases, courts would use experts merely to find an appropriate secular instrument with which to resolve the dispute. The bulk of the courts' decisions could then turn on accepted secular principles of American jurisprudence.

***1895** I am not suggesting, therefore, that the choice-of-law decisions provide license for courts to use religious law to resolve disputes, but rather that they argue against an overtly strict interpretation of the deference approach, whereby courts must altogether abstain from hearing religious disputes. Indeed, Justice Blackmun's majority opinion in Jones unequivocally recognizes the state's "obvious and legitimate interest" in adjudicating religious disputes and the provision of "a civil forum" where such disputes can be resolved conclusively.[72] Consequently, the important inquiry is not whether courts should intervene, but, exempting solely ecclesiastical issues of belief, the question is how that intervention should be conducted. To that end, the choice-of-law precedents not only reinforce recourse to the neutral-principles doctrine to resolve religious disputes, but also stand for the premise of interpreting the Court's guidelines in Jones broadly enough to allow courts to use resources (including expert testimony) to better identify appropriate secular tools that more closely resemble the religious rule undergirding the dispute.[73]

Thus, the Supreme Court's guidelines governing the judiciary's ability to review disputes emanating out of religious agreements do not mandate complete deference in all matters to religious bodies, nor do they offer the lower courts the option to choose between the deference and neutral-principles-of-law approaches. Rather a more complete reading of the Court's analysis indicates that "religious institutions are properly subject to neutral principles of law,"[74] which the judiciary may interpret broadly when reviewing religious disputes. Before turning to the religious divorce cases, Part I.C briefly addresses the Supreme Court's guidance on the Free Exercise Clause.

C. Supreme Court Guidance on the Free Exercise Clause

In its landmark Free Exercise Clause decision, Employment Division v. Smith,[75] the Court held that religious objectors are not entitled to an automatic exemption from a "neutral law of general applicability," which does not intentionally discriminate on the basis of religion, but only incidentally burdens religion.[76] The Court went on to ***1896** explain that such neutral laws are not required to pass the strict scrutiny standard of review, but may be evaluated under the rational relationship test.[77] The opinion created an immediate outcry and remains controversial to this day because it was deemed by many scholars to have overturned an established cornerstone of constitutional jurisprudence.[78] This unanimity of condemnation is surprising for two reasons. First, the Court's Free Exercise jurisprudence has followed a meandering path and was not set in stone in 1990, as many of Smith's detractors assume.[79] Second, when examined closely, Smith's holding is narrow and ring-fenced by an impressive list of qualifications.

Turning first to the issue of precedent, Smith echoes the Court's 1878 decision in Reynolds v. United States,[80] which addressed the Mormon Church's challenge to polygamy laws.[81] In that decision, the Court held that religious objectors were not entitled

to exemptions from generally applicable laws under the Free Exercise Clause.[82] The Court went on to say that to recognize such exemptions "would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself."[83] "[U]nder such circumstances," the court concluded, the "[g]overnment could exist only in name."[84]

Almost ninety years later, Free Exercise jurisprudence shifted when, in the 1963 decision Sherbert v. Verner,[85] the Court held that government actions that substantially burdened religious exercise were ***1897** required to pass strict scrutiny[86] and sincere religious objectors had a presumptive right to an exemption under certain circumstances even if the legislation did not provide for one.[87] Although, in theory, following Sherbert, the government had to demonstrate that a law was the least restrictive means of serving a compelling government interest, the Justices' dramatic shift towards accommodating religious objectors was somewhat ameliorated in practice because the Court's application of the strict scrutiny test in Religion Clauses jurisprudence was much more diluted than its use of the standard in race classifications and content-based speech restrictions.[88] As a result, the Court rejected most requests for exemption in its Free Exercise cases.[89] Thus, seen in this historical context, Smith is not an apocalyptic constitutional anomaly, but merely hails a return to established Free Exercise Clause jurisprudence as articulated in Reynolds (permitting exemptions to religious objectors only when legislation provides for one) after only a brief interlude when the Court entertained the constitutional exemption model set forth in Sherbert.

In addition to taking its cue from Supreme Court precedent, Smith's holding is fairly narrow and limited by a number of qualifications. As a result, the different approaches set out in Smith and Sherbert may reflect a mirage[90] since, in practice, the rational relationship test applied to government legislation in Smith is not very different from the weak strict scrutiny test applied to earlier religious practice cases under Sherbert.[91] The majority in Smith alludes to this when it declares, "[w]e have never invalidated any governmental action on the basis of the Sherbert test except the denial of unemployment ***1898** compensation."[92] First, Smith's holding only applies to neutral laws of general applicability. In other words, while it may be a little harder under Smith for religious objectors to obtain an exemption to neutral laws because the government has to only demonstrate that the law passes constitutional muster under the rational relationship test, the decision leaves untouched laws that intentionally discriminate on the basis of religion, which must still be evaluated pursuant to the strict scrutiny test outlined in Sherbert.[93]

Second, Smith does not change the law regarding government action that impedes religious belief as opposed to religious acts. The majority confirmed that, most importantly, "[t]he free exercise of religion means . . . the right to believe and profess whatever religious doctrine one desires," but that the same blanket protection does not extend to religious conduct.[94] In other words, Smith, where applicable, restores the distinction made in earlier Supreme Court decisions preceding Sherbert (such as Reynolds) pursuant to which the First Amendment gives far greater protection to religious belief than to religious conduct. Third, the Smith decision leaves in place higher levels of protection for hybrid rights involving "the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech . . . or the right[s] of parents."[95]

Fourth, the decision gives legislatures full discretion to provide or deny religious exemptions to general secular statutes.[96] As such, the restrictions under Smith only apply to neutral laws where the legislature has chosen not to provide any exemptions to religious objectors. Finally, ***1899** the Smith majority confirmed that religious and non-religious objectors may not be treated differently by declaring that "where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason."[97]

When looked at comprehensively, Smith's narrow holding limits exemptions to neutral laws, which do not intentionally discriminate either against religious practice or between religious and non-religious objectors, and at the same time do not

negatively impact other constitutional protections. Seen from this perspective, Smith did not in any practical manner overrule Sherbert, but rather simply returned to the legislature the decision to exempt any particular privilege Sherbert may have required.

Despite the limitations inherent in the Smith decision, it generated enough shock waves to prompt Congress to pass the Religious Freedom Restoration Act (RFRA) of 1993[98] to legislatively reverse Smith and restore the standards under Sherbert's constitutional exemption model.[99] In City of Boerne v. Flores,[100] however, the high court held that the RFRA exceeded congressional power regarding state law, but seemingly left the law in place as far as it impacts federal legislation.[101] In the wake of Boerne, several states have passed RFRAs requiring exemptions from state and local laws unless the state law can pass the strict scrutiny standard of review.[102] A number of other state supreme courts have held that their state constitutions are required to follow the Sherbert/Yoder model, and some states remain undecided between Sherbert/Yoder or Smith. Thus, to fully decipher Free Exercise issues raised by courts' adjudication of religious family disputes, Part II.A undertakes the inquiry pursuant to both the strict scrutiny and rational relationship standards of review. In states that have not passed an RFRA, and the government action is deemed neutral, the lower standard of review adopted in Smith will be applied to evaluate the constitutionality of the government action, while states that have passed an RFRA will undertake their analysis pursuant to the strict scrutiny standard outlined in Sherbert.

*1900 II. Jewish and Islamic Divorce Cases

This Part examines two sets of family law decisions to chart how lower courts have addressed potential conflicts between gender equality and religious liberty. Part II.A, which reviews get divorce cases, examines how lower courts have applied the Supreme Court's guidance on the justiciability of religious disputes, both to gauge whether the judiciary may review these disputes and also to determine whether remedies awarded in the get decisions, which typically entail an order of specific performance to grant a get or appear before the Beth Din, are constitutional.

Part II.B, which reviews a set of mahr decisions,[103] probes a little deeper into whether courts correctly apply the neutral-principles approach to meet the challenge set forth in Jones to adjudicate a religious dispute "in purely secular terms."[104] The majority in Jones obviously could not decree which secular terms should be used in a specific dispute, but logic dictates that the neutral principle selected should parallel the parameters of the religious provision in order to reflect the intent of the parties. The mahr decisions show that when lower courts do not understand the precise nature of a religious provision, they can sometimes reach for a secular tool that bears very little resemblance to the religious article. At a minimum, this results in a great deal of inconsistency in lower court decisions, and at its worst, in serious misinterpretation of the parties' contractual arrangement. This Article considers whether, to facilitate the selection of an appropriate secular legal tool to analogize to the mahr, courts should interpret Jones more broadly,[105] giving themselves access to additional resources, such as expert testimony to better understand the nature of the mahr. Of course, any broad reading of the judiciary's authority to review religious disputes must remain within the neutral-principles approach of Jones to prevent courts from making the mistake of basing their decisions on religious doctrines discussed by the experts.

A. Get Divorce Cases

Under certain branches of Judaism, a divorce is not final until the husband voluntarily gives a get to his wife, and she, in turn, accepts it.[106] Without a get, "the wife [becomes] an 'agunah' (a 'tied' woman)" and is ***1901** not allowed to marry again.[107] If she does marry, she and her children (referred to as mamzerim, "illegitimate") are stigmatized for generations.[108] In many disputes, the husband may strategically refuse to grant a get to exact a better divorce settlement from the wife.[109]

1. Get Divorce Cases and the Establishment Clause

In order to determine if the judiciary may resolve get disputes and evaluate the constitutionality of remedies awarded in those cases, it is helpful to divide the decisions into three overlapping categories. The first category encompasses cases where the parties have entered into express settlement agreements with explicit language that the husband will grant a get to the wife (or will appear before the Beth Din, a Rabbinical tribunal) at the time of a civil divorce.[110] In the second group of cases, where the parties have not entered into an express agreement, the wife typically argues that the language in the ketubah, a traditional Jewish marriage contract, gives rise to an implied contractual obligation by the husband to execute a get.[111] In the third class of cases, the wife petitions the court to order the husband to abide by his agreement to ***1902** resolve any dispute relating to Jewish law before the Beth Din, rather than specifically grant a get.[112]

When adjudicating disputes from the first category of cases, courts have shown a consistent willingness to grant the wife's equitable action for specific performance because the request flows from an express agreement between the parties. In general, in this first group of decisions, the courts do not dwell on the religious nature of the get but focus on using neutral principles of law to determine if the parties entered into a contract on the subject of the get and then award the remedy the parties outlined in their arrangement. For example, in Waxstein v. Waxstein, the parties executed a separation agreement as part of their divorce negotiation pursuant to which the husband agreed that "the parties shall obtain a Get from a duly constituted Rabbinical court."[113] The court rejected the husband's argument that "the court may not enforce a contractual provision requiring a spouse to obtain a 'Get"' because it would "compel [him] to practice a[] religion."[114] The court stated that it would be awarding the order of specific performance pursuant to the parties' own separation agreement, which addressed the ***1903** issue of the get[115] and noted that the validity of orders of specific performance to grant a get had already "been recognized in [New York]."[116]

Any disagreement in the lower court decisions in the first category of cases focuses on marginal issues, such as whether any additional consequences, including a term of imprisonment or a fine, should be imposed on the defaulting party. In Kaplinsky v. Kaplinsky,[117] for example, the husband, who was party to a settlement agreement wherein he had voluntarily stipulated that he would "remove any and all barriers to the wife's remarriage" at the time of divorce, refused to award a get.[118] The New York Appellate Court upheld the lower court's contempt and imprisonment orders, as well as the denial of all economic benefits, until the husband purged himself of the contempt.[119] The court rejected the husband's contention that the lower court's hearing on the wife's contempt application regarding the get violated statutory and constitutional standards because it dealt with a "religious issue."[120] Instead, the court ruled that the lower court had "properly held the former husband in contempt of court for his failure to deliver [to] the former wife a Get pursuant to the stipulation of settlement entered into by the parties in open court."[121] A number of other decisions also reflect the Waxstein-Kaplinsky approach, upholding the parties' arrangement that the husband will award a get at the time of divorce as memorialized in a written divorce or settlement agreement.[122]

In the second category of cases, the lower courts are more divided when faced with the question of whether, in the absence of an express ***1904** agreement, the general language of the ketubah gives rise to an implied contractual arrangement to give a get at the time of a civil divorce.[123] Typically, in the ketubah, the parties agree to be bound by "the laws of Moses and Israel," and the question becomes whether "the laws of Moses and Israel" mandate the granting of a get.[124] Faced with this language, some courts opt for strict abstention on the grounds that any examination of a religious text is unconstitutional, while others attempt to use the neutral-principles-of-law approach to interpret the secular aspects of the ketubah. Decisions that do not find any Establishment Clause impediments hold that orders of specific performance to grant a get or appear before the Beth Din are constitutional under both the tripartite test in Lemon and the endorsement test.

Under the first prong of the Lemon test, some lower courts hold that an order of specific performance to grant a get may be deemed to have several secular purposes, including "enforcing a contract between the parties. . . . [,] promot[[[ing] the amicable settlement of disputes . . . [, and] mitigat[ing] the potential harm to the spouses and their children caused by the process of legal dissolution of marriage."[125] Since the Supreme Court has not, to date, evaluated a dispute emanating out of a religious

divorce, one cannot declare with certainty what it would deem a permissible secular purpose in the get cases. Still, the Court's past decisions may provide some insight into how it may evaluate an order of specific performance to grant a get under the first prong of the Lemon test. To this end, the Supreme Court has stated that it would accept a state's declaration of a secular purpose as long as it is "sincere and not a sham."[126] The Court has even noted that government action that directly benefits religious institutions (such as state funding of tuition vouchers, flowing largely to religiously affiliated schools) has a secular purpose.[127] ***1905** In comparison, it seems plausible that courts' use of neutral principles of law to interpret the secular parts of a ketubah will be deemed to serve a less religious purpose than funding voucher programs that profit sectarian schools. As a result, it is possible the Supreme Court may accept that the courts' sole and sincere goal is to resolve the claimants' dispute rather than a sinister agenda to benefit or discredit a particular religion.[128]

As part of their examination of the second prong of the Lemon test, some lower courts reason that an order of specific performance to grant a get "neither advances nor inhibits religion,"[129] but rather, its "principal or primary effect" is to further the secular purposes stated above.[130] Again, because the Supreme Court has not ruled directly on get cases, it is impossible to be certain whether it would classify an order of specific performance as a type of government action that advances or inhibits religion. Past examples of "impermissible primary effect[]" include "[p]referential financial benefits for religion,"[131] while "[b]enefit[s] flowing to religious speakers" in order to give them the "same access to government property as is given to other speakers" constitutes a permissible primary effect.[132] In Texas Monthly, Inc. v. Bullock, the Court struck down as an impermissible primary effect, preferential sales tax exemptions for religious magazines,[133] but, six years later, upheld, in ***1906** Rosenberger v. Rector & Visitors of University of Virginia, the constitutionality of providing funds to permit religious speech a voice in a public forum, so long as the venue was equally open to non-religious and anti-religious speech.[134] Unlike the provision of preferential tax exemption to religious magazines, which clearly favors, and therefore advances, the financial welfare of the beneficiary religious institutions, awarding an order of specific performance to grant a get or to appear before the Beth Din does not advantage Judaism, but instead has the primary effect of supporting a host of secular goals outlined above. On the other hand, the tone of the Rosenberger decision (even though adjudication of get disputes does not touch directly on religious speech) suggests that the justices may be receptive to giving litigants the same access to one of our most public forums, the civil courts, irrespective of whether their disputes emanate out of a religious agreement or a secular arrangement.

The third prong of the Lemon test prohibits only "excessive government entanglement with religion," but does not call "for total separation between church and state."[135] In Agostini v. Felton,[136] the Court reaffirmed this perspective by noting that "[n]ot all entanglements . . . [[[between church and state] have the effect of advancing or inhibiting religion. . . . Entanglement must be 'excessive' before it runs afoul of the Establishment Clause."[137] Many of the lower court decisions focus on this prong of the Lemon test and hold that awarding an order of specific performance to grant a get does not result in excessive entanglement with religion, because, pursuant to the mandate in Jones, the court can resolve the dispute using neutral, "well-established principles of contract law to enforce the agreement made by the parties."[138]

Once again, since the Supreme Court has not directly addressed a get dispute, one can only extrapolate from its other Religion Clauses cases whether it would view the granting of an order of specific performance to give a get or appear before the Beth Din as excessively entangling the government in religious affairs. Generally, based on the standards articulated in Lemon, Agostini, and other related decisions, excessive entanglement occurs when there is a need for ongoing state supervision of religious programs or if the state meddles in purely ***1907** doctrinal matters. For example, the Court has held that provision of remedial education, guidance, and job counseling services by public school employees to low-income students attending qualified private religious elementary or secondary school does not constitute excessive entanglement.[139] On the other hand, the Court has found excessive entanglement when the government supervises religious institutions and programs too closely[140] or when it discriminates amongst denominations.[141] Since, in most of the get disputes, the court awards only a single order of specific performance without assigning itself any continuing surveillance duties, usually there is no need for ongoing state

supervision. Were a court, however, to take an active role in establishing the Beth Din or directing the form of the get document, it would surely raise Establishment Clause alarm bells.[142]

Nevertheless, lower court decisions that rely on the general language of the ketubah to find an implied contractual agreement to give a get do risk enmeshing the courts in a doctrinal analysis and thereby face a challenge under the third prong of the Lemon test. While the neutral-principles approach may allow courts to find the basic elements of a contract in these cases, it is not always evident how the courts can decipher what the parties agreed to in that contract without some exploration of what "the laws of Moses and Israel" have to say regarding the granting of a get. In other words, a court may not be able to use "purely secular terms," as Jones requires, to examine what many would view as disputed questions of religious doctrine, namely whether pursuant to "the laws of Moses and Israel" a husband may be forced to grant a get to his wife. As a testament to this difficulty, courts looking to grant the wife's request for an order of specific performance based on the language in the ketubah often base the core of their analysis on expert testimony by rabbis.[143]

As a result, some lower courts take the view that the judiciary is prohibited by the Religion Clauses from interfering in get disputes that rely on the general interpretation of the ketubah.[144] From this ***1908** perspective, deciding what "the laws of Moses and Israel" requires is a quintessential example of something that cannot be determined by reference to "neutral principles," because it requires the resolution of a contested religious question.[145] Ironically, however, the set of decisions that seek to recuse the judiciary from adjudicating religious disputes may risk becoming even more entangled in theological analysis by trying to establish the religious underpinning of a get.[146] The Supreme Court warned against this in Jones and suggested that "a rule of compulsory deference" to religious institutions may cause even greater entanglement than the application of neutral principles of law.[147]

The issue in most of the first and second category cases is whether the courts are constitutionally empowered to interpret the ketubah, or the parties' express agreement related to the ketubah, to order the husband to grant a get or cooperate with the Beth Din. In general, these decisions do not confront directly the question of deference to religious tribunals (in this case the Beth Din). The third category of cases, led by the landmark decision Avitzur v. Avitzur, does precisely that and asks whether the parties' agreement embodied in the ketubah to submit all controversies between husband and wife regarding "the standards of the Jewish law of marriage" to the Beth Din is enforceable.[148]

The Avitzur majority first acknowledges that the judiciary may not consider disagreements centered purely on religious belief, but goes on to recognize that, under Jones v. Wolf, courts may use the "neutral principles of law" approach to resolve "religious disputes which do[] not entail consideration of doctrinal matters."[149] Next, the opinion notes that, when crafting a remedy, the mere fact "that the obligations undertaken by the parties . . . are grounded in religious belief and practice does not preclude enforcement of [the ketubah's] secular ***1909** terms."[150] To that end, the Avitzur majority found that the parties' contract to submit their marital dispute to a Beth Din constituted a secular arbitration agreement, which the court was empowered to adjudicate under Jones.[151] The court reasoned that it avoided "excessive entanglement between church and State" by relying on "neutral principles of contract law, without reference to any religious principle," to award the wife's request for specific performance to submit to the jurisdiction of the Beth Din.[152] The majority also repeatedly pointed out that it was not ordering the husband to award a get, but merely enforcing the parties' contractual agreement to submit to religious arbitration.[153] In light of all the shortcomings of the second category of decisions and their tendency to risk lapsing into doctrinal analysis, Avitzur may reflect a more tenable approach to reviewing religious disputes.

As stated earlier, in some of its religion clauses decisions, the Supreme Court has largely ignored the three-pronged Lemon test and relied on the endorsement test, which asks whether a reasonable observer would conclude that a state action endorses (or disapproves) or merely accommodates religion. Thus, within the context of the get cases, the appropriate inquiry under the endorsement test is whether a reasonable observer would view awards of orders of specific performance as either an endorsement

of Judaism, because it favors Orthodox and Conservative Jewish women, or a condemnation of Judaism, by sending the message that the husband's power to withhold divorce is unjust. As described earlier, the Supreme Court, in Allegheny and Lynch, emphasized the importance of "context" in Establishment Clause analysis and concluded that an objective observer would not view a display of the crèche as an endorsement of religion if it were presented alongside other secular items.[154] Given that the crèche, which communicates one of the central messages of Christianity, "that God sent His son into the world to be a Messiah,"[155] may be deemed secular, it is not far-fetched to suggest that the Court will also uphold the non- ***1910** sectarian act of awarding orders of specific performance in get cases, as it can be justified on several secular bases. Instead of viewing the judiciary's actions in get cases as either endorsing or condemning religion, a reasonable observer may consider orders of specific performance as remedies crafted based on the parties' own agreement to (1) support general standards of gender equality in family law, (2) uphold the freedom of contract and encourage settlement of disputes in divorce cases, and (3) level the playing field for Orthodox and Conservative Jewish women (regarding their right to remarry). Furthermore, because, as part of its guidance on the Establishment Clause, the Supreme Court has stated that the judiciary must treat believers and non-believers equally,[156] courts may in fact fail the endorsement test if they close their doors to litigants who are party to a religious agreement, because they would be excluding believers from a very important public forum.

The Supreme Court's overall guidance on the Establishment Clause does not, by in large, counsel abstinence from the neutral interpretation of contracts, even if the contracts address religious disputes. Consequently, a broad range of remedies awarded in religious family law cases may be deemed constitutional, although courts should be more disciplined and rely solely on neutral principles of law in crafting their decisions. Understandably, courts are most comfortable with adjudicating these cases if the parties' agreement is encapsulated in an express settlement contract or if the agreement between the parties involves a commitment to appear before the Beth Din rather than specifically to grant a get. Perhaps, inevitably, courts betray the greatest anguish when resolving the second category of cases where the parties' understanding regarding a get must be implied from the language of the ketubah rather than a separate settlement agreement. When confronted with this dilemma, some courts abstain from adjudicating get disputes in order to avoid entanglement in doctrinal analysis under "the laws of Moses and Israel," while others attempt to apply the neutral-principles-of-law approach to interpret the secular parts of the ketubah in order to find an implied obligation for the husband to grant a get to the wife.

2. Get Divorce Cases and the Free Exercise Clause

Concurrent with an Establishment Clause defense, husbands in get disputes often also assert that judicial orders of specific performance violate their rights to freely exercise their religion. Generally, the ***1911** defendant husband argues that because, under Jewish law, the get has to be granted voluntarily, an order of specific performance interferes with his prerogative to choose to give or withhold a get.[157] A few husbands make the opposite argument, positing that, as liberal Jews they should not be forced to practice the tenants of Orthodox Judaism, which they find "discriminatory" and "antimodern."[158]

Free Exercise challenges in religious family law disputes could potentially be evaluated under either the standard set forth in Smith or Sherbert's tepid strict scrutiny standard. As outlined above, in Smith, the Supreme Court held that for the purposes of Free Exercise analysis, religious objectors are not entitled to an automatic exemption from a "neutral law of general applicability," which does not intentionally discriminate on the basis of religion, but only incidentally burdens religion.[159] The Court went on to explain that such neutral laws are not required to pass the strict scrutiny standard of review, but may be evaluated under the rational relationship test.[160] On the other hand, if judicial remedies in religious divorce cases are not characterized as neutral and instead are deemed to intentionally discriminate on the basis of religion, they must pass the strict scrutiny test outlined in Sherbert.

Smith's detractors may object that its holding has no bearing on get disputes because Smith is limited to disputes involving government legislation, not contractual arrangements between private parties. In fact, however, courts have applied Smith to disputes emanating out of private contractual arrangements to protect state priorities, such as the state's interest in the general

economic order.[161] Other objectors may ***1912** declare that get disputes are simply not concerned with a "neutral law of general applicability." While it is true that most of the get decisions do not deal with direct violations of legislation, it is possible to characterize states' regimes of family law as a set of neutral laws of general applicability. In this context, the important question is whether the judiciary's abstinence from reviewing Jewish divorce cases, which would result in rubber-stamping the husband's refusal to grant a get, is the equivalent to giving him a religious exemption to civil family law. It is possible to draw this conclusion because accommodating the husband's refusal to grant a get potentially reinserts discriminatory standards into the balanced framework of divorce law, often giving recalcitrant partners a bargaining chip for negotiating better terms as part of their overall divorce settlement.[162] On the other hand, awarding the order of specific performance simply maintains a neutral family law regime and disarms any negotiating advantage the husband may have. Just as in Smith, where the Supreme Court held that Free Exercise rights may not be used as a shield against otherwise criminal activity,[163] the Religion Clauses should not be deployed to cloak otherwise sexist behavior.

Denying a husband's automatic exemption from gender-neutral family law standards also dovetails with the Supreme Court's guidance in Jones on the Free Exercise defense. The Jones majority rejected the argument that "[t]he neutral-principles approach . . . [would] 'inhibit' the free exercise of religion," and instead emphasized that "the neutral principles approach," had the required "flexibility . . . to reflect the intentions of the parties."[164] The Court in Jones noted that church members could at any time modify deeds to express how church property ownership would be allocated such that the courts' application of neutral principles would inevitably result in outcomes that reflected the parties' wishes.[165] Similarly, in crafting orders of specific performance in get cases, courts use neutral principles of contract law to decipher the parties' intent from their own contractual arrangement, "[c]ompelling a party to do nothing more than what that party has already promised," which, as one scholar noted, "hardly offends the spirit of individual autonomy that lies at the root of the First Amendment."[166]

***1913** Smith is not applicable, however, in jurisdictions that have passed state RFRAs or adopted the Sherbert/Yoder state constitutional models. As such, an order of specific performance would have to pass the strict scrutiny test outlined in Sherbert, pursuant to which the party objecting to the awarding of the remedy must first establish that the order constitutes a substantial burden on his religious belief, shifting the burden of proof to the other party, who must then demonstrate that an order of specific performance is the least restrictive means of achieving a compelling governmental interest. As noted earlier, the strict scrutiny test applied in Religion Clauses jurisprudence is a much weaker version of the same test applied in equal protection- or speech-based analysis.[167] As part of its Free Exercise Clause jurisprudence, the Supreme Court has found a range of objectives, such as "maintaining a sound tax system" free of religious exceptions[168] and "eradicating racial discrimination in education,"[169] to constitute compelling government goals. Extrapolating from these earlier decisions, it does not seem implausible to suggest that, preventing gender discrimination in divorce law and preserving a fair family law regime (including protecting the right to marry or remarry, which the Supreme Court has categorized as a fundamental right[170]) would constitute compelling goals, especially under the lower strict-scrutiny standard applied in religion cases. In addition to sustaining the non-discriminatory framework of family law, other compelling goals, which may be served by upholding orders of specific performance, include maintaining the judiciary's ability to adjudicate religious disputes using neutral principles of contract law, thereby giving believers and non-believers equal access to the courts, and restraining criminal behavior, such as extortion, amongst the divorcing parties.

Finally, granting an order of specific performance in get cases is the least restrictive means of achieving the above compelling goals. Unlike Sherbert, where the Court held that the risk of fraudulent claimants "feigning religious objections to Saturday work" would not "dilute the unemployment compensation fund,"[171] hampering the judiciary's ability to oversee religious disputes using neutral principles of law would certainly tarnish the state's "obvious and legitimate interest"[172] in ***1914** adjudicating these disagreements and would deny parties to Jewish marriage contracts a "civil forum"[173] for resolving their dispute.[174]

On balance, it appears that challenges to judicial orders of specific performance pursuant to the Free Exercise Clause stand on a weak leg under both Smith and Sherbert. Furthermore, enforcing absolute religious liberty, in disregard of Smith and Sherbert, would mean that "harm to women yields to religious freedom without judicial review."[175] Conversely, permitting judicial intervention in religious disputes using neutral legal tools preserves the jurisdiction of the courts and affords an impartial civil forum where litigants can resolve their disputes based on non-discriminatory standards. Often times, this approach more appropriately reflects the parties' own contractual arrangement while at the same time maintaining the standards of gender equality that frame modern family law.

B. Islamic Divorce and Mahr Provisions

Another area of family law disputes where courts have struggled to honor private religious agreements within the boundaries of Religion Clauses jurisprudence, without forfeiting legal safeguards against gender discrimination, involves mahr provisions in Islamic marriage contracts. The Qur'an defines the mahr as a gift to the bride for entering into the marriage contract.[176] In the English translation of the portion of the marriage ceremony that relates to the mahr, the woman states "I give myself to you in marriage for the marriage gift which is 'x,'" and "[i]n place of 'x,'" the parties enter the amount of the agreed-upon mahr.[177] Much like the get decisions, the mahr cases also raise concerns about whether their adjudication excessively entangles the judiciary with religion or impermissibly interferes with the litigants' rights to freely practice their religion. However, because, with minor nuances, the analysis regarding these broad issues are the same as those already addressed in the get decisions, this Part narrows its lens further and focuses on whether courts meet Jones's challenge of finding a suitable secular tool that closely parallels the religious provision underpinning the agreement to use as the basis for resolving the dispute on civil ***1915** grounds. The mahr decisions show that when lower courts do not understand the precise nature of a religious provision, they often choose a secular tool that bears very little resemblance to the religious article, handicapping the judiciary's ability to reach a holding that reflects the parties' intent.

Some scholars have suggested that Jones is too vague to help courts identify specifically which "purely secular terms"[178] should be used in each instance of resolving a religious dispute, thereby limiting its predictability value.[179] Consequently, they reason, courts end up employing too wide a variety of, often inappropriate, secular tools to resolve strikingly similar disputes causing confusion and uncertainty.[180] This Article's findings suggest, however, that the reason the lower courts render inconsistent decisions, is not because the Supreme Court's directive in Jones is inherently flawed, but rather because lower courts interpret Jones too narrowly, leaving little room to understand the nature of the religious provision underpinning the dispute. Thus handicapped, courts are often unable to identify an appropriate civil legal tool to analogize to the religious article.

As noted earlier, the Jones majority categorically recognized the state's "obvious and legitimate interest" in providing a "civil forum" where religious disputes could be resolved conclusively.[181] Also, as highlighted earlier, the judiciary has occasionally employed resources such as expert testimony as part of its choice-of-law decisions to understand religious standards without raising Establishment Clause concerns.[182] The combination of Jones's directive and the history of religious choice-of-law decisions points to an approach whereby civil courts can resolve religious disputes by first taking the opportunity to understand the religious instrument at issue and then, based on that comprehension, identify the closest matching secular tool with which to resolve the dispute.[183] In this way, courts would not base their decisions ***1916** on any religious standard discussed by the experts,[184] but would use the information solely to identify an appropriate secular legal tool with which to resolve the mahr dispute.

Hampered by their limited understanding of the nature of the mahr, and based on the definition of a premarital agreement in the Uniform Premarital Agreement Act as a contract "made in contemplation of marriage and to be effective upon marriage,"[185] many courts reflexively analogize the mahr to a premarital agreement.[186] On closer examination, however, one can draw out key differences between a mahr provision and a prenuptial agreement. First, the tendency to compare the mahr to a premarital

agreement stems largely from the judiciary's assumption that Islamic marriage mirrors the Western narrative, which views marriage as either a sacrament or a simple civil union.[187] As a result, any financial agreement negotiated between a couple in the West as part of their marital arrangement entails an extra, voluntary step and, as such, is assumed to center around the bargaining away of certain rights. Thus, legal protections (crafted around pre-marital statutes and under the common law) mandate specific acts, such as the disclosure of the parties' assets or the requirement that an attorney be present at the time the agreement is executed.[188] By contrast, an Islamic marriage is centered on a simple contract, which embodies certain mandatory terms as a pre-requisite for matrimony and is null and void without the necessary bargaining over the mahr provision. Muslims, who are quite familiar with the customary haggling over the mahr, are not under the slightest misconception that the negotiation represents in any remote way an extraordinary or unanticipated bargaining away of their rights.[189] The mahr is simply a gift, and any ***1917** expectation over assets a Muslim husband or wife may have do not stem from the marriage contract, but rather from Islamic property law.[190]

Second, the mahr constitutes a mandatory part of an Islamic marriage contract,[191] unlike a prenuptial agreement, which is a voluntary agreement to modify certain civil standards. As such, while a couple entering into a civil marriage has to make a conscious decision to execute a prenuptial agreement, parties to an Islamic marriage contract cannot marry without a mahr provision. If they fail to agree upon a mahr, by default, under Islamic law, the husband will be required to give the wife a "proper Mahr which [is] in accordance with the Mahr usually paid to women of her category."[192]

Third, it is worth repeating that the Qur'an defines the mahr as a gift to the bride for entering into the marriage contract,[193] and not as a vehicle for apportioning property and resources at the time of divorce.[194] It is not therefore compensation to be distributed at the time of divorce, but a prize for the wife in exchange for her agreement to marry. As such, the mahr is payable at any time during the life of the marriage, even if the parties never divorce, while a prenuptial agreement mostly anticipates the division of resources in the event of a divorce. Consequently, because the mahr is not designed to address the division of assets, it lacks the procedural safeguards that exist in most prenuptial statutes. For example, there is neither a requirement for the "fair and reasonable disclosure of the property"[195] nor much sanction against what might be considered unconscionable behavior under statutory prenuptial regimes.

Fourth, in many Islamic countries there is no civil alternative to a religious agreement. Participants must enter into an Islamic marriage contract and, as noted above, by necessity stipulate to a mahr provision. Thus, many Muslim immigrants who married before coming to the United States may not have had the option of a civil marriage to avoid the mahr provision. Even Muslims living outside of Islamic countries at the time of their marriage, where, in theory, they have the option of foregoing a religious ceremony, are often under enormous pressure to solemnize their bond in accordance with religious procedure--otherwise their union would be deemed illegitimate with grave social implications. By contrast, no one in the United States is obligated to ***1918** enter into a prenuptial agreement and in the process potentially forgo the benefits of civil family law protections.

A final unusual characteristic of the mahr (and the Islamic marriage contract in general) that differentiates it from a prenuptial agreement relates to the wife's rights to divorce under Islamic Law, which are much more limited than a husband's. Under Islamic standards, one way for the wife to obtain a divorce is to offer to give up her mahr.[196] According to some Islamic authorities, the amount of property the husband takes in consideration for granting a divorce should not exceed the mahr in the case of a "Mubarat Divorce," where the husband and wife develop "mutual aversion" to each other,[197] but may exceed the mahr in the case of a "Khula' Divorce," where the wife alone develops an aversion to the husband.[198] This contrasts dramatically with the general standard in the United States where women have the same rights to divorce as men and are typically not under pressure to relinquish the assets already allocated to the wife in a prenuptial agreement to coax a divorce from their husbands.

Ignoring these glaring distinctions between a mahr and a prenuptial agreement can lead to some unwelcome results in the lower courts. The most obvious risk of analogizing the mahr to a premarital agreement is that it could easily be struck down

on technical grounds because it is negotiated simply according to community customs without attention to common law and statutory standards that must be met when executing a legally binding prenuptial agreement. Consequently, when a mahr agreement is struck down because it was not entered into in a timely manner or because the parties failed to consult a lawyer or properly disclose their assets, the wife is deprived of the benefit of her contractual bargain, even though none of these steps were a pre-requisite at the time she executed the mahr.[199]

***1919** Ironically, a potentially even more damaging fate may befall the wife if the court mischaracterizes the mahr as a prenuptial agreement and then upholds it as the parties' sole agreement for the comprehensive division of all their marital property, often placing the wife in a dramatically weaker position than if the allocation of assets was adjudicated under a civil regime. While many state prenuptial statutes contain default rules giving the wife rights in property titled in the husband's name if a civil prenuptial agreement is silent on marital property, Islamic law does not give the wife any rights in property titled in her husband's name, and, since the mahr is not designed to address the division of the marital estate, she is often left at the time of divorce only with the gift she received for entering into the marriage.[200]

Some lower court decisions indicate that, in an effort to reach a just outcome, courts are willing to treat factually similar cases very differently and strike down a mahr provision on public policy grounds if drawing the parallel with a prenuptial agreement will deprive the wife of any meaningful amount of community property,[201] but uphold the validity of the mahr as a premarital agreement in the absence of a significant marital estate, so that the wife may derive some financial benefit from the union.[202] For example, in Shaban v. Shaban, the husband argued that the marriage contract constituted a prenuptial agreement and signified the wife's assent to accepting a thirty dollar mahr in place of a share of the parties' three million dollar estate.[203] The California Court of Appeals confirmed the lower court's ruling that the terms of the contract were too vague to constitute a prenuptial agreement and instead held that the document was a simple "marriage certificate."[204]

***1920** On the other hand, in Akileh v. Elchahal, where the marital estate was insignificant, but the parties had stipulated to a $50,000 mahr provision, the court, confronted with perhaps an even vaguer marriage contract than the one in Shaban, readily ruled that the mahr constituted an enforceable prenuptial agreement, entitling the wife to the $50,000 she demanded under the terms of the document.[205] The court's sympathies were particularly aroused in this case because the wife sought divorce after she contracted genital warts from her husband a year after the marriage, which condition he had failed to disclose prior to their union.[206] Similarly, in Afghahi v. Ghafoorian, where the couple had no other assets, the court held that the marriage contract constituted a premarital agreement and enforced payment under the mahr provision.[207]

While the courts' concern for the wives' welfare in these cases is admirable, the inconsistency, which results from comparing the mahr to a premarital agreement, weakens the value (and predictability) of the mahr decisions in guarding against gender discrimination. In all of the above cases, the courts could have arrived at the same result by comparing the mahr to a simple contract instead of a premarital agreement. By drawing the parallel to a simple contract, the court in Shahban[208] could have enforced the husband's commitment to pay a nominal sum under the Islamic marriage contract and still divided the marital estate according to civil standards. Similarly, the Akileh and Afghahi courts could have evaluated the mahr provisions as simple contracts and examined if the parties had a valid arrangement pursuant to civil contract law. In this way, the methodology of all the decisions would have been uniform, instead of diametric opposites, thereby avoiding the need to manipulate the technical requirements of what constitutes a valid premarital agreement to reach a desired result.

The strategy of evaluating mahr provisions as premarital agreements becomes even riskier in disputes where the marriage took place abroad. In these decisions, courts face greater pressure to either enforce mahr provisions as premarital agreements (as part of a foreign divorce order), to the great financial detriment of women, or to strike down the foreign divorce orders and confront charges of defective ***1921** comity analysis.[209] Furthermore, this group of decisions highlights the ease with which some courts fall into the trap of resolving mahr decisions on religious grounds instead of deploying the neutral-principles approach set forth in Jones.

In Chaudry v. Chaudry,[210] a couple moved to the United States after marrying in Pakistan pursuant to an Islamic ceremony in 1961.[211] In 1968, the wife moved back to Pakistan with her two children, thinking that her husband would permanently join her.[212] Instead, the husband took affirmative steps to prevent his wife and children from moving back to the United States to live with him, and in 1973, informed the wife by mail that he had filed divorce papers with the Pakistani consulate in New York City.[213] The divorce was confirmed by Pakistani courts in 1974 and 1975 respectively, but the wife instituted a separate maintenance action in New Jersey in 1975.[214] The New Jersey appellate division reversed the trial court and upheld the Pakistani divorce pursuant to the "the principles of comity."[215] The court reasoned that the five years the wife had spent in the United States and the husband's ongoing domicile in New Jersey constituted an insufficient "nexus" to New Jersey for its courts to award the wife equitable distribution of property.[216] The court then went on, incorrectly, to equate the Islamic marriage contract with a prenuptial agreement, but, instead of using the neutral-principles approach to gauge its validity, it applied Pakistani law, which, for the major tenets of family law, is based on the Shariah.[217] As part of its analysis, the court conceded that, according to expert testimony, under Pakistani law, the wife "was not entitled to alimony or support upon a divorce" and that "[a] provision in the agreement to the contrary would be void as a matter of law."[218] In other words, the court acknowledged that, at the time of her marriage, the wife was categorically forbidden to negotiate any terms regarding support--in contrast to prenuptial regimes in the ***1922** United States, which generally do not even allow the parties to waive alimony,[219] never mind tolerate a blanket prohibition on the parties' right to negotiate support benefits. Yet, despite such glaring discrepancies, the court concluded "that the wife is not entitled to equitable distribution by reason of the [antinuptial] agreement" and limited her to a single, lump sum payment of $1,500.[220]

Thirty years later, in Aleem v. Aleem, the Maryland Court of Appeals came to the opposite conclusion in a case where the couple had married in Pakistan but lived in the United States for twenty years, with the husband on a special work visa and the wife a green card holder.[221] The husband worked at the World Bank, and the dispute concerned the division of his pension. After the wife initiated divorce proceedings, the husband went to the Pakistani embassy in Washington, D.C. and obtained an Islamic divorce, or talaq, by declaring three times "I Divorce thee Farah Aleem."[222] The court compared the Pakistani marriage contract to a premarital agreement, but rejected the husband's claim that payment of the mahr, in the amount of $2,500, was all that was "due the wife, as opposed to the one half of almost two million dollars that she might be entitled to under Maryland law."[223] The Court reasoned that the Pakistani marriage contract could not be equated with a valid premarital agreement because Islamic law, which formed the basis of Pakistani family law, and Maryland law differed dramatically on how marital property is apportioned between the parties when there is no agreement in place. The court noted that, under Islamic Law, if the marriage contract is silent on the division of marital assets, the wife is not entitled to any of the community property that is not in her name, while the opposite is true under Maryland law, whereby if the premarital agreement is silent, "the wife has . . . rights in property titled in the husband's name."[224] After striking down the mahr arrangement on technical grounds, the court extended its examination on religious grounds to the comity issue and refused to recognize talaq laws in Pakistan. The court held that because the husband could execute a divorce unilaterally without either notice to the wife or any opportunity to share in the equal division of the marital property, the conflict was ***1923** "so substantial that applying Pakistani law in the instant matter would be contrary to Maryland public policy."[225]

Notwithstanding radically different outcomes, both courts made the mistake of comparing the applicable Islamic marriage contract to a prenuptial agreement and then evaluating the wife's rights according to religious standards, an approach that is particularly tempting when the court seeks, pursuant to established comity standards, to uphold a foreign divorce. In this way, the Chaudry decision subjected itself to the charge that it showed scant concern for women's welfare and gender equality, while the Aleem decision exposed itself to the allegation that it resolved the dispute in an overbearing fashion showing total disrespect for established rules of Comity.[226] If both courts had instead resolved the disputes by analogizing the Islamic marriage agreement to a simple contract rather than a prenuptial agreement and employed the neutral-principles approach, they could have upheld

the foreign divorce, enforced the parties' arrangement on the mahr, and allocated assets and support according to the relevant state statutes. To this end, the Chaudry court even acknowledged that there was much precedent under New Jersey law for awarding alimony and equitable division of property where a foreign divorce does not provide for these rights.[227]

The final two cases, Zawahiri v. Alwattar[228] and Odatalla v. Odatalla,[229] best demonstrate how the selection of secular terms with ***1924** which to scrutinize the mahr can change the outcome of a dispute even when the facts are strikingly similar. In both instances, the courts employed Jones's neutral-principles doctrine, but one compared the mahr to a premarital agreement, while the other drew the parallel to a simple contract.[230] In Zawahiri, the couple married pursuant to an Islamic ceremony, after being introduced by their parents. According to tradition, at the time of the ceremony, they negotiated and signed the marriage agreement at the house of the bride's parents. The opinion indicates that the groom and the prospective bride's father were advised by some of the male witnesses to the marriage on an appropriate amount for the mahr and "[u]ltimately . . . settled on $25,000 for the 'postponed' portion of the mahr" and on a ring and gold already given to the bride.[231] The couple in the second case, Odatalla, also entered into an Islamic marriage contract at the home of the prospective bride and proceeded to negotiate the terms and conditions of the mahr at the time of the ceremony. The Odatalla opinion describes a videotape that shows the families sitting around the living room "negotiating the terms and conditions of the entire Islamic marriage license."[232] There was no attorney present at either ceremony, a fact specifically stipulated in the Zawahari decision,[233] but also implied by the Odatalla opinion.[234]

However, despite the factual parallels, the outcomes of the two decisions differ dramatically because the Zawahari court analogized the mahr to a premarital agreement,[235] whereas the Odatalla court called it "nothing more and nothing less than a simple contract between two consenting adults."[236] In Zawahiri, the Ohio Court of Appeals rejected, on procedural grounds, the wife's argument that the mahr provision should be evaluated as a general contract,[237] even though it acknowledged that out-of-state courts had accepted similar comparisons. Instead, the court persisted in comparing the mahr to a premarital agreement and upheld the lower court's ruling striking down the mahr provision because the circumstances, including the husband's inability to consult with counsel, indicated "overreaching" and failed to ***1925** meet the standard under Ohio law that the parties enter into a premarital agreement "freely without fraud, duress, coercion, or overreaching."[238]

In comparing the mahr to a prenuptial agreement, the Zawahiri court misunderstood both the nature of the mahr and the cultural context in which it is commonly negotiated. As one scholar has noted, negotiating the mahr at the time of the ceremony is "as much a part of the social script of Muslim marriages as church bells, aisles, alters, and priests or ministers are for Christian marriages."[239] It is therefore highly unlikely that a Muslim man entering into an arranged marriage, such as the one described in the Zawahiri case, would not be fully aware that a mahr must be negotiated as part of the ceremony. In Zawahiri, the court seemed swayed by the husband's claim that the imam raised the issue of mahr only two hours before the ceremony and that, after a hurried negotiation, "[he] agreed to a 'postponed' mahr of $25,000 because he was embarrassed and stressed."[240] Also, it is not surprising that the facts of the two cases are strikingly similar since they follow common cultural practices of many Muslim weddings. It is not unusual for the parties to negotiate the details of the mahr in the absence of an attorney[241] and at the last minute right before the ceremony.[242] Thus, the Zawahiri court's depiction of the mahr negotiations as crafty and coercive is completely misrepresentative. While a similar sequence of events as part of negotiating a prenuptial agreement in the West may seem conniving, the wedding process described in Zawahiri is quite standard. Under these circumstances, the Zawahiri court, by comparing the mahr to a premarital agreement, was forced into a theoretical straitjacket, almost guaranteeing that it would strike down the mahr provision on technical grounds.

By contrast, the Odatalla court was not at all disturbed by the absence of an attorney and the lack of any pre-planning in negotiating the details of the mahr.[243] Furthermore, the court rejected the husband's claim that it was prohibited from adjudicating the dispute under the Establishment Clause and squarely grounded its holding in the neutral-principles approach.[244]

Relying on Jones, the court stated that agreements reached as part of a religious ceremony are enforceable if ***1926** they (1) are "capable of specific performance under 'neutral principles of law"' and (2) "meet[] the state's standards for those 'neutral principles of law'."[245] In selecting an appropriate civil legal doctrine, the court declared that the mahr was "nothing more and nothing less than a simple contract between two consenting adults" and held that "the essential elements of a contract [were] present."[246] To that end, the New Jersey Superior Court approvingly cited the videotape of the last-minute negotiations during the marriage party to show that the husband executed the marriage agreement "freely and voluntarily . . . making an offer to the [wife]," and the wife signed "making an acceptance of the offer."[247] The court also noted that Mr. Odatalla gave "one gold coin" to the wife as "the symbolic first payment[[[,] . . . confirming his intention to be bound by the Mahr Agreement."[248]

As this brief survey of Islamic divorce cases demonstrates, the judiciary makes two mistakes in resolving mahr disputes. First, courts do not take the effort to understand the nature of the mahr and wrongly compare it to a premarital agreement.[249] As a result, the decisions often do not reflect the intent of the parties and frequently allow one party to exploit technicalities under civil law to forgo his or her obligation, sometimes resulting in gross unfairness to the other party. In addition to better reflecting the parties' intent, taking steps to understand the mahr and drawing the parallel to a simple contract may also ease courts' temptation to reach fair results at any cost, even by manipulating the technical requirements for what constitutes a valid prenuptial.[250]

***1927** Second, some courts tend to ignore the neutral-principles approach and evaluate mahr disputes based on Islamic standards. This risks running afoul of Establishment Clause limitations on the judiciary's ability to delve into religious doctrine.[251] The solution to both these mistakes is to use neutral principles of contract law only to interpret the specific mahr provisions in the marriage contract, thereby avoiding the trap of applying Islamic rather than American law to a couple's divorce arrangement. Drawing the parallel to a simple contract would also go a long way toward harmonizing disputes involving marriage contracts negotiated abroad and allow the judiciary the flexibility to recognize Islamic divorce, or talaq, without necessarily dividing the couples' marital estate based on religious rather than civil standards. Hence, rooting courts' decisions on civil contract law would strengthen the judiciary's ability to render well-thought-out, consistent decisions, eliminate the most glaringly unfair outcomes, and lower the risk of basing their evaluation on religious standards.

Next this Article considers the increased use of religious arbitration, which has forced many nations to grapple with how to best integrate religious legal pluralism into their judicial framework.[252] Given this shift, it is important to examine whether deference by the civil judiciary to religious tribunals sanctions a form of autonomous religious governance that could result in violation of individual liberties and run the risk of indirectly injecting into the legal system discrimination that has only recently been eliminated.

***1928 III. Religious Arbitration**

This Article's central inquiry has focused on whether parties to religious contracts should have recourse to civil courts to resolve potential disagreements. This question embodies two main areas of concern, and, so far, the examination has centered on whether civil courts have any meaningful authority under the Religion Clauses of the Constitution to resolve religious disputes. Within the context of religious divorce cases, this Article suggests that courts do indeed have real power pursuant to the neutral-principles approach to substantively review certain religious disputes. This Part now turns to the second area of concern and asks whether it would not be more prudent for courts to defer to the holdings of religious forums even when they have the constitutional authority to review religious disputes. In the United States, religious tribunals, including Christian organizations, such as Peacemaker Ministries, and Beth Dins, routinely resolve doctrinal disagreements as well as commercial and family law disagreements.[253] There are also a growing number of forums for Islamic arbitration.[254] Wherever available, parties may submit their disputes to an arbitration court, such as an "Islamic Mosque,"[255] and, at least in Texas, parties can stipulate to religious arbitration under the Texas General Arbitration Act to resolve their marital disputes.[256]

Currently, following the Supreme Court's interpretation of the FAA urging deference to arbitration panels,[257] secular courts regularly uphold religious tribunals' decisions without addressing the substantive issues that shaped the original dispute. Supporters of this approach propose that judicial acquiescence to religious arbitration follow the same parameters as deference to secular arbitration, where any compromise of individuals' rights is simply the price to pay for an efficient system of binding arbitration.[258] This superficial symmetry, ***1929** however, fails to take into consideration ways in which religious arbitration opens the door to a whole series of laws with a different spirit than laws that govern the secular arbitration system. There are two possible unwelcome consequences. First, the individual rights of the party challenging the religious arbitration award may be compromised under rules that violate equity norms and diverge dramatically from civil standards that the party would ordinarily be judged by in a secular forum.[259] Second, basing religious arbitration awards on biased standards may impact "substantial public and third-party interests,"[260] with the risk of re-inscribing into law through a back door "discrimination that has only recently been ameliorated."[261]

The judiciary, therefore, finds itself in an awkward position where it is empowered to substantively review many religious awards under the neutral-principles doctrine but is held at bay by the Supreme Court's interpretation of the FAA. As a result, it seems appropriate to investigate whether the Court's strict guidelines under the FAA should be loosened and to explore circumstances under which deference to religious arbitration is appropriate. Many commentators persuasively argue that religious arbitration should be non-binding in order to permit the courts the right to substantively review all such awards.[262] Ayelet Shachar, who has written extensively on this issue, proposes under her theory of "transformative accommodation," which seeks a balance between personal liberties and religious practices, that parties should have the right to opt out of religious arbitration when the "relevant power-holder has failed to provide remedies to the plight of ***1930** the individual."[263] She worries that giving religious tribunals unbounded jurisdiction over group members not only impacts individual liberties, but also stunts the cause of reform because religious leaders may deem "all 'alternative' suggestions for reform as signs of cultural decay and corrupting outside infiltration."[264] At the same time, within the context of deference to religious tribunals, she rejects the state's role as a guarantor of a limited set of basic rights since such an approach handicaps an individual's ability to maintain a religious cultural identity.[265] Instead she suggests that citizenship rights should be expanded to include "the recognition [and] accommodation of minority cultures," an approach that deviates "from standard citizenship theory."[266]

While I am largely sympathetic to Shachar's position, it does not entirely escape the charge that "transformative accommodation" gives the civil judiciary unbridled discretion to decide if religious arbitrators have failed "to effectively respond to constituent needs."[267] Critics charge that Shachar's approach "enables . . . parties to switch jurisdictions" merely because it is "in their best interests," thereby preventing the arbitration proceeding from reaching any "meaningful conclusion."[268] One solution to this dilemma is to keep in place the choice to opt out, but to tie it to a more concrete standard. Instead of allowing either party to switch jurisdictions simply based on a civil court's determination that the arbitrators "failed to provide remedies to the plight of the individual,"[269] any opt-out option could be limited to those circumstances where there is a lack of convergence between the goals and standards of the applicable secular and religious laws.

The challenge with this approach, of course, is to fully draw out what is meant by convergence. Martha Minow suggests that the possibility of convergence exists when two sides can find "common ground without sacrificing principles."[270] For the purpose of determining when it may be appropriate for the civil judiciary to defer to the holding of religious tribunals, convergence may be said to exist ***1931** when comparable sets of religious and secular rules are rooted in concepts of equity and broadly share similar goals. Thus, in applying a convergence test, one would ask two questions: First, whether the religious standard, like the secular law, treats different groups equally; and second, whether the religious and civil standards share similar goals.[271] If the answer to both questions is yes, then deference to the religious tribunal in that instance may be appropriate.[272] However, if the answer to either question is no, then automatic deference is not appropriate, and the civil court overseeing the dispute

should examine the underlying substantive claim raised by the parties to determine whether the arbitration award should be struck down.[273]

Some may argue that the public policy exception, which renders unenforceable any agreement where individuals waive rights designed to protect society at large, already encompasses what a "convergence" standard would seek to cover. There are, however, a number of ways the public policy exception fails to provide adequate protection in the arbitration setting. First, as a matter of law, it is unclear, under recent Supreme Court decisions, whether public policy remains a viable basis for vacating arbitration decisions. In its 2008 decision, Hall Street Associates, L.L.C. v. Mattel, Inc.,[274] the Supreme Court held that the FAA "unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions [set forth in the statute] applies."[275] Under the FAA, judicial review of arbitration awards is limited to "where the award was procured by corruption, fraud, or undue means," or some similar procedural irregularity.[276] Since the public policy exception does not constitute one of the "prescribed exceptions" in the FAA, the decision implicitly jeopardizes its continued viability in the arbitration context. Indeed, subsequent judicial rulings certainly indicate that lower courts have interpreted Hall Street to mean that public policy is no longer an option for vacating arbitration awards.[277]

***1932** Second, the mahr decisions, particularly those centering around issues of comity, demonstrate that courts can apply public policy standards with too much flexibility, resulting in a great deal of inconsistency and confusion. In an effort to reach fair results, courts appear more willing to strike down a mahr provision on public policy grounds if drawing the parallel with a prenuptial agreement will deprive the wife of any meaningful marital property,[278] but will readily uphold the validity of the mahr as a premarital agreement in the absence of a significant estate, so that the wife may retain minimal economic security.[279] By contrast, a convergence standard will permit the courts less flexibility and obligate them to more objectively measure the difference between the goals and standards of a religious instrument and its secular counterpart.

Third, some scholars feel that irrespective of the Supreme Court's pronouncements on the public policy exception, "religious arbitral awards should be enforced even when they violate public policy."[280] Otherwise, they propose, religious arbitration will lose its effectiveness as an "efficient, fair, and relatively inexpensive" alternative to the courts.[281] While this perspective is troubling because completely restricting the courts' ability to review arbitration awards in violation of the public's interest could jeopardize many important societal interests, it is possible that some of the concerns of these scholars will be alleviated if a tightly drawn and more objective "convergence standard" is applied.

A specific example might better illuminate this point. Under Jewish law, the "principle of Hasagath Gevul (literally 'encroaching on the border') . . . . prohibits an individual from opening a second business identical to an existing business in such close proximity that doing so would lead to the financial ruin of the existing business."[282] Thus, Rabbinical courts may often find themselves in conflict with civil antitrust standards in the United States because under the ***1933** "encroachment" principle they may protect businesses even from fair competition if it is clear that such competition will be ruinous.[283] In light of these differences, without a "convergence standard," the civil judiciary would likely vacate arbitration awards by Rabbinical courts that deviated from civil antitrust standards.

A convergence standard, however, would ask whether secular and Jewish anti-competition laws are both rooted in concepts of equity and whether both approaches broadly share similar goals. It is readily decipherable that the principle of Hasagath Gevul, like secular antitrust standards, applies equally and neutrally to any party undertaking a business enterprise. It does not seek to award an undue advantage according to any economic criteria or to discriminate on any other basis. Moreover, anti-competitive standards under Jewish law share the same goals as civil antitrust laws, namely some level of protection against ruinous destruction of businesses that have invested significant resources in their enterprise. Thus, a choice-of-law provision between two businesses to arbitrate their disputes in a Rabbinical court according to the principle of Hasagath Gevul would have a much fairer chance of being upheld under a convergence standard than the current public policy analysis the courts employ.

By contrast, it will typically be much harder to justify deference to religious arbitration in family law disputes under the convergence standard.[284] For example, as described above, under Islamic law, men are entitled to unilateral divorce by simply declaring three times "I divorce thee" without any obligation to provide notice or general due process rights to their wives.[285] Any arbitral decision that upholds a divorce on these terms will fail the convergence test because it treats men and women differently--unlike secular divorce rules, which are rooted in a gender-neutral approach and treat men and women in the same manner.[286] Similarly, because husbands retain almost complete control over divorce under Jewish law, arbitral awards relating to get disputes should also be subject to substantive review under a convergence test.[287]

***1934** Supporters of religious autonomy, who, at first, may resent the restrictions a convergence test would place on arbitral independence, might take comfort in the idea that an objective test would likely reassure some current skeptics and detractors and thus increase the circle of support for legal pluralism. Under a convergence standard, it appears that a significant degree of deference may be appropriate in religious disputes governing business arrangements, where the parties are more sophisticated than those involved in family disputes and where similar religious and secular standards and goals often prevail. Conversely, deference to religious tribunals may be unacceptable in areas such as family law if the underlying contract is grounded in rules that do not convey the same rights to men and women. In the end, putting together an objective measure for evaluating when automatic deference to religious tribunals is appropriate serves as the best method for advancing a secure, long-term role for religious arbitration, without risking violation of other fundamental rights. Moreover, a pluralistic, but flexible, system may reassure skeptics and encourage religious communities to take steps toward a more liberal interpretation of religious doctrine, thereby persuading a greater percentage of their members to choose to stay within the framework of religious arbitration.

Conclusion

Throughout the history of the United States, religious institutions and communities have striven for greater autonomy both by pushing for a broad reading of constitutional protections under the Religion Clauses and by fighting for the independence of alternative religious dispute resolution forums. Religious arbitration, which has historically found a very receptive home in the United States, has become the foremost battleground for championing the cause of legal pluralism and religious sovereignty. However, as this Article details, while it is hard to find fault in the basic idea that parties should be permitted to structure their relationships and adjudicate their disputes based on shared values, religious arbitration poses a number of unusual problems that renders its execution somewhat challenging.

The greatest difficulty presented by religious arbitration involves potential clashes between a number of religious laws and standards and certain civil protections, including many concerned with gender equality. Courts' abilities to deal with this conflict have been limited by two constraints. First, the Supreme Court's interpretation of the FAA, ***1935** directing the judiciary to defer to arbitration decisions, has prompted courts readily to accede to the holdings of religious arbitral bodies without paying much attention to the underlying substantive issues that characterized the original dispute. Second, a misreading of constitutional guidelines, including those set forth in Jones, has convinced some lower courts that going beyond procedural review of religious arbitral awards will result in Establishment Clause violations by impermissibly entangling the courts in doctrinal analysis.

The first part of this Article takes aim at the second constraint, namely, the general misreading of the Supreme Court's constitutional guidelines on the Religion Clauses, and demonstrates that the Supreme Court articulated the neutral-principles doctrine in Jones for the very purpose of allowing judicial review of disputes arising out of religious agreements. By championing the neutral-principles approach, the Court rejected the premise that judicial review of religious contracts violates the Establishment Clause[288] and secured for group members, whose fundamental rights were at risk of being violated by discriminatory religious standards, continued access to secular courts to defend their civil liberties. The Court's resolution to keep open the gates of the judiciary also minimized the risk of re-inscribing into law through a back door discriminatory gender standards that have "only recently been ameliorated."[289]

In tackling the first constraint, this Article suggests that the Supreme Court's interpretation of the FAA, requiring blanket deference to alternative religious dispute resolution forums, is too broad and instead proposes a new methodology, the convergence test, for determining when automatic deference to religious arbitration is appropriate. The convergence test asks a two-fold question: Whether the religious standard underpinning the dispute treats different groups equally, and whether the religious and its corresponding civil standard share the same goals. If the answer to both of these questions is yes, the convergence test authorizes automatic deference to religious forums, but if the answer to either question is no, the test mandates that courts examine, pursuant to the neutral-principles doctrine, the underlying substantive claim raised by the parties to determine whether the arbitration award should be struck down. Overall, the convergence test is a more objective standard than current approaches, including the ***1936** public policy exception, for determining when to defer to religious arbitration. By limiting compulsory deference to religious forums to instances where there is convergence between the goals and standards of religious and secular laws, the test seeks to distinguish "questionable" arbitration awards from the routine and thus advance and secure a long-term role for religious arbitration without threatening group members' access to the civil courts.

The third serious challenge religious arbitration poses concerns pressures contracting parties may feel from their communities to subscribe to the authority of religious forums. While this problem does not raise the same analytical dilemmas as a clash between fundamental rights or constitutional violations of the Religion Clauses, it embodies a myriad of important practical and procedural difficulties, whose resolution would be crucial to the success of any pluralistic architecture. Although it is beyond the scope of this Article to consider these issues in detail, it is worth raising some of the concerns. For example, since a dual jurisdiction framework will be more difficult to administer and understand, should the state put in place programs that will inform the parties of their respective rights under each system? Will women in certain communities have the independence (emotional and material) to exercise their civil rights, or will they be subject to community pressure to subscribe to religious arbitration?[290] If group pressure is a serious issue, by instituting a dual jurisdiction system, will we merely create "ghetto communities" where women with certain religious affiliations simply will not enjoy the same rights as the majority of Americans? Can this hurdle be managed through outreach programs to the impacted communities, (as well as educational programs for parties to specific contracts), which over time will allow informed, free choices to be made? Should the state go further and provide some form of material backing, for example subsidized housing, to women who are abandoned by their communities and families after choosing a civil divorce to offer them some extra measure of independence? Finally, will opt-out schemes, along with state support for women who no longer wish to be bound by religious arbitration, make religious leaders defensive and more skeptical that the majority in America is exercising secular elitism?[291]

As the survey of religious divorce cases reveals, mapping the boundaries of the judiciary's authority over religious forums is not just a ***1937** matter of academic interest, but is vital to everyday concerns because so many Americans use religion as an anchor for their personal relationships. As a result, if Supreme Court guidelines are misinterpreted to deny parties to a religious agreement recourse to the civil judiciary, or if deference to religious arbitration becomes automatic in all circumstances, women's economic welfare, their ability to retain some form of custody of their children, and even their right to remarry can be significantly impacted. It is crucial, therefore, to continue to evaluate the boundaries between religious autonomy and other civil liberties. Perhaps, the lessons learned from this ongoing American experiment could even help countries searching for new constitutional models or those simply looking to undertake similar reform.

Footnotes

d1 Lecturer, UCLA Department of Women's Studies. Many thanks to Eugene Volokh for his indispensible help and guidance. I would also like to thank the participants at the UCLA School of Law faculty colloquium for their many thoughtful comments to an earlier draft.

1 See Michael C. Grossman, Note, Is This Arbitration?: Religious Tribunals, Judicial Review, and Due Process, 107 Colum. L. Rev. 169, 177-81 (2007).

2 See Michael A. Helfand, Religious Arbitration and the New Multiculturalism: Negotiating Conflicting Legal Orders, 86 N.Y.U. L. Rev. 1231, 1249-52 (2011) (citing examples of initiatives for the establishment of Islamic arbitration venues such as the Fiqh Council of North America).

3 See, e.g., Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991) (holding that the resolution of an age discrimination claim pursuant to an arbitration agreement precluded resort to the civil courts); Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477 (1989) (extending presumption in favor of arbitration to disputes under the Securities Act of 1933).

4 Laura S. Underkuffler, Odious Discrimination and the Religious Exemption Question, 32 Cardozo L. Rev. 2069, 2072 (2011) (focusing on women, Underkuffler concludes that gender discrimination may not be excused when defendant claims religiously compelled bias, otherwise we would be sanctioning "religiously based, odious discrimination").

5 Leslie C. Griffin, Smith and Women's Equality, 32 Cardozo L. Rev. 1831, 1852 (2011) (internal quotation marks omitted).

6 Ann Laquer Estin, Embracing Tradition: Pluralism in American Family Law, 63 Md. L. Rev. 540, 590 (2004) (focusing on the tension between religious pluralism and gender discrimination, Estin states that "it is important to protect against re-inscribing into our family law the gender discrimination that has only recently been ameliorated").

7 559 U.S. 700 (2010).

8 545 U.S. 844 (2005).

9 545 U.S. 677 (2005).

10 These tests are examined in Part I. See infra text accompanying notes 21-29. Undoubtedly, some readers will feel strongly that the correct standard to apply is the coercion test. This Article addresses this argument directly in Part I. See discussion infra text accompanying notes 36-48.

11 Jones v. Wolf, 443 U.S. 595, 603 (1979).

12 See, e.g., Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696 (1976) (holding that the First Amendment mandates absolute judicial deference to internal church rules for the selection and removal of archbishops); Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440 (1969) (holding that under the First Amendment absolute judicial deference to internal church rules for holding title to property is required).

13 Jones, 443 U.S. at 602-04. While some courts have read Jones narrowly by limiting it to the resolution of property disputes among churches, see, e.g., Kinder v. Webb, 396 S.W.2d 823, 824 (Ark. 1965), most have interpreted it broadly enough to apply the "neutral principles of law" standard to all religious disputes, see Marci A. Hamilton, Religious Institutions, the No-Harm Doctrine, and the Public Good, 2004 BYU L. Rev. 1099, 1115 (acknowledging, with approval, the Supreme Court's directive that courts must "obey neutral principles of law in the religious institution cases under the Establishment Clause").

14 See, e.g., Pleasant Glade Assembly of God v. Schubert, 264 S.W.3d 1, 2 (Tex. 2008) (interpreting the Religion Clauses of the First Amendment to shield ecclesiastical institutions from liability and thus barring recovery under tort law in suit against church).

15 See, e.g., Douglas Laycock, Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy, 81 Colum. L. Rev. 1373, 1388-402 (1981); see also Michael A. Helfand, Litigating Religion, 93 B.U. L. Rev. 493 (2013) (referencing the "church autonomy doctrine").

16 A mahr is a gift from the husband to the wife for entering into the marriage contract, see Raj Bhala, Understanding Islamic Law (Shari'a) §35.02[[[A] (2011), and should be distinguished from a dowry, which in some cultures is brought by the bride to the marriage.

17 See discussion infra text accompanying notes 136-40.

18 For a discussion of how a convergence standard can be used to determine under what circumstances it is appropriate for the civil judiciary to defer to the holding of religious tribunals, see infra text accompanying notes 269-87.

19 U.S. Const. amend. I.

20 See Salazar v. Buono, 559 U.S. 700 (2010); McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky., 545 U.S. 844 (2005); Van Orden v. Perry, 545 U.S. 677 (2005).

21 Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971); see also Eugene Volokh, The Religion Clauses and Related Statutes: Problems, Cases and Policy Arguments 3-6 (2005) (presenting an excellent overview of the Lemon test).

22 Lemon, 403 U.S. at 612-13 (internal quotation marks omitted).

23 Id. at 615.

24 Agostini v. Felton, 521 U.S. 203, 233 (1997); see Zelman v. Simmons-Harris, 536 U.S. 639 (2002) (O'Connor, J., concurring) (stating that the endorsement test "folded the entanglement inquiry into the primary effect inquiry" (citing Agostini, 521 U.S. at 203, 218, 232-33)).

25 Volokh, supra note 21, at 182.

26 Lynch v. Donnelly, 465 U.S. 668, 692 (O'Connor, J., concurring).

27 Capital Square Review & Advisory Bd. v. Pinette, 515 U.S. 753, 779 (1995) (O'Connor, J., concurring in part and concurring in the judgment) (alteration in original) (quoting Lynch, 465 U.S. at 690 (O'Connor, J., concurring)) (internal quotation marks omitted).

28 Id. at 782 (citing Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 629 (1989)).

29 Lynch, 465 U.S. at 692 (O'Connor, J., concurring) ("What is crucial is that a government practice not have the effect of communicating a message of government endorsement or disapproval of religion.").

30 Id. at 680.

31 See Cnty. of Allegheny, 492 U.S. at 598.

32 Id. at 598.

33 Id. at 635 (O'Connor, J., concurring in part and concurring in the judgment).

34 Id. at 613-14 (majority opinion).

35 See Christopher Lund, Salazar v. Buono and the Future of the Establishment Clause, 105 Nw. U. L. Rev. Colloquy 60, 71 (2010) (declaring that Salazar v. Buono, 559 U.S. 700 (2010), did not relieve the confusion created by Allegheny and Lynch and instead "leaves us where we started--in a state of mild confusion...,definite uncertainty about the legal rule, and eager anticipation of the next case").

36 The Supreme Court announced the McCreary and Van Orden decisions on the same day, and both involved displays of the Ten Commandments. The ten opinions making up the two decisions revealed deep divisions between the Justices on Establishment Clause principles. See Volokh, supra 21, at 138. The McCreary majority held that the display of the Ten Commandments (juxtaposed against an ever-changing selection of historical documents) violated the Establishment Clause because "the primary purpose of the displays was to endorse the Ten Commandments, rather than to show a wide array of historical legal sources that happened to include the Ten Commandments." See id. In Van Orden, the Court, in a plurality opinion, upheld the display of the Ten Commandments, with Justice Breyer declaring, in his controversial but controlling opinion, that "[t]he Establishment Clause was aimed at preventing religious divisiveness." See id. at 139. Justice Breyer also noted that "the presence of endorsement" constituted a relevant portion of the analysis. See id.

37 See Salazar, 559 U.S. at 721-22 (holding that a cross placed on a rock outcropping as a World War I memorial on federal land did not constitute an endorsement of Christianity, but rather honored the sacrifices of veterans); see also Lund, supra note 35, at 70 (arguing that the Court's ambiguity in Salazar is not worrisome because, in Establishment Clause decisions, "the cases have always been more important than the tests, because the tests are too manipulable to do much work on their own").

38 505 U.S. 577 (1992).

39 Id. at 598-99.

40 Id. at 587, 592.

41 Id. at 592-94.

42 Id. at 640-42 (Scalia, J., dissenting); see also McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky., 545 U.S. 844, 908-09 (2005) (Scalia, J. dissenting) (stating that government display of Ten Commandments was constitutional since there was no evidence of coercion or intent to further religious practice); Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 312 (2000) (holding that pressure to attend a football game accompanied with government-sponsored prayer is unconstitutional coercion under the Establishment Clause).

43 See, e.g., Lee, 505 U.S. at 581 (principal "invited a rabbi to deliver prayers at...graduation exercises").

44 Id. at 587.

45 Id. at 586-87.

46 Id. at 592 (emphasis added).

47 In addition, closing the courts' doors to parties who are seeking a hearing in a neutral, non-biased, civil forum would handicap the neutral-principles approach and take the courts back to a strict non-justiciability regime. See discussion infra Part I.B.

48 Jones v. Wolf, 443 U.S. 595, 603 (1979).

49 See, e.g., Thomas v. Review Bd. of the Ind. Emp't Sec. Div., 450 U.S. 707, 714 (1981) ("[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.").

50 See, e.g., United States v. Ballard, 322 U.S. 78, 81 (1944).

51 See, e.g., Hernandez v. Comm'r, 490 U.S. 680, 699 (1989) ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds."); Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449-50 (1969).

52 Jones, 443 U.S. at 604; see also Volokh, supra note 21, at 3-6.

53 80 U.S. (13 Wall.) 679 (1871).

54 See Kent Greenawalt, Hands Off! Civil Court Involvement in Conflicts over Religious Property, 98 Colum. L. Rev. 1843, 1863 (1998) (stating that the deference approach "goes back to Watson v. Jones").

55 The Court first suggested the neutral-principles doctrine in Presbyterian, 393 U.S. at 450, and later fully sanctioned it in Jones, 443 U.S. at 602-04.

56 Jones, 443 U.S. at 602-03.

57 Id. at 604.

58 Id.

59 See Nathan Clay Belzer, Deference in the Judicial Resolution of Intrachurch Disputes: The Lesser of Two Constitutional Evils, 11 St. Thomas L. Rev. 109, 139 (1998) (concluding that deference is "the lesser of two constitutional evils"); Laycock, supra note 15, at 1373 (advocating for "church autonomy," which he describes as "a constitutionally protected interest in [[[churches] managing their own institutions free of government interference").

60 Hamilton, supra note 13, at 1190 (stating that some courts have misread "the parameters of the Supreme Court's Religion Clause Jurisprudence" in concluding that they "lack jurisdiction" over a broad swath of religious disputes).

61 See discussion infra Part II.A-B.

62 See, e.g., Pleasant Glade Assembly of God v. Schubert, 264 S.W.3d 1, 12-13 (Tex. 2008) (barring recovery under tort law because the Religion Clauses of the First Amendment shielded ecclesiastical institutions from liability). Some cases also protect clergy from malpractice torts. See, e.g., Schmidt v. Bishop, 779 F. Supp. 321, 332 (S.D.N.Y. 1991) (holding that adjudicating the nature of sexual advances by clergy on minor was beyond purview of judiciary); Langford v. Roman Catholic Diocese of Brooklyn, 705 N.Y.S.2d 661, 662 (App. Div. 2000) (not evaluating conduct of priest who made sexual advances toward woman while counseling her that God can heal her multiple sclerosis because doing so would foster "excessive entanglement with religion").

63 See, e.g., Van Osdol v. Vogt, 908 P.2d 1122, 1126-28, 1133-34 (Colo. 1996) (en banc) (barring claim under the ministerial exception to Title VII); see also Joanne C. Brant, ''Our Shield Belongs to the Lord": Religious Employers and a Constitutional Right to Discriminate, 21 Hastings Const. L.Q. 275, 276-77, 280-83 (1994); Laura L. Coon, Note, Employment Discrimination by Religious Institutions: Limiting the Sanctuary of the Constitutional Ministerial Exception to Religion-Based Employment Decisions, 54 Vand. L. Rev. 481, 484-86 (2001).

64 See Hamilton, supra note 13, at 1190-91 (acknowledging that religious institutions have "complete dominion over belief," but emphasizing that it is limited to "solely...ecclesiastical" issues (internal quotation marks omitted)).

65 Id. at 1180 (calling for a constitutional approach that adheres to a "no-harm to third parties" rule).

66 Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696, 714-15 (1976) (footnote omitted).

67 Id. at 727, 734 (Rehnquist, J., dissenting).

68 Id. at 734.

69 Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969) (internal quotation marks omitted).

70 Gen. Council on Fin. & Admin. of the United Methodist Church v. Superior Court of Cal., 439 U.S. 1355, 1372 (1978) (order denying application for stay pending review on cert.).

71 See, e.g., Nat'l Grp. for Commc'ns & Computers Ltd. v. Lucent Techs. Int'l Inc., 331 F. Supp. 2d 290, 293, 301 (D.N.J. 2004) (investigating what Saudi law, which codifies and builds on the Shariah (Islamic Law), would call for to resolve the parties' disagreement and rendering judgment based upon, among other things, its "review of...the testimony of the experts,...and the Court's understanding of the fundamental principles of Islamic law as they would be interpreted by a court in Saudi Arabia"); see also Bridas Corp. v. Unocal Corp., 16 S.W.3d 893, 898, 900-03 (Tex. App. 2000) (in resolving a tortuous interference claim between the parties, crediting extensive expert trial testimony on Afghan Law under the Taliban, which followed a very conservative model of the Shariah).

72 Jones v. Wolf, 443 U.S. 595, 602 (1979). Blackmun's focus is to restrain civil courts from using "religious doctrine and practice" as the basis for deciding religious disputes. Id.

73 This flexibility would prove particularly useful in the mahr decisions, enabling the courts to understand the true nature of a mahr provision so that they could analogize it to the most appropriate secular legal tool under the neutral-principles doctrine. See infra Part II.B.

74 Hamilton, supra note 13, at 1134 (internal quotation marks omitted).

75 Emp't Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872 (1990).

76 Id. at 879, 890 (internal quotation marks omitted) (holding that the Free Exercise Clause did not protect the rights of Native Americans, fired for smoking peyote for sacramental purposes in violation of neutral state law prohibiting the use of drugs, to receive unemployment benefits).

77 See Frederick Mark Gedicks, An Unfirm Foundation: The Regrettable Indefensibility of Religious Exemptions, 20 U. Ark. Little Rock L.J. 555, 572 (1998) ("Smith merely requires that laws which incidentally burden religious conduct have a rational basis....").

78 See, e.g., Angela C. Carmella, Exemptions and the Establishment Clause, 32 Cardozo L. Rev. 1731, 1731 (2011) (noting that the Smith decision "immediately provoked reaction (almost entirely negative) from the legal academy"); Daniel. O. Conkle, Religious Truth, Pluralism, and Secularization: The Shaking Foundations of American Religious Liberty, 32 Cardozo L. Rev. 1755, 1755 (2011)

(declaring that Smith "dealt a blow to religious liberty"); Ira C. Lupu, The Trouble with Accommodation, 60 Geo. Wash. L. Rev. 743, 781 (1992) (expressing unhappiness with the Court's decision in Smith); Michael W. McConnell, Free Exercise Revisionism and the Smith Decision, 57 U. Chi. L. Rev. 1109 (1990).

79 See, e.g., Gedicks, supra note 77, at 561-62 (arguing that, "[f]rom the standpoint of history,...Sherbert and Yoder, not Smith," are the "aberrations," with "the constitutional history of the Free Exercise Clause... almost completely against religious exemptions"); William P. Marshall, In Defense of Smith and Free Exercise Revisionism, 58 U. Chi. L. Rev. 308, 325 (1991) (arguing that while the text of the Free Exercise Clause "is consistent with protecting religion from discrimination; it does not compel discrimination in favor of religion").

80 98 U.S. 145 (1878).

81 See id. at 161-62.

82 Id. at 166-67.

83 Id. at 167.

84 Id.

85 374 U.S. 398 (1963).

86 Some scholars have criticized the use of strict scrutiny in the arena of religious jurisprudence. See, e.g., Hamilton, supra note 13, at 1103 (observing that strict scrutiny is usually applied when "the law bears indicia of unconstitutional purposes," whereas in religious jurisprudence the standard is applied to "neutral, generally applicable laws....to place the religious entity in a position generally superior to the law").

87 Sherbert, 374 U.S. at 403-04 (holding that a member of the Seventh Day Adventist Church, whose religion prohibited her from working on Saturday, was entitled to unemployment compensation). The period between the Reynolds and Sherbert decisions is often referred to as the statutory exemption model, whereby religious objectors received an exemption only if the legislation provided for one. See Volokh, supra 21, at 339. The Sherbert holding created the constitutional exemption model, with sincere objectors potentially entitled to an exemption even when the statute does not provide for one, depending on how the law is evaluated under the strict scrutiny standard described above. See id. at 339-40.

88 Volokh, supra note 21, at 369 (describing strict scrutiny for religious exemptions as "strict in theory, feeble in fact" (internal quotation marks omitted)).

89 For an excellent overview of religion clauses jurisprudence, see generally id.

90 Mark Tushnet, "Of Church and State and the Supreme Court": Kurland Revisited, 1989 Sup. Ct. Rev. 373, 379 (rejecting that there is "a general doctrine of mandatory accommodation" pursuant to Sherbert and instead proposing that "Sherbert retains vitality only as a case about unemployment compensation").

91 Ronald J. Krotoszynski, Jr., If Judges Were Angels: Religious Equality, Free Exercise, and the (Underappreciated) Merits of Smith, 102 Nw. U. L. Rev. 1189, 1193 (2008).

92 Emp't Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 883 (1990), superseded by statute, Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. §§2000bb to 2000bb-4 (2012)).

93 By implication, because Smith's analysis pertains to a "neutral law of general applicability," id. at 879 (internal quotation marks omitted), it leaves intentionally discriminatory laws subject to strict scrutiny. Subsequently, the Supreme Court reaffirmed the inapplicability of the Smith standard to intentionally discriminatory legislation. See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 546-47 (1993) (holding that while government may ban all killing of certain animals without any exemption for religious conduct, it is not permitted to ban solely the religious sacrifice of animals).

94 Smith, 494 U.S. at 877.

95 Id. at 881. For an example of hybrid rights upheld by Smith, see Wisconsin v. Yoder, 406 U.S. 205, 214-15 (1972) (using strict scrutiny, reversing Wisconsin's decision not to exempt Amish parents from compliance with the Wisconsin Compulsory School Attendance Law as a violation of the parents' First Amendment rights). Some supporters of Smith fault the majority for seemingly excluding "religious parenting cases" from the decision through its affirmation of the Yoder case. See, e.g., James G. Dwyer, The Good, the Bad, and the Ugly of Employment Division v. Smith for Family Law, 32 Cardozo L. Rev. 1781, 1786-87 (2011) (concluding that "the Smith Court effectively invited parents who want an exemption from any child welfare legislation to assert a 'hybrid rights claim'").

96 Smith, 494 U.S. at 899; see also Kent Greenawalt, Establishment Clause Limits on Free Exercise Accommodations, 110 W. Va. L. Rev. 343, 347 n.26 (2007); cf. Dwyer, supra note 95, at 1781 (criticizing Smith's broad deference to legislative exemptions, which may result in too much deference to parents).

97 Smith, 494 U.S. at 884 (citing Bowen v. Roy, 476 U.S. 693, 708 (1986)); see also Leslie C. Griffin, Fighting the New Wars of Religion: The Need for a Tolerant First Amendment, 62 Me. L. Rev. 23, 44 (2010) ("The best way to avoid privileging a religious or philosophical reading of the Constitution is to hold all citizens to the same law, as Smith requires.").

98 Pub. L. No. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. §§2000bb to 2000bb-4 (2012)).

99 See Volokh, supra note 21, at 339-40.

100 521 U.S. 507 (1997).

101 See id. at 536.

102 See Hamilton, supra note 13, at 1104 & n.16; see also Gary S. Gildin, A Blessing in Disguise: Protecting Minority Faiths Through State Religious Freedom Non-Restoration Acts, 23 Harv. J.L. & Pub. Pol'y 411 (2000) (arguing in support of state RFRAs).

103 The mahr is a gift to the bride for entering into the marriage contract. See Bhala, supra note 16, §35.02[A]; see also Qur'an 4:4.

104 Jones v. Wolf, 443 U.S. 595, 604 (1979).

105 See supra text accompanying notes 72-73.

106 See Aflalo v. Aflalo, 685 A.2d 523, 526-27 (N.J. Super. Ct. Ch. Div. 1996).

107 Id. at 527.

108 See id. (citing Shmuel Himelstein, The Jewish Primer: Questions and Answers on Jewish Faith and Culture 161 (1990)).

109 See, e.g., Segal v. Segal, 650 A.2d 996, 997-98 (N.J. Super. Ct. App. Div. 1994) (involving a husband who refused to grant a get unless the wife "waived any claim to child support or alimony, disclaimed any interest in all marital assets including [the husband's] business, and in addition paid him $25,000"); Burns v. Burns, 538 A.2d 438, 439 (N.J. Super. Ct. Ch. Div. 1987) (involving a husband who stated that he would secure the get for the defendant only if she agreed to "invest $25,000 in an irrevocable trust for the benefit of their daughter, with the plaintiff and another party of his choosing as joint trustees").

110 See, e.g., Schwartz v. Schwartz, 913 N.Y.S.2d 313 (App. Div. 2010) (finding husband in contempt of court for failing to obtain a get by the date he voluntarily agreed to in a written stipulation executed by the parties); Waxstein v. Waxstein, 395 N.Y.S.2d 877 (Sup. Ct. 1976) ("[G]rant[[[ing] specific performance of...separation agreement [provision] requiring the parties to obtain a 'Get'."), aff'd, 394 N.Y.S.2d 253 (App. Div. 1977); Rubin v. Rubin, 348 N.Y.S.2d 61 (Fam. Ct. 1973) (finding valid and enforceable a separation agreement that made payment of support and alimony conditional upon the wife obtaining a get).

111 See, e.g., Scholl v. Scholl, 621 A.2d 808, 812 (Del. Fam. Ct. 1992); In re Marriage of Goldman, 554 N.E.2d 1016, 1022 (Ill. App. Ct. 1990) (finding that "the parties intended the ketubah to be a contract that the status and validity of their marriage would be governed by Orthodox Jewish law" and that "Orthodox Jewish law requires the husband to obtain and deliver to his wife an Orthodox get upon dissolution of the marriage"); Minkin v. Minkin, 434 A.2d 665, 666 (N.J. Super. Ct. Ch. Div. 1981) ("To compel the husband to secure a get would be to enforce the agreement of the marriage contract (ketuba)."); Stern v. Stern, 5 Fam. L. Rep. (BNA) 2810 (N.Y. Sup. Ct. Aug. 7, 1979). But compare Aflalo, 685 A.2d at 540-41, Victor v. Victor, 866 P.2d 899, 902 (Ariz. Ct. App. 1993),

and Mayer-Kolker v. Kolker, 819 A.2d 17, 20-21 (N.J. Super. Ct. App. Div. 2003), for instances where the courts felt the particular ketubah was too vague to form the basis for an implied agreement by the husband to deliver a get to the wife.

112 See, e.g., Avitzur v. Avitzur, 446 N.E.2d 136 (N.Y. 1983) (enforcing parties' prenuptial agreement to appear before a Beth Din to arbitrate martial issues). A related issue, beyond the scope of this Article, involves the constitutionality of §253 of the Domestic Relation Law, passed by the New York legislature in 1983 and popularly referred to as the "get statute," which makes a civil divorce contingent on the removal of all barriers to remarriage. See N.Y. Dom. Rel. Law §253(3) (McKinney 2014). Section 253(3) states:

> No final judgment of annulment or divorce shall thereafter be entered unless the plaintiff shall have filed and served a sworn statement: (i) that, to the best of his or her knowledge, he or she has, prior to the entry of such final judgment, taken all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

Id. The New York legislature took an additional step in 1992 and amended the state's equitable distribution statute empowering courts to take into account the impact "of a barrier to remarriage" when calculating equitable distribution in a marital dissolution. Id. §§236(B)(5)(h), (B)(5-a)(i), (B)(6)(d) (collectively with §253, referred to as the "get statute"). Similarly, the United Kingdom, Canada, and South Africa, all with large Jewish populations, have enacted their own versions of a get statute. Jeremy Glicksman, Note, Almost, but Not Quite: The Failure of New York's Get Statute, 44 Fam. Ct. Rev. 300, 301 (2006). Also, "[i]n Israel, [where] Orthodox Jewish religious authorities have exclusive legal authority over marriage and divorce, providing a get is a condition precedent for remarriage and failure to do so can result in incarceration." Id.

113 Waxstein, 395 N.Y.S.2d at 880 (internal quotation marks omitted). The relevant section of the separation agreement stated that "[p]rior to the Wife vacating the premises as hereinbefore set forth, the parties shall obtain a Get from a duly constituted Rabbinical court." Id. (internal quotation marks omitted). The wife moved out by the agreed date, but the husband refused to give a get. He argued before the court that because she had moved out before he granted the get, he was no longer obligated to comply with the provision. The court rejected the argument and surmised that the husband could not be the cause of the wife not complying with the provision and then use that as his defense. Id.

114 Id.

115 Id. at 881.

116 Id. at 880.

117 603 N.Y.S.2d 574 (App. Div. 1993).

118 Id. at 575 (internal quotation marks omitted).

119 Id.

120 Id.

121 Id. (emphasis added). The Kaplinsky decision builds on earlier holdings where the New York appellate courts upheld orders of specific performance to grant a get, but reversed orders of imprisonment for contempt of court. See, e.g., Margulies v. Margulies, 344 N.Y.S.2d 482 (App. Div. 1973). In Margulies, upon the husband's continued refusal to honor the order to grant a get, the lower court first fined him and then sentenced him to fifteen days in jail. Id. at 484. The majority in Margulies used neutral principles of contract law to interpret the husband's voluntary agreement to enter into an "open court stipulation" to grant a get and upheld the lower court's order of specific performance, but reversed the imprisonment order, allowing him to purge himself of the contempt either by paying a fine or by granting the get. Id.

122 See, e.g., Schwartz v. Schwartz, 913 N.Y.S.2d 313, 316-17 (App. Div. 2010) (finding husband in contempt of court for failing to grant a get by the date he voluntarily agreed to in a written stipulation executed by the parties); Fischer v. Fischer, 655 N.Y.S.2d 630, 630-31 (App. Div. 1997) (holding husband in contempt because "his failure to...comply with the provisions of the divorce judgment regarding the procurement of a 'get'....was willful"). But cf. Pal v. Pal, 356 N.Y.S.2d 672, 672-73 (App. Div. 1974) (reversing an order allowing the court to choose a third rabbi in a Rabbinical court). The Pal court was apparently concerned that the lower court's order would result in excessive entanglement in religion.

123 See, e.g., Scholl v. Scholl, 621 A.2d 808 (Del. Fam. Ct. 1992); Minkin v. Minkin, 434 A.2d 665 (N.J. Super. Ct. Ch. Div. 1981); Stern v. Stern, 5 Fam. L. Rep. (BNA) 2810 (N.Y. Sup. Ct. Aug. 7, 1979).

124 See In re Marriage of Goldman, 554 N.E.2d 1016, 1020 (Ill. App. Ct. 1990); Aflalo v. Aflalo, 685 A.2d 523, 529-31 & n.10 (N.J. Super. Ct. Ch. Div. 1996).

125 See, e.g., Goldman, 554 N.E.2d at 1023 (internal quotation marks omitted); see also Minkin, 434 A.2d at 668 (holding that an order had "the clear secular purpose of completing a dissolution of the marriage"). A number of other courts have also held that the words "according to the law of Moses and Israel" in the ketubah create an implied contractual obligation to grant and receive a get or to appear before the Beth Din. See, e.g., Scholl, 621 A.2d at 810, 812 (using "neutral principles of law" to order the "[h]usband to do what he already promised" and "to obtain an Orthodox [get]" (internal quotation marks omitted)); Schneider v. Schneider, 945 N.E.2d 650 (Ill. App. Ct. 2011) (granting wife's petition for specific performance for the husband to give a get pursuant to the terms of the ketubah the parties signed as part of their marriage ceremony); Burns v. Burns, 538 A.2d 438 (N.J. Super. Ct. Ch. Div. 1987) (ordering husband to appear before the Beth Din or in the alternative authorize a proxy to grant get to the wife).

126 Edwards v. Aguillard, 482 U.S. 578, 587 (1987).

127 See, e.g., Zelman v. Simmons-Harris, 536 U.S. 639 (2002) (holding that government funding of tuition voucher programs constitutes permissible secular purpose even when ninety-six percent of the funds flow to religiously affiliated schools). On the other hand, any government action that endorses religion is deemed to have an impermissible religious purpose. See discussion supra text accompanying notes 31-35 (discussing the Supreme Court's ruling in Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573 (1989)).

128 It has also been suggested that another secular purpose may include the avoidance of the intentional infliction of emotional distress, since the deliberate withholding of a get, with full knowledge of its implications, may cause extreme anguish. Irving Breitowitz, The Plight of the Agunah: A Study in Halacha, Contract, and the First Amendment, 51 Md. L. Rev. 312, 386, 399-400, 402 (1992). Breitowitz also proposes that women in this position may have a claim that without a get they are denied the Free Exercise of their religion. In other words, by facilitating the granting of a get "the state is merely accommodating the practice of religion by removing its disadvantages, rather than establishing it in a preferred position." Id. at 385. In this way, judicial orders of specific performance to grant a get may be deemed to serve an anti-discrimination purpose because, without a get, marriages among Orthodox and Conservative Jews that have been declared civilly terminated could be perpetuated indefinitely, leaving traditional Jewish women disadvantaged in comparison to other American women. See id.

129 Under the second prong of the Lemon test, the "principle or primary effect" of a government action "must be one that neither advances nor inhibits religion." Lemon v. Kurtzman, 403 U.S. 602, 612 (1971) (citing Bd. of Educ. v. Allen, 392 U.S. 236, 243 (1968)).

130 See, e.g., In re Marriage of Goldman, 554 N.E.2d 1016, 1019, 1022 (Ill. App. Ct. 1990); see also Minkin v. Minkin, 434 A.2d 665, 668 (N.J. Super. Ct. Ch. Div. 1981) (holding that an order of specific performance did not advance religion or cause "excessive entanglement with religion").

131 Volokh, supra note 21, at 5 (emphasis omitted) (citing Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989)).

132 Id. at 4-5 (citing Capitol Square Review & Advisory Bd. v. Pinette, 515 U.S. 753 (1995) and Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819 (1995)).

133 Texas Monthly, 489 U.S. at 14-15; see also Volokh, supra note 21, at 4-5.

134 Rosenberger, 515 U.S. at 840-43.

135 Lemon v. Kurtzman, 403 U.S. 602, 613-14 (1971) (internal quotation marks omitted) (first quote quoting Walz v. Tax Comm'n of N.Y., 397 U.S. 664, 674 (1970)).

136 521 U.S. 203 (1997).

137 Id. at 233.

138 In re Marriage of Goldman, 554 N.E.2d 1016, 1023 (Ill. App. Ct. 1990). The court also emphasized that the order was limited "to avoid interference with religious doctrine." Id. The order specified four options for the husband, including giving the get, cooperating with a Beth Din, or authorizing a proxy to give the get. Id. at 1021.

139 Agostini, 521 U.S. at 234-35.

140 See, e.g., Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989).

141 See, e.g., Larson v. Valente, 456 U.S. 228 (1982).

142 See, e.g., Pal v. Pal, 356 N.Y.S.2d 672, 673 (App. Div. 1974) (reversing order allowing the court to choose a third rabbi in a Rabbinical court). The Pal court was apparently concerned that the lower court's order would result in excessive entanglement in religion.

143 In both the Goldman and Minkin decisions, for example, Rabbis testified that the get procedure is "secular rather than religious in nature" because it does not require the husband to profess any religious belief and a Rabbi is not needed to preside over it. See Goldman, 554 N.E.2d at 1020; accord Minkin v. Minkin, 434 A.2d 665, 667-68 (N.J. Super. Ct. Ch. Div. 1981). The courts then used this testimony to propose that resolving a dispute centered around a get, which is secular, neither advances religion nor causes excessive entanglement between church and state. See Goldman, 554 N.E.2d at 1023; Minkin, 434 A.2d at 668.

144 E.g., Aflalo v. Aflalo, 685 A.2d 523, 528, 531 (N.J. Super. Ct. Ch. Div. 1996) (holding that it was prohibited by the "Establishment.... [and] [[[t]he Free Exercise Clause[s]...from interfering" in the dispute and reflecting that the wife's predicament comes from her "own sincerely-held religious beliefs" when "she agreed to be obligated to the laws of Moses and Israel" and "can hardly be remedied by [the] court").

145 See Victor v. Victor, 866 P.2d 899, 900 (Ariz. Ct. App. 1993) (holding that "it is without jurisdiction to order the respondent to grant an [[[O]rthodox 'Get"'); Mayer-Kolker v. Kolker, 819 A.2d 17, 18-19 (N.J. Super. Ct. App. Div. 2003) (noting that the trial judge lamented that although he would have liked to grant the request for an order of specific performance, following Aflalo, he did not believe that he had "the authority to do that" (internal quotation marks omitted)).

146 See, e.g., Aflalo, 685 A.2d at 526-27, 529 & n.10, 530 (quoting repeatedly from 6 Encyclopedia Judaica 131 (1971) and Deuteronomy 24:1-4 to define a get, clarify the process involved in granting a get, and explain the implications for the wife if the husband refuses to give a get). The court also seems to engage in ideological observations by declaring that the wife's "religion, at least in terms of divorce, does not profess gender equality." Id. at 535.

147 Jones v. Wolf, 443 U.S. 595, 605 (1979).

148 Avitzur v. Avitzur, 446 N.E.2d 136 (N.Y. 1983); see also Berg v. Berg, No. 25099/05, 2008 WL 4155652, at *3 (N.Y. Sup. Ct. Sept. 8, 2008) (holding that "it is well established that the court can enforce an agreement in which [the] parties agree to refer a divorce matter to a Beth Din"), aff'd as modified, 926 N.Y.S.2d 568 (App. Div. 2011).

149 Avitzur, 446 N.E.2d at 138 (internal quotation marks omitted).

150 Id. at 139.

151 Id. at 138. The court also rejected the husband's argument that the ketubah was unenforceable because it was entered into as part of a religious ceremony, noting that the state has always recognized solemnization of marriages by religious officials. Id. at 138-39.

152 Id. at 138.

153 See, e.g., id. ("[P]laintiff is not attempting to compel defendant to obtain a Get or to enforce a religious practice arising solely out of principles of religious law. She merely seeks to enforce an agreement made by defendant to appear before and accept the decision of a designated tribunal.").

154 See Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 595-97 (1989); Lynch v. Donnelly, 465 U.S. 668, 679-80 (1984).

155 Lynch, 465 U.S. at 711 (Brennan, J., dissenting) (suggesting that the crèche's embodiment of "one of the central elements of Christian dogma," is not neutralized by the presence of secular figures such as "Santa Claus, reindeer, and carolers").

156 Everson v. Bd. of Educ., 330 U.S. 1, 18 (1947) (concluding that the Establishment Clause "requires the state to be a neutral in its relations with groups of religious believers and non-believers").

157 See, e.g., Minkin v. Minkin, 434 A.2d 665, 666 (N.J. Super. Ct. Ch. Div. 1981); see also Aflalo v. Aflalo, 685 A.2d 523, 534 (N.J. Super. Ct. Ch. Div. 1996) (refusing to order husband to give wife a get under the First Amendment).

158 See, e.g., In re Marriage of Goldman, 554 N.E.2d 1016, 1023 (Ill. App. Ct. 1990).

159 Emp't Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 879 (1990) (quoting United States v. Lee, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring)) (internal quotation marks omitted), superseded by statute, Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. §§2000bb to 2000bb-4 (2012)).

160 See Gedicks, supra note 77, at 572 ("Smith merely requires that laws which incidentally burden religious conduct have a rational basis....").

161 See, e.g., S. Jersey Catholic Sch. Teachers Org. v. St. Teresa of the Infant Jesus Church Elementary Sch., 696 A.2d 709 (N.J. 1997). In South Jersey, over the objections of the church, teachers in a parochial school sued for the right to unionize pursuant to the constitution of the State of New Jersey, which provided for collective bargaining rights of private employees. Id. at 713. The court noted that under Smith the state no longer had to show a compelling state interest if a neutral program only incidentally burdened a religious practice and affirmed the lower court's ruling that organizing a union that limited its agenda to secular terms and conditions did not violate the church's free exercise rights. Id. at 719, 724. Other cases, without using Smith, have nonetheless held that limits must be placed on the shield the Free Exercise Clause can provide against discriminatory behavior. For example, in McKelvey v. Pierce, 800 A.2d 840 (N.J. 2002), the court held that courts should be able to hear claims based on "breach of contract (implied in fact and law)...; a breach of covenant of good faith and fair dealing; a breach of fiduciary duty; intentional infliction of emotional distress; and fraud and deceit." Id. at 858.

162 See Burns v. Burns, 538 A.2d 438, 439 (N.J. Super. Ct. Ch. Div. 1987) (involving husband who refused to grant wife get unless she agreed to "invest $25,000 in an irrevocable trust for the benefit of their daughter, with the plaintiff and another party of his choosing as joint trustees").

163 Smith, 494 U.S. at 890.

164 Jones v. Wolf, 443 U.S. 595, 603, 606 (1979).

165 Id. at 606.

166 See Breitowitz, supra note 128, at 357.

167 Volokh, supra note 21, at 369 (describing strict scrutiny in religion cases as "strict in theory, feeble in fact" (internal quotation marks omitted)).

168 Hernandez v. Comm'r, 490 U.S. 680, 699-700 (1989) (internal quotation marks omitted).

169 Bob Jones Univ. v. United States, 461 U.S. 574, 604 (1983).

170 Loving v. Virginia, 388 U.S. 1 (1967) (striking down a miscegenation statute that violated the fundamental right to marry).

171 Sherbert v. Verner, 374 U.S. 398, 407 (1963).

172 Jones v. Wolf, 443 U.S. 595, 602 (1979).

173 Id.

174 Also, since many Jewish husbands grant gittin (Jewish divorces) without considering themselves in violation of religious law, it is unlikely that the requirement to grant a get would be deemed a substantial burden on the husband's religious beliefs.

175 Griffin, supra note 5, at 1834.

176 See Qur'an 4:4; see also Bhala, supra note 16, §35.02[A].

177 Abdul Hadi Al-Hakim, A Code of Practice for Muslims in the West 170 (Najim al-Khafaji ed., Sayyid Muhammad Rizvi trans., 2001) (This book is based on the expert opinions of Grand Ayatollah al-Sayyid 'Ali al-Husayni al-Sistani, one of the most revered leaders of Shia Islam.).

178 Jones v. Wolf, 443 U.S. 595, 604 (1979).

179 See, e.g., Greenawalt, supra note 54, at 1883 (noting, despite tepid support for the neutral-principles approach, "that applications of neutral principles are nonuniform and unpredictable").

180 See, e.g., John E. Fennelly, Property Disputes and Religious Schisms: Who is the Church?, 9 St. Thomas L. Rev. 319, 353 (1997) (proposing that the use of "[n]eutral principles has led to the willy-nilly application" of a whole soup of neutral legal instruments resulting in "confusion and uncertainty").

181 Jones, 443 U.S. at 602.

182 See discussion supra text accompanying notes 71-73.

183 See Richard W. Garnett, A Hands-Off Approach to Religious Doctrine: What Are We Talking About?, 84 Notre Dame L. Rev. 837, 858 (2009) ("That we do not think government officials may or should 'declare religious truth' does not mean--or, at least, it need not always mean--that they cannot take judicial notice of the fact that, say, ham-and-cheese sandwiches are not Kosher....[or] to confirm, or take judicial notice of the fact, that the Roman Catholic Church teaches that 'Jesus of Nazareth...is the eternal Son of God made man.'" (second ellipsis in original)).

184 For an example of when courts cross the line and use religious doctrine to reach their result, see Rahman v. Hossain, No. A-5191-08T3, 2010 WL 4075316, at *4 (N.J. Super. Ct. App. Div. June 17, 2010) (holding that the mahr provision was unenforceable, because, under Islamic Law, the wife's mental illness relieved the husband from his obligations under the contract).

185 See, e.g., Unif. Premarital Agreement Act §1(1), 9C U.L.A. 35 (2001). In addition, premarital agreements may also be governed by the Uniform Probate Code, see Unif. Probate Code (amended 2010), and the Uniform Marital Property Act, see Unif. Marital Prop. Act (1983).

186 See, e.g., Zawahiri v. Alwattar, 2008-Ohio-3473U, 2008 WL 2698679, at PP20-22 (Ct. App. July 10, 2008). This Article uses the terms "premarital agreement," "antenuptial agreement," and "prenuptial agreement" interchangeably.

187 See Nathan B. Oman, Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization, 45 Wake Forest L. Rev. 579 (2010) (providing a comprehensive examination of differences between the Western and Islamic narratives of marriage).

188 See, e.g., Unif. Premarital Agreement Act §6(a)(2)(i), 9C U.L.A. 35 (2001) (stating that the premarital agreement is unenforceable if there was no "fair and reasonable disclosure of the property or financial obligations of the other party" to "the party against whom enforcement is sought").

189 See Oman, supra note 187, at 600.

190 See id.

191 See Bhala, supra note 16, §35.02[A].

192 Islamic Laws: Marriage: Rules Regarding Permanent Marriage, Official Website His Eminence Grand Ayatollah al-Sayid 'Ali al-Husayni al-Sistani, http://www.sistani.org/english/book/48/2349 (last visited Feb. 20, 2014) (italics added); see also Bhala, supra note 16, §35.02[A]; M. Afzal Wani, The Islamic Institution of Mahr 71-72 (1996).

193 See Qur'an 4:4; see also Bhala, supra note 16, §35.02[A].

194 See Bhala, supra note 16, §35.02[A] (describing the mahr as a "nuptial gift").

195 Unif. Premarital Agreement Act §6(a)(2)(i), 9C U.L.A. 35 (2001).

196 See Bhala, supra note 16, §33.04[A] (explaining different methods of divorce under the Shariah, including "al khala" divorce, which "occurs when a wife gives back to her husband her nuptial gift" and "[a]t that point...the marriage ends").

197 Islamic Laws: Divorce: Mubarat Divorce, Official Website His Eminence Grand Ayatollah al-Sayid 'Ali al-Husayni al-Sistani, http://www.sistani.org/english/book/48/2362 (last visited Feb. 20, 2014).

198 Islamic Laws: Divorce: Khula' Divorce or Talaqul Khula', Official Website His Eminence Grand Ayatollah al-Sayid 'Ali al-Husayni al-Sistani, http://www.sistani.org/english/book/48/2361 (last visted Feb. 20, 2014).

199 See, e.g., Ahmed v. Ahmed, 261 S.W.3d 190 (Tex. App. 2008). In Ahmed, the parties entered into their civil marriage six months prior to executing an Islamic marriage contract, which stipulated that the husband pay a deferred mahr of $50,000 to the wife. Id. at 192-93. The Texas Court of Appeals evaluated the mahr provision as a premarital agreement and held that it was invalid because it was entered into after the civil ceremony, rather than made in contemplation of marriage. Id. at 194. Yet Muslims living in non-Muslim jurisdictions very frequently enter into both civil and religious arrangements with no particular attention to the order of these events. Since under Islamic law, the mahr constitutes an agreement by the husband to give a gift to the prospective bride, the timing of the civil ceremony should be irrelevant.

200 See, e.g., Aleem v. Aleem, 947 A.2d 489, 491 (Md. 2008) ("If the Pakistani marriage contract is silent, Pakistani law does not recognize marital property. [Whereas, i]f a premarital or post-marital agreement in Maryland is silent with respect to marital property,...the default under Maryland law is that the wife has marital property rights in property titled in the husband's name." (quoting Aleem v. Aleem, 931 A.2d 1123, 1134 (Md. Ct. Spec. App. 2007)) (internal quotation marks omitted)); see also Bhala, supra note 16, §§35.01-35.02[A].

201 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 865 (Ct. App. 2001); Chaudhary v. Ali, No. 0956-94-4, 1995 WL 40079, at *1-2 (Va. Ct. App. Jan. 31, 1995).

202 See, e.g., Akileh v. Elchahal, 666 So. 2d 246, 248 (Fla. Dist. Ct. App. 1996).

203 Shaban, 105 Cal. Rptr. 2d at 866, 870.

204 Id. at 865 (internal quotation marks omitted). In Chaudhary, the husband analogized the whole marriage contract, or "nikah nama," to a "prenuptial agreement which bars [the] wife from receiving anything from [the] husband upon their divorce." Chaudhary, 1995 WL 40079, at *1. In rejecting the husband's argument, the court declared that the marriage contract did not constitute a valid premarital agreement because it failed to either make "fair and reasonable provision" for the spouse or provide a "full and frank disclosure" of the husband's worth to the wife prior to signing the agreement. Id. (quoting Batleman v. Rubin, 98 S.E.2d 519, 521 (Va. 1957)) (internal quotation marks omitted). Similarly, in In re Marriage of Altayar, No. 574745-2-I, 2007 WL 2084346 (Wash. Ct. App. July 23, 2007) (per curiam), the wife, under threat of physical violence, signed a quit claim deed transferring her rights in the community property (the family home and a service garage) to her brother in law. Id. at *1. The court refused to recognize the mahr (consisting "of 19 grams of 21 karat gold" and a Qur'an) as a valid substitute for the wife's fair share of the community property. Id. at *1, *4.

205 Akileh, 666 So. 2d at 247, 249.

206 Id. at 247.

207 See Afghahi v. Ghafoorian, No. 1481-09-4, 2010 WL 1189383, at *1 n.1, *4 (Va. Ct. App. Mar. 30, 2010) (discussing marriage contract that stipulated, among other nominal items, to a mahr in the amount of 514 gold coins valued at approximately $141,100).

208 The same argument applies to other similarly decided cases including Chaudhary, 1995 WL 40079, at *1-2, and Altayar, 2007 WL 2084346. See supra note 204.

209 See Estin, supra note 6, at 586-88; Rajni K. Sekhri, Note, Aleem v. Aleem: A Divorce from the Proper Comity Standard--Lowering the Bar That Courts Must Reach to Deny Recognizing Foreign Judgments, 68 Md. L. Rev. 662, 689-90 (2009) (criticizing the Aleem court's "defective comity analysis").

210 388 A.2d 1000 (N.J. Super. Ct. App. Div. 1978).

211 Id. at 1003-04.

212 Id.

213 Id. at 1004.

214 Id. at 1004-05.

215 Id. at 1005, 1008; see also Sherif v. Sherif, 352 N.Y.S.2d 781, 783-84 (Fam. Ct. 1974) (upholding an Egyptian divorce on the basis of comity).

216 Chaudry, 388 A.2d at 1006.

217 Oman, supra note 187, at 580, 596-97 (noting that the court wrongly "assumed that the contract must be a premarital agreement" intended to "bargain[] away rights in divorce," while also acknowledging that "Pakistani family law follows the classical fiqh in providing no equitable distribution of property upon divorce").

218 Chaudry, 388 A.2d at 1004.

219 Jonathan E. Fields, Forbidden Provisions in Prenuptial Agreements: Legal and Practical Considerations for the Matrimonial Lawyer, 21 J. Am. Acad. Matrimonial Law. 413, 423 (2008) (stating that waivers of spousal support were prohibited at common law and that even in states where such waivers are now permissible, enforcement is prohibited if it "would render the spouse a public charge" or if the waiver fails "the substantive or procedural fairness tests").

220 Chaudry, 388 A.2d at 1006.

221 Aleem v. Aleem, 947 A.2d 489, 494 (Md. 2008).

222 Id. at 490 (internal quotation marks omitted).

223 Id. at 493 n.5, 494.

224 Id. at 491 (quoting Aleem v. Aleem, 931 A.2d 1123, 1134 (Md. Ct. Spec. App. 2007)) (internal quotation marks omitted).

225 Id. at 491, 500 (quoting Aleem, 931 A.2d at 1134) (internal quotation marks omitted); see also Maklad v. Maklad, No. FA000443796S, 2001 WL 51662, at *2 (Conn. Super. Ct. Jan 3, 2001) (holding that an Egyptian divorce order was invalid because it was obtained without accommodating the wife's due process rights); Tarikonda v. Pinjari, No. 287403, 2009 WL 930007, at *2-3 (Mich. Ct. App. Apr. 7, 2009) (reversing the trial court and holding that talaq violated the wife's due process rights because of the (1)failure to notify the wife of the performance of talaq, (2)lack of legal representation and right to be present at the time of talaq pronouncement, and (3)overall lack of opportunity to provide a hearing; recognizing that talaq falls short under Michigan public policy because Islamic law does not provide for an equitable division of the marital estate, but rather only entitles a wife to property that is in her name); In re Ramadan, 891 A.2d 1186, 1188, 1190 (N.H. 2006) (denying comity to Lebanese divorce whereby the husband performed talaq himself one day before the wife filed for divorce in New Hampshire and stating that "[c]omity...is a discretionary doctrine that will not be applied if it violates a strong public policy of the forum state, or if it leaves the court in a position where it is unable to render complete justice"); Farag v. Farag, 772 N.Y.S.2d 368, 371 (App. Div. 2004) (recognizing comity with Egyptian divorce law but holding that "a foreign divorce decree obtained on the ex parte petition of a spouse present but not domiciled in the foreign country will not be recognized in New York where the other nonresident spouse does not appear and is not served with process" (internal quotation marks omitted)).

226 See Sekhri, supra note 209, at 689 (calling the court's comity analysis "defective").

227 Chaudry v. Chaudry, 388 A.2d 1000, 1006 (N.J. Super. Ct. App. Div. 1978). The court left open the possibility for an equitable distribution of property "where there is a sufficiently strong nexus between the marriage and th[e] State [of New Jersey]." Id. (citing Healey v. Healey, 377 A.2d 762 (N.J. Super. Ct. App. Div. 1977)); see also Pierrakos v. Pierrakos, 372 A.2d 1331 (N.J. Super. Ct. App. Div. 1977).

228 2008-Ohio-3473U, 2008 WL 2698679 (Ct. App. July 10, 2008).

229 810 A.2d 93 (N.J. Super. Ct. Ch. Div. 2002).

230 Although the Ohio Court of Appeals in Zawahiri refused to compare the mahr to a general contract because the wife failed to raise the argument at trial (and therefore waived it), the comparison with Odatalla is still valuable because it illustrates the importance of choosing an appropriate neutral instrument when applying the neutral-principles doctrine.

231 Zawahiri, 2008 WL 2698679, at P5.

232 Odatalla, 810 A.2d at 95.

233 Zawahiri, 2008 WL 2698679, at P23.

234 Odatalla, 810 A.2d at 94-95.

235 Zawahiri, 2008 WL 2698679, at PP20-23.

236 Odatalla, 810 A.2d at 98.

237 Zawahiri, 2008 WL 2698679, at PP9-10 (refusing to evaluate the merits of the wife's claim, who, having realized her error in analogizing the mahr provision to a premarital agreement, tried to persuade the Court of Appeals to uphold the mahr as a simple contract, because she had not preserved the claim for review).

238 Id. P13.

239 Oman, supra note 187, at 602.

240 Zawahiri, 2008 WL 2698679, at P23.

241 The custom of not having an attorney present was acknowledged in Ali. See Chaudhary v. Ali, No. 0956-94-4, 1995 WL 40079, at *1 (Va. Ct. App. Jan. 31, 1995) ("It is not customary for the parties to receive legal counsel prior to signing the agreement.").

242 The author has witnessed frenzied, last-minute negotiations at many Islamic marriages and at one union was given the responsibility, without any advanced notice, of negotiating the mahr shortly before the ceremony.

243 See Odatalla v. Odatalla, 810 A.2d 93, 94-95 (N.J. Super. Ct. Ch. Div. 2002).

244 Id. at 94-97.

245 Id. at 98.

246 Id.

247 Id. at 97.

248 Id.

249 See, e.g., Chaudry v. Chaudry, 388 A.2d 1000 (N.J. Super. Ct. App. Div. 1978). At this point, you may be wondering whether this Article contradicts itself, because in the earlier discussion on the get cases, the Article warns against adjudicating contracts based on an interpretation of the "laws of Moses and Israel." So how, you may wonder, can courts start exploring the mahr without running into Establishment Clause concerns? This is a worthy criticism, but I would suggest that in some of the potentially unconstitutional get decisions, courts use expert testimony to figure out when, according to the "laws of Moses and Israel," a husband may be obligated to grant a get, whereas in this Section, I am recommending that courts use expert testimony for the limited purpose of figuring out what a mahr is--is it a prenuptial agreement, a gift, or a simple contract? The courts would not be taking the extra step of trying to decipher what role a mahr provision plays in the division of assets under Islamic law. Similarly, in the get cases, it would be fine to use expert testimony to identify that a get is a Jewish divorce, but not to explore under what circumstances a get must be granted pursuant to the "laws of Moses and Israel."

250 As demonstrated earlier, the comparison between the Zawahiri and Odatalla decisions reveals that mahr disputes, even when framed by very similar facts, are interpreted in conflicting ways because courts facing large marital estates are often reluctant to deprive the wife of her economic rights, but courts facing insignificant marital estates wish for her to obtain the benefit of her bargain under the mahr provision. See supra notes 228-48 and accompanying text.

251 See Oman, supra note 187, at 600 (proposing that a Muslim man's expectation that his wife is not entitled to the marital estate "arises because of the background rules of Islamic property law," not "as a matter of contract").

252 It is worth noting that while there has been a dramatic rise in religious arbitration in the United States, this trend is not reflected globally. In Ontario, Canada, for example, where Christian and Jewish arbitration panels have been functioning for some time, the attempt to authorize Islamic arbitration of family disputes ran into a groundswell of opposition over concerns that such a system could permit serious departures from secular guarantees of gender equality. As a result, on September 11, 2005, Ontario banned all religious arbitration of family disputes (including Christian and Jewish forums), with Premier Dalton McGuinty declaring: "There will be no religious arbitration in Ontario. There will be one law for all Ontarians." Prithi Yelaja & Robert Benzie, McGuinty: No Sharia Law, Toronto Star, Sept. 12, 2005, at A01. The Quebec legislature also unanimously rejected the use of Islamic tribunals. Keith Leslie, No Sharia in Ontario: All Religious Arbitration to Be Prohibited, McGuinty Says, Montreal Gazette, Sept. 12, 2005, at A1. Similarly, the Archbishop of Canterbury, Dr. Rowen Williams, came under severe criticism after he called for plural jurisdiction and the need to adopt part of the Shariah in the United Kingdom. Ruth Gledhill & Philip Webster, Archbishop of Canterbury Argues for Islamic Law in Britain, Times (London), Feb. 8, 2008, at 1. Unlike Canada, however, the United Kingdom quietly set up the Muslim Arbitration Tribunal in 2007 to settle certain civil disputes between Muslims. The Tribunal's "decisions are enforceable in the UK courts." Frances Gibb, Are Sharia Courts Depriving Women of Their Legal Rights?; A New Bill Highlights Worries That a Parallel Legal System is Being Developed, Reports Frances Gibb, Times (London), June 16, 2011, at 67.

253 See Grossman, supra note 1.

254 See Helfand, supra note 2, at 1250 (citing examples of initiatives for the establishment of Islamic arbitration venues such as the Fiqh Council of North America).

255 See Abd Alla v. Mourssi, 680 N.W.2d 569, 570-71, 574 (Minn. Ct. App. 2004) (evaluating and affirming the validity of an arbitration award by "the Arbitration Court of an Islamic Mosque" (whose jurisdiction the parties had stipulated to in a partnership agreement) and holding that the plaintiff failed to follow statutory time requirements under the Minnesota arbitration statute for filing a timely protest); see also Charles P. Trumbull, Note, Islamic Arbitration: A New Path for Interpreting Islamic Legal Contracts, 59 Vand. L. Rev. 609, 640-46 (2006) (proposing that "judges...infer an arbitration clause into Islamic contracts").

256 See Jabri v. Qaddura, 108 S.W.3d 404, 407 (Tex. App. 2003) (enforcing parties' agreement that all their disputes be submitted to the Texas Islamic Court).

257 See, e.g., Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 24-26 (1991); Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 480-81 (1989).

258 See Joel A. Nichols, Multi-Tiered Marriage: Ideas and Influences from New York and Louisiana to the International Community, 40 Vand. J. Transnat'l L. 135, 140-41 (2007) (advocating broadly for deference to religious arbitration); Edward A. Zelinsky, Deregulating Marriage: The Pro-Marriage Case for Abolishing Civil Marriage, 27 Cardozo L. Rev. 1161, 1185 (2006).

259 For example, certain religious traditions set limitations on the admissibility of women's testimony, which is a dramatic deviation from the civil rules of evidence. See Mohammad Fadel, Note, Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought, 29 Int'l J. Middle E. Stud. 185 (1997) (discussing how different schools of Islamic jurisprudence address limitations on the value of women's testimony); Grossman, supra note 1, at 181 ("[S]trict Jewish law categorically excludes women from serving as judges, and, along with the handicapped, minors, and others, excludes women from testifying as witnesses." (citing 1 Emanuel Quint, A Restatement of Rabbinic Civil Law 255-56 (1990))).

260 Griffin, supra note 5, at 1852 (internal quotation marks omitted).

261 Estin, supra note 6, at 590. I am not simply making the narrow argument that courts should defer to secular, but not religious arbitration. In all likelihood, any such proposal would have to pass the real strict scrutiny standard set forth in Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993). Rather, my concern is with automatic deference to any arbitration body that applies sex-

discriminatory rules, including a secular forum, which, pursuant to the parties' contract, relies on the foreign law of a country that violates the equity norms embodied in the civil standards of this country.

262 See, e.g., Ayelet Shachar, Multicultural Jurisdictions: Cultural Differences and Women's Rights 122 (2001) (proposing that parties should be permitted to opt out when "power-holders fail to effectively respond to constituent needs"); Maria Reiss, Note, The Materialization of Legal Pluralism in Britain: Why Shari'a Council Decisions Should Be Non-Binding, 26 Ariz. J. Int'l & Comp. L. 739, 777 (2009) (arguing that "Shari'a Councils [[[should] remain functioning as non-binding tribunals as they have been in the past").

263 Shachar, supra note 262, at 123.

264 Id. at 85.

265 Id. at 20-22.

266 Id. at 22.

267 Id. at 122; see Helfand, supra note 2, at 1284 (arguing that "Shachar's...approach...lacks.... specificity").

268 Helfand, supra note 2, at 1284.

269 Shachar, supra note 262, at 123.

270 Martha Minow, Is Pluralism an Ideal or a Compromise?: An Essay for Carol Weisbrod, 40 Conn. L. Rev. 1287, 1300 (2008). Minow "argues that accommodations for minority groups by liberal democracies do not require a compromise when convergence between values can be achieved." Id. at 1287. She goes on to explain that "[w]hen convergence cannot be achieved, compromise is not always wrong and can on occasion be justified to pursue social stability and to express competing principles embraced within the liberal democracy, but compromise cannot be justified if it involves capitulation to threats." Id.

271 Minow states that convergence exists when each side finds "common ground without sacrificing principles." Id. at 1300.

272 Minow proposes that the New York get statute's treatment "of religious impediments to secular divorce exemplif[ies] convergence rather than either the state supplanting of religious norms or religious norms supplanting state rules." Id. at 1297.

273 It is important to acknowledge at the outset that determining what constitutes convergence will not always be easy, especially when the religious rules are complex, subject to debate by experts, and unfamiliar to the civil courts.

274 552 U.S. 576 (2008).

275 Id. at 587.

276 9 U.S.C. §10(a) (2012); see also Hall Street, 552 U.S. at 582 ("Section 10 [of the FAA] lists grounds for vacating an award, while §11 names those for modifying or correcting one.").

277 See, e.g., DCR Constr., Inc. v. Delta-T Corp., No. 8.09-CV-741-T-27AEP, 2009 WL 5173520, at *6 (M.D. Fla. Dec. 30, 2009) (holding that the public policy exception is no longer a basis for judicial review of arbitration awards); LeFoumba v. Legend Classic Homes, Ltd., No. 14-08-00243-CV, 2009 WL 3109875, at *2 (Tex. App. Sept. 17, 2009) (overruling a complaint, finding the public policy exception no longer available under the FAA).

278 See, e.g., In re Marriage of Shaban, 105 Cal. Rptr. 2d 863, 865 (Ct. App. 2001); Chaudhary v. Ali, No. 0956-94-4, 1995 WL 40079, at *1-2 (Va. Ct. App. Jan. 31, 1995).

279 See, e.g., Akileh v. Elchahal, 666 So. 2d 246, 248 (Fla. Dist. Ct. App. 1996).

280 E.g., Helfand, supra note 2, at 1257 n.113, 1288-94.

281 Id. at 1258 n.114 (quoting Joan Parker, Judicial Review of Labor Arbitration Awards: Misco and Its Impact on the Public Policy Exception, 4 Lab. Law. 683, 711 (1988)) (internal quotation marks omitted); see also Harry T. Edwards, Judicial Review of Labor Arbitration Awards: The Clash Between the Public Policy Exception and the Duty to Bargain, 64 Chi.-Kent L. Rev. 3, 34 (1988) (concluding that vacating arbitration awards based on the public policy exception will undermine the efficacy of arbitration

proceedings); Stephen L. Hayford, Law in Disarray: Judicial Standards for Vacatur of Commercial Arbitration Awards, 30 Ga. L. Rev. 731, 823 (1996) (concluding that giving the public policy exception wide berth may risk courts "trespassing into the merits of the underlying dispute").

282 Helfand, supra note 2, at 1258-59.

283 See id. at 1258-60.

284 Minow poses the question: "[s]hould a religious tribunal supervise divorce and child custody determinations with results to be accorded state recognition?" Minow, supra note 270, at 1307. She answers with another question, wondering whether "such a tribunal [should] be allowed to perform such a role only if its norms match those of the larger state?" Id.

285 See supra text accompanying notes 221-25.

286 Of course, the search for equality in divorce law also has much further to go in this country, but the question before us is limited: Whether, for the purposes of the convergence test, the religious standard governing talaq deviates from the equity standards that shape its civil counterpart.

287 See discussion supra Part II.A. It is worth noting from the earlier discussion that it is much more challenging for courts to adjudicate a get dispute that turns on an interpretation of the general language of the ketubah, in the absence of an express agreement outlining the parties' intent regarding the get.

288 In fact, the Supreme Court's concern ran in the opposite direction when it warned in Jones that attempts to enforce a singular rule of "compulsory deference" is much more likely to increase the risks of entanglement. Jones v. Wolf, 443 U.S. 595, 605 (1979). The high court's prescient words are amply borne out by decisions such as Aflalo v. Aflalo, 685 A.2d 523 (N.J. Super. Ct. Ch. Div. 1996), where the New Jersey Superior Court delved deeply into religious doctrine analysis to demonstrate that it cannot undertake an investigation into parochial issues. See id. at 526-31.

289 Estin, supra note 6, at 590.

290 See Shalina A. Chibber, Charting a New Path Toward Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code, 83 Ind. L.J. 695, 710 (2008) (arguing that basing reform of religious personal laws in India on a "right of exit approach" "is facially misleading because the majority of women in India do not enjoy the privilege of making choices about their rights" (internal quotation marks omitted)).

291 See id. at 711 (arguing that a dual-jurisdiction system "provides minority groups with new fears of majority encroachment and loss of identity").

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2016

The Honorable Dan Flynn
Chair, Committee on Pensions
Texas House of Representatives
Post Office Box 2910
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Opinion No. KP-0094

Re: The extent to which a judge may refuse to apply the law of a jurisdiction outside of the United States in certain family law disputes (RQ-0083-KP)

Dear Representative Flynn:

You ask a number of questions concerning "the extent to which current law authorizes or requires a judge of a state court to refuse to apply foreign law in certain family law disputes."[1] You explain that by "foreign law," you mean "the law of a country other than the United States," and by "family law dispute," you mean "a legal dispute regarding a marital relationship or a parent-child relationship." Request Letter at 1. While you propose nineteen different factual scenarios, they each involve the application of foreign law that violates a party's right to due process or the public policy of this State. *Id.* at 1–3. As the Texas Supreme Court has explained, "[t]he basic rule is that a court need not enforce a foreign law if enforcement would be contrary to Texas public policy." *Larchmont Farms, Inc. v. Parra*, 941 S.W.2d 93, 95 (Tex. 1997). Mere differences between Texas law and foreign law do not necessarily render the foreign law unenforceable, but if a foreign law "violates good morals, natural justice, or is prejudicial to the general interests of our own citizens," a court may refuse to enforce it. *Robertson v. Estate of McKnight*, 609 S.W.2d 534, 537 (Tex. 1980). Furthermore, the United States Supreme Court has explained that "due process requires that no other jurisdiction shall give effect . . . to a judgment elsewhere acquired without due process." *Griffin v. Griffin*, 327 U.S. 220, 228 (1946). It is with these principles in mind that we address your specific questions.

You first ask whether a judge may refuse to enforce a judgment of another country that is based on the application of foreign law that violated a party's due process rights or was contrary to the public policy of this State. Request Letter at 1. "A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction." *Griffin*, 327 U.S. at 228. Texas courts have long held "the chief requisite for the recognition of a foreign judgment necessarily is that an opportunity for a full and fair trial was afforded." *Banco Minero v. Ross*, 172 S.W. 711, 714–15 (Tex. 1915) (declining to recognize a judgment by a Mexican court after finding that it was entered without a full and fair trial before an

[1]Letter from Honorable Dan Flynn, Chair, House Comm. on Pensions, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Dec. 17, 2015), https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs ("Request Letter").

impartial tribunal). Thus, if a judgment was obtained in a foreign jurisdiction in violation of a party's due process rights, a state court judge may refuse to enforce the judgment. Similarly, Texas courts will consider whether a judgment obtained in a foreign country was based on foreign law contrary to this State's public policy, and, if so, the courts may refuse to enforce the judgment. *See Ashfaq v. Ashfaq*, 467 S.W.3d 539, 543–44 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (considering whether Pakistani divorce law violated Texas public policy).

You next ask whether a judge may refuse to enforce a decision of an agreed-upon arbitrator if the arbitrator's application of foreign law or the application of principles of a particular faith resulted in an arbitration decision violating a party's due process rights or was contrary to the public policy of this State. Request Letter at 2. "Parties in an arbitration proceeding have due process rights to notice and a meaningful opportunity to be heard." *Ewing v. Act Catastrophe-Tex. L.C.*, 375 S.W.3d 545, 551 (Tex. App.—Houston [14th Dist.] 2012, pet. denied); *see* TEX. CIV. PRAC. & REM. CODE § 171.044(a) (requiring notice of arbitration). To the extent that an arbitration award is obtained in violation of these due process rights, a judge is authorized to refuse enforcement of the award. Furthermore, a Texas court "may refuse to enforce an arbitration award that is contrary to public policy." *Myer v. Americo Life, Inc.*, 232 S.W.3d 401, 413 (Tex. App.—Dallas 2007, no pet.).

In your third question, you ask whether a judge may refuse to apply foreign law that would otherwise apply under the principles of conflict of laws if applying such law would violate due process or the public policy of this State. Request Letter at 2. Traditional conflict-of-law principles prescribe that issues that are strictly procedural in nature are governed by the laws of the forum state. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 122 (AM. LAW INST. 1971); *Arkoma Basin Expl. Co. v. FMF Assocs. 1990-A, Ltd.*, 249 S.W.3d 380, 387 n.17 (Tex. 2008). Thus, a court of this State would apply Texas procedural law, not the procedures of a foreign law, to determine the substantive rights of the parties. With regard to the public policy concerns you raise, "[i]f the law of the foreign jurisdiction with the most significant contacts is against good morals or natural justice, or is prejudicial to the general interests of our citizens, Texas courts should refuse to enforce said law." *Vanderbilt Mortg. & Fin., Inc. v. Posey*, 146 S.W.3d 302, 316 (Tex. App.—Texarkana 2004, no pet.) (internal quotation marks omitted).

In your fourth question, you ask whether a judge may refuse to enforce a contract provision that provides for foreign law to govern the dispute if applying the law would violate a party's right to due process or the public policy of this State. Request Letter at 2. As with the choice-of-law principles discussed above, although a contract may provide for foreign law to govern the rights of parties to a dispute, a court of this State will apply Texas law to matters of procedure. *Man Indus. (India), Ltd. v. Midcontinent Express Pipeline, L.L.C.*, 407 S.W.3d 342, 352 (Tex. App.—Houston [14th Dist.] 2013, pet. denied). With regard to foreign law that violates the public policy of this State, the United States Supreme Court has explained that a state is not required to "lend the aid of its courts to enforce a contract founded upon a foreign law where to do so would be repugnant to good morals, . . . or, in other words, violate the public policy of the state where the enforcement of the foreign contract is sought." *Griffin v. McCoach*, 313 U.S. 498, 506 (1941); *see also United Paperworkers Intern. Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 42 (1987) ("a court may refuse to enforce contracts that violate . . . public policy"). Thus, a court may refuse to enforce

a contract provision that requires the application of foreign law to a dispute if doing so would violate the public policy of this State.

In your fifth question, you ask whether a judge may refuse to enforce a contractual forum-selection provision providing that a dispute will be resolved by a court outside of the United States if doing so would violate the party's right to due process or the public policy of this State. Request Letter at 2. Enforcement of forum-selection clauses is generally mandatory; however, a court has authority to refuse to enforce the clause upon a showing that "enforcement would be unreasonable or unjust" or because "enforcement would contravene a strong public policy of the forum where the suit was brought." *In re AutoNation, Inc.*, 228 S.W.3d 663, 668 n.15 (Tex. 2007); *In re Automated Collection Techs., Inc.*, 156 S.W.3d 557, 559 (Tex. 2004). Thus, if the enforcement of a forum-selection clause would violate the party's right to due process or the public policy of this State, a court may refuse to enforce it.

You next ask, based on the principle of forum non conveniens, whether a judge may exercise jurisdiction over a case, despite a more convenient alternative forum, if the foreign forum would apply foreign law that would violate a party's right to due process or the public policy of this State. Request Letter at 2. A court generally has authority to dismiss a suit on grounds of forum non conveniens because a court outside Texas has jurisdiction over the suit and is a more appropriate forum. *A.P. Keller Dev., Inc. v. One Jackson Place, Ltd.*, 890 S.W.2d 502, 505 (Tex. App.—El Paso 1994, no writ). "[T]rial courts possess broad discretion in deciding whether to dismiss a case on forum-non-conveniens grounds." *In re Pirelli Tire, L.L.C.*, 247 S.W.3d 670, 676 (Tex. 2007). The United States Supreme Court has articulated, and the Texas Supreme Court has adopted, a number of factors that courts should consider in deciding a forum-non-conveniens motion. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508–09 (1947); *In re Smith Barney, Inc.*, 975 S.W.2d 593, 596 (Tex. 1998) ("We embraced *Gulf Oil's* analysis long ago."). Among the factors to be considered are whether an adequate alternative forum would have jurisdiction over the case and whether certain private interests of the litigants would weigh in favor of the alternative forum. *In re Pirelli Tire, L.L.C.*, 247 S.W.3d at 677–79. In determining whether an adequate alternative forum exists, courts should consider whether the parties will be "deprived of all remedies or treated unfairly." *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 671 (5th Cir. 2003). And in determining whether the private interests of the litigants weigh in favor of an alternative forum, a court should consider, among other private-interest factors, any "obstacles to [a] fair trial" in the alternative forum. *Flaiz v. Moore*, 359 S.W.2d 872, 874 (Tex. 1962). Thus, if an alternative forum to Texas would apply law that would violate a party's right to due process or the public policy of this State, such factors could provide grounds for a judge to deny a motion to dismiss for forum non conveniens.

In your seventh question, you ask whether a judge abuses his or her discretion if a judge allows the application of a foreign law in the scenarios previously described and doing so violates a party's right to due process or the public policy of this State. Request Letter at 3. A court's decision regarding whether a contract, arbitration award, foreign judgment, or application of foreign law violates public policy is a question of law that is reviewed de novo by a reviewing court. *See Sanchez v. Palau*, 317 S.W.3d 780, 785 (Tex. App.—Houston [1st Dist.] 2010, pet. denied) (court's ruling on recognition of a foreign country judgment is reviewed de novo); *Xtria, L.L.C. v. Int'l Ins. All., Inc.*, 286 S.W.3d 583, 591 (Tex. App.—Texarkana 2009, pet. denied)

(judgment confirming an arbitration award is reviewed de novo); *Johnson v. Structured Asset Servs., L.L.C.*, 148 S.W.3d 711, 726 (Tex. App.—Dallas 2004, no pet.) (whether a contract violates public policy is a question of law, which is reviewed de novo). Thus, as a matter of law, a court is without discretion to apply foreign law in a circumstance where doing so violates a party's right to due process or the clearly established public policy of this State. A trial court's forum-non-conveniens ruling is subject to review for clear abuse of discretion. *In re Pirelli Tire, L.L.C.*, 247 S.W.3d at 676. Whether a court abuses its discretion in ruling on any given forum-non-conveniens motion will depend on a weighing of all the factors and the relevant facts of the particular case. *See id.* at 679 (considering all the factors articulated in *Gulf Oil* and concluding that the denial of a forum-non-conveniens motion was a clear abuse of discretion).

In your eighth question, you ask whether a judge may refuse to enforce a provision of a contract that is entered into voluntarily that provides for any of the following:

- An arranged marriage
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows child labor in dangerous conditions
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that lacks laws against child abuse
- Granting custody of a female child to a conservator who would remove the child to a foreign jurisdiction that allows the practice of female genital mutilation
- Granting custody of a child to a conservator who would remove the child to a foreign jurisdiction that allows a person to be subjected to any form of slavery
- Providing for a consequence or penalty for breach of the contract that violates the public policy of this State, such as the infliction of bodily harm

Request Letter at 3. Parties do not have a right to enter into contracts that violate the strong public policy of this State. *See Fairfield Ins. Co. v. Stephens Martin Paving, L.P.*, 246 S.W.3d 653, 664 (Tex. 2008). A state's public policy is embodied in its constitution, statutes, and the decisions of its courts. *See Texas Commerce Bank, N.A. v. Grizzle*, 96 S.W.3d 240, 250 (Tex. 2002); *Churchill Forge, Inc. v. Brown*, 61 S.W.3d 368, 373 (Tex. 2001). With regard to family law disputes, the Legislature has clearly articulated that it is the public policy of this State to:

> (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;

> (2) provide a safe, stable, and nonviolent environment for the child; and
>
> (3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

TEX. FAM. CODE § 153.001(a). To the extent that any contract term, including those specific terms that you raise, violates the public policy of this State, a court may refuse to enforce it. *See City of Willow Park v. E.S. & C.M., Inc.*, 424 S.W.3d 702, 710 (Tex. App.—Fort Worth 2014, pet. denied) (voiding a contract after finding that "it contravenes the legislature's public policy"); *see also Southwestern Bell Tel. Co. v. Gravitt*, 551 S.W.2d 421, 427 (Tex. App.—San Antonio 1976, writ ref'd n.r.e.) ("[A] general restraint on marriage is unenforceable whether the restraint results from a promise not to marry or from enforcement of a condition providing for forfeiture of rights in case of marriage.").

In your ninth question, you ask whether a judge may refuse to enforce an adoption order entered by a foreign court or tribunal if the order would result in a violation of fundamental rights, Texas law, or the public policy of this State. Request Letter at 3. Section 162.023 of the Family Code provides:

> Except as otherwise provided by law, an adoption order rendered to a resident of this state that is made by a foreign country shall be accorded full faith and credit by the courts of this state and enforced as if the order were rendered by a court in this state *unless the adoption law or process of the foreign country violates the fundamental principles of human rights or the laws or public policy of this state.*

TEX. FAM. CODE § 162.023(a) (emphasis added). Under the plain language of the Legislature's exception in subsection 162.023(a), a court may refrain from enforcing an adoption order if doing so would violate the fundamental rights or the laws or public policy of this State.

In your tenth question, you ask whether a judge may refuse to enforce a premarital agreement or property partition agreement if the agreement is unconscionable. Request Letter at 3. "Unconscionable contracts . . . are unenforceable under Texas law." *In re Poly-Am., L.P.*, 262 S.W.3d 337, 348 (Tex. 2008); TEX. BUS. & COM. CODE § 2.302(a). Provisions in the Family Code provide specifically with regard to premarital and partition agreements that such agreements are not enforceable if the party against whom enforcement is requested proves, among other requirements, that the agreement was unconscionable when it was signed. *See* TEX. FAM. CODE §§ 4.006(a)(2), .105(a)(2). Whether any specific agreement is unconscionable must be determined by a court after analyzing the relevant facts. *See Ski River Dev., Inc. v. McCalla*, 167 S.W.3d 121, 136 (Tex. App.—San Antonio 2005, pet. denied) (explaining the factors to be examined in determining whether a contract is unconscionable).

You also ask whether a judge may refuse to enforce a premarital agreement if the agreement violates the public policy of this State or a statute that imposes a criminal penalty. Request Letter at 3. Section 4.003 of the Family Code authorizes the parties to a premarital agreement to contract with respect to all matters "not in violation of public policy or a statute imposing a criminal penalty." TEX. FAM. CODE § 4.003(a)(8). "[P]arties have the right to contract as they see fit as long as their agreement does not violate the law or public policy"; however, courts may refuse to enforce a contract, or a provision in a contract, on the ground that it is against public policy. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 129 & n.11 (Tex. 2004); *Security Serv. Fed. Credit Union v. Sanders*, 264 S.W.3d 292, 297 (Tex. App.—San Antonio 2008, no pet.). Furthermore, a contract that cannot be performed without violating the law contravenes public policy and is void. *Lewis v. Davis*, 199 S.W.2d 146, 148–49 (Tex. 1947); *Merry Homes, Inc. v. Chi Hung Luu*, 312 S.W.3d 938, 945 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

In your final question, you ask to what extent chapter 36 of the Civil Practice and Remedies Code authorizes "a judge to refuse to enforce a judgment of a foreign court regarding a family law dispute where the judgment grants or denies payment of a sum of money to one of the parties." Request Letter at 3. Chapter 36 is the "Uniform Foreign Country Money-Judgment Recognition Act," and it authorizes a court to "refuse recognition of the foreign court judgment if the motions, affidavits, briefs, and other evidence before it establish grounds for nonrecognition as specified in Section 36.005, but the court may not, under any circumstances, review the foreign country judgment in relation to any matter not specified in Section 36.005." TEX. CIV. PRAC. & REM. CODE §§ 36.003, .0044(g). Relevant to your request, "foreign country judgment" is defined for purposes of chapter 36 to mean "a judgment of a foreign country granting or denying a sum of money," but it expressly excludes a judgment for "support in a matrimonial or family matter." *Id.* § 36.001(2)(B). Thus, chapter 36 will have limited applicability to family law disputes. To the extent that it applies, however, a court need not recognize a foreign-country money judgment if, among other grounds, "the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend" or if "the cause of action on which the judgment is based is repugnant to the public policy of this state." *Id.* § 36.005(b)(1), (3).

SUMMARY

Under Texas law, a court is not required in family law disputes to enforce a foreign law if enforcement would be contrary to Texas public policy or if it would violate a party's basic right to due process.

Very truly yours,

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