



ISLAMIC MARRIAGE CONTRACTS

2012

A RESOURCE GUIDE FOR LEGAL PROFESSIONALS,
ADVOCATES, IMAMS & COMMUNITIES

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Peaceful Families Project



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Sponsored By
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PREFACE

This guide was developed as a resource for legal professionals and advocates working with Muslims, and for Muslim leaders and community members. This resource is meant to provide and clarify information about Islam and gender equality in marriage and divorce, to direct readers to the best practices that safeguard women’s rights and interests, to promote well-being and balance for all parties, and to nurture communities.

Like the majority of Americans, there are practicing and non-practicing American Muslims who choose to have a religious official solemnize their marriage. In the event of divorce, if enforcement of the *mahr* (gift) stipulation contained within an Islamic marriage contract is sought, American courts must determine whether the contract is valid under state law. The marriage contract can be enforced as long as the provision does not violate a person’s constitutional rights or public policy, as is the case with Jewish and canon law. This resource aims to highlight the legal issues that may arise, as well as the resources that are available to American Muslim women and their families under the auspices of American law.



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TABLE OF CONTENTS

INTRODUCTION

LAW, RELIGION & CULTURAL PRACTICES	1
I. Who are American Muslims?	1
Summary of American Muslims	3
II. Family Law	4
A. Traditional Islamic Family Law	4
1. Sources of Law	4
2. Gender	5
3. Marriage	6
4. Marital Conflict	7
5. Primary Types of Marital Dissolution	8
6. Child Custody	9
Summary of Traditional Islamic Family Law	10
B. U.S. Family Law	11
1. History	11
2. Marriage Laws	11
3. Nuptial Agreement Laws	11
4. Divorce Law	12
5. Child Custody	12
6. Spousal Support	13
7. Marital Property Systems	14
8. Domestic Violence	14
Summary of U.S. Family Law	15

III. Muslim Marriages & the Islamic Marriage Contract	16
A. Marriage Contracts under Islamic Jurisprudence	16
Summary of Marriage Contracts under Islamic Jurisprudence	17
B. Contemporary Marital Practices among American Muslims	18
Summary of Contemporary Marital Practices among American Muslims	22
C. Trends in Abuse	23
1. Domestic Violence	23
2. Non-Civil Marriage	23
3. Forced Marriage	24
4. Appropriated <i>Mahr</i>	24
5. Abandonment Divorce	24
6. Pre-Consumation Divorce	24
7. Unilateral Divorce	25
8. Limping Divorce	25
9. Polygynous Divorce	26
10. Legal Manipulation	26
11. Revictimization	26
D. Islamic Marriage Contracts in the American Court Room	27
Summary of Islamic Marriage Contracts in the American Court Room	30
IV. Drafting an Islamic Marriage Contract	31
A. Sample Islamic Marriage Contract	32
B. Stipulations	34
1. Equality	34
2. Conflict Resolution	34
3. Domestic Duties	34
4. Finances	34
5. Education	35
6. Work	35
7. Polygyny	35
8. Domestic Violence	35
Summary of Drafting an Islamic Marriage Contract	36
V. References	37

RECOMMENDATIONS	40
I. Recommendations for Legal Professionals	40
II. Recommendations for Advocates	42
III. Recommendations for Imams & Community Leaders	43
IV. Recommendations for Community Members	45
RESOURCES	47
I. Case Law	47
A. Marriage Contracts (<i>Mahr/Sadaq</i>)	47
B. Divorce (Validity)	49
C. Marriage (Validity)	50
D. Child Custody	50
II. Experts	51
III. Glossary	53
IV. Legal Organizations	56
A. National	56
B. Regional	56
V. Publications	57
A. Legal	57
B. Domestic Violence	59
C. Gender	59
D. Islam & Muslims	60
VI. Questions for Muslim Couples to Consider Before Marriage	61
VII. Qur'anic Verses Related to Family Law	64
VIII. Websites	72



INTRODUCTION

This resource provides an overview of marriage and divorce among American Muslims for judges, lawyers, advocates, social service providers, imams, community leaders, and community members. The guide explores issues of Islamic and U.S. family laws as they relate to religious and cultural practices of American Muslim couples and families. There is a significant distinction between Islam as a faith and the varied cultures of individual Muslims, yet faith-based marital solemnization is a common practice, much the same as it is for most Americans. Most couples with Islamic marriage contracts intersect with the U.S. legal system when they register for a civil marriage license, and for some, in the event of divorce when they present the contract to an American court for enforcement. As it is at this intersection that potential issues and barriers may arise due to lack of understanding between the court and parties to the contract, this resource aims to smooth the process by bridging the informational gap. Through better understanding, legal practitioners can help to protect the civil rights of Muslims and all Americans, and Muslim communities can support couples by ensuring their marital rights are preserved.

This guide was also developed with the goal of helping American Muslims navigate the complex American legal system, and to assist helping professionals in understanding their Muslim neighbors, the issues they may face in their homes, and the types of support they may need. As advocates working in the field of domestic violence, the collaborating organizations that produced this resource often encounter survivors of abuse with issues related to their Islamic marriage contracts – both civil and religious. Although most American Muslim couples are often unaware of the importance the Islamic marriage contract may hold for them in the

Introduction

event of a divorce, the inclusion of key stipulations can help to supply protective financial and religious measures. It is our hope that careful consideration will be given by American Muslim couples, families, and communities to every Islamic marriage contract that is drawn up, and the accompanying protective stipulations that can be added.

Legal professionals and advocates with limited knowledge of Islam and Muslim culture will learn more about traditional Islamic family law, common cultural practices, trends in abuse, and potential issues at hand when Islamic marriage contracts are presented for enforcement. Muslim community leaders and members will gain a better understanding of U.S. family law on marriage and divorce, and the challenges divorcees may face in civil court. A sample Islamic marriage contract is included along with supporting clauses that can help to protect women's rights, as well as additional stipulations that may be considered. The main content of the guide ends with specific recommendations that are provided for legal professionals, advocates, imams and community leaders, and community members respectively.

The guide concludes with resources that include relevant case law, expert witnesses, Islamic scholars, a glossary, Muslim legal organizations, publications, premarital questions, and relevant Qur'anic verses.

The author would like to note that this resource is by no means meant to encompass the full theological and legal scope of marriage and divorce in the American Muslim experience. Indeed, the author looks forward to contributions to the field by scholars of Islamic theology and law, and anticipates revisions of this resource will be necessary to address future research, landmark cases, emerging dilemmas, and new issues arising from discussion among providers and communities.

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LAW, RELIGION & CULTURAL PRACTICES

I. WHO ARE AMERICAN MUSLIMS?

This guide is not meant to represent or address the beliefs of all American Muslims,¹ but rather commonly held beliefs and practices. Indeed, American Muslims are a diverse group in terms of religiosity, culture, race, ethnicity, education, and socioeconomic background. There are an estimated 1.7 billion Muslims in the world, and the majority live in 56 predominantly Muslim countries. Contrary to popular belief, only 20% of Muslims in the world are of Arab origin, and the countries with the largest percentage of Muslims are Indonesia, Pakistan, and Bangladesh. Islam is divided into two major denominations, and approximately 85% of Muslims are Sunni and 15% are Shia.

Historically, there have been Muslims in America since colonial times when African Muslims were forced into slavery. The first major wave² of Muslim immigrants between the late 1800s and early 1900s were primarily of Middle Eastern origin and immigrated in search of economic opportunities. The second wave in the 1960s were predominantly of South Asian and Middle Eastern origin, who, after coming to the U.S. for their university studies, decided to permanently settle. From the 1990s to the present, in part due to increasing political unrest in countries with dictatorial regimes, a significant number of Muslims from the Balkans, Middle East, South Asia, and Southeast Asia have immigrated to the U.S.

1. For the purposes of this guide, the term “American Muslims” is meant to encompass all Muslims in America, regardless of their place of birth, cultural heritage, or personal identification.

2. Though this overview covers the major waves of immigration, from the mid-1800s to the present, there were several smaller waves of Muslim immigrants in between.

There have been several studies of American Muslims over the last decade.³ The most recent was conducted by the Pew Research Center in 2011 as a follow-up to their 2007 survey. In a national random sample of the U.S. population, Pew interviewed 1,033 American Muslims regarding their demographics, attitudes, and opinions, and estimated that there are 2.75 million American Muslims. Study results indicate that most American Muslims today are young, racially diverse, predominantly immigrants,⁴ religiously observant, Democratic, and hold U.S. citizenship. In terms of household income, survey results were significantly lower than in 2007; on average, American Muslims earn less than the general population.⁵ The study found that 37% were born in the U.S., 26% were born in the Middle East and North Africa, 16% in South Asia, and the rest in a mixture of sub-Saharan African, European, and other countries. The majority (63%) were first generation, 15% were second generation, and 22% were third generation or later.⁶ Racially, 30% of the respondents identified as White,⁷ 23% as Black, 21% as Asian, 6% as Hispanic, and 19% as other or mixed race. Socioeconomically, 14% of their households earned \$100k or more annually, 40% earned between \$100k and \$30k, and 45% earned under \$30k. Regarding their education, 26% earned a university degree or higher, 19% had completed some college, and 40% had finished high school. An additional 26% were enrolled in college at the time of the study.

The Pew 2011 study also studied religious practices, and found that most American Muslims are Sunni, pray daily, are pluralistic, and believe Islam can be interpreted in different ways. Of the combined Sunnis (65%) and Shias (11%), 69% felt that religion was very important. With a 20% overall conversion rate for American Muslims, 69% of respondents who were third generation or more had converted to Islam. Religious commitment varied among respondents with 29% maintaining a high religious commitment,⁸ 22% a low commitment, and 49% somewhere in between. Most (65%) prayed daily, while 32% prayed occasionally or never. While 47% attended the mosque weekly,⁹ the majority occasionally or never attended the mosque. A minority of women observed religious garb, with 36% wearing *hijab* all the time,^{10,11} 26% occasionally, and 40% never. Pew also explored national and religious identities in the study, and found that, comparable to the national average, 49% identified with their faith first while 26% identified as American first. The statistics above illustrate the wide variation that exists between American Muslims on almost every level.

It is important to bear those distinctions in mind while reading this guide. With regard to this resource, perhaps the most important difference to remember is the distinction between religion and culture. The practices of American Muslims do not necessarily represent Islam, and are informed by the cultures of the diverse homes in which they were raised. In addition,

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3. The most often cited studies were conducted by the Pew Research Center and the Gallup Center for Muslim Studies, both in 2007, and by CAIR in 2001 and 2010.
 4. A full quarter of American Muslims immigrated to the U.S. after the year 2000.
 5. One could speculate that this is due to the high number of recent immigrants that are in the process of establishing themselves, as well as their age, since 59% are between the ages of 18 and 39, 20% higher than the general population.
 6. This statistic includes African-American and white participants whose families have been in the U.S. for many generations.
 7. This category likely includes a significant number of Arabs in addition to Caucasians since the U.S. Census categorizes Arabs as "White."
 8. Pew measured religious commitment by weekly mosque attendance, observance of five daily prayers, and indication of the importance of religion to their belief system.
 9. Islam requires Muslims to pray five times each day, and for men to pray at the mosque on Friday – which is the Muslim holy day.
 10. *Hijab* is the head covering worn by many religiously practicing Muslim women. Contrary to popular misconception, there is no correlation between *hijab* and educational levels. Many American Muslim women, including those raised in secular homes, choose to begin wearing *hijab* after university or graduate school.
 11. All non-English terms in this guide are italicized with the definitions available in the glossary.

not all American Muslims are religiously observant. For those that are religious, one cannot determine their degree of religious adherence by their clothing or even some rituals. Signing an Islamic marriage contract, for example, does not necessarily correlate with religious adherence. However, like the general public, many American Muslims choose to solemnize their marriages with faith-based traditions.

This guide was developed with both Sunnis and Shias in mind. It should be noted that although both sects base their religious beliefs upon the Qur'an, there are some distinctions in their sources of jurisprudence; in this case their family laws.¹² With the goal of serving as a resource about the beliefs and practices of both denominations, only Qur'anic¹³ verses are quoted throughout this guide.¹⁴ It should also be noted that like all scriptures, the Qur'an and *Sunnah* can be interpreted in many ways, and this guide attempts to illustrate the range of interpretations of scholars and laypeople alike.

Summary of American Muslims

- 🌀 The practices of American Muslims may reflect Islamic teachings to varying degrees, and are informed by the cultures of the diverse homes in which they were raised.
- 🌀 Not all American Muslims are religiously practicing.
- 🌀 Not all American Muslims solemnize their marriage vows with an Islamic marriage contract.
- 🌀 American Muslims interpret the Qur'an in different ways.
- 🌀 Most American Muslims are young, racially diverse, predominantly immigrants, religiously observant, pluralistic, Democratic, and hold U.S. citizenship.



12. For example, Sunni and Shia jurisprudence related to child custody, and to additional types of marriage and divorce bear distinctions.

13. Qur'anic references throughout this guide are taken from Abdullah Yusuf Ali's translation of the Qur'an, as it is widely used among Muslims.

14. Sunnis and Shias have some differences in the sources of their jurisprudence. Notably their compilations that document the sayings and beliefs of Prophet Muhammad are in some ways distinct.

LAW, RELIGION & CULTURAL PRACTICES, CONT'D.



II. FAMILY LAW

A. Traditional Islamic Family Law

1. Sources of Law

Religiously observant Muslims base their practices to varying extents on *Shari'ah*, or Islamic law, which is based upon the Qur'an¹⁵ and *Sunnah*. Muslims believe the Qur'an to have been divinely revealed by God to Prophet Muhammad through Angel Gabriel in 7th century Arabia. Prophet Muhammad is considered by Muslims to be the "seal of prophethood" ending a long line of prophets, beginning with Adam and including Abraham, Moses, and Jesus. Muslims consider Prophet Muhammad's character and behavior to be the ideal role model, and a history of his sayings and behavior was compiled into what has come to be known as the *Sunnah*.¹⁶ The Qur'an is considered the primary source of belief for all Muslims, while the *Sunnah*¹⁷ is used to lend practical understanding to Qur'anic concepts.

The term *Shari'ah*, literally defined as the "path to water," provides the premise upon which Muslims are meant to base their lives, in accordance with God's will. *Shari'ah* law, as it is referred to today, is somewhat of a misnomer, as there is a distinction between God's words and human interpretation, just as there is between Islam as divinely revealed and the Muslims who put it into practice. *Shari'ah* law is considered to be divine in origin as it is considered to be the word of God as written in the Qur'an, while human beings undertake scriptural exegesis to interpret the Qur'an. *Shari'ah* law as divinely inspired, based on the word of the Qur'an, covers a code of worship, a system of ethics, spirituality, and civil transactions. Common practices such as eating, praying, and tithing are covered by *Shari'ah*. The outcome of the human understanding of *Shari'ah* is known as *fiqh*, or jurisprudence, and the experts of *fiqh* are known as *fuqaha*, or jurists. Traditional Islamic jurisprudence (*usul al fiqh*), which defines the principles and methods on which *Shari'ah* is based and provides guidelines and rules for Muslims to engage with the Qur'an, is divided into worship (*'ibadah*) and transactions (*mu'amalat*). In Islamic jurisprudence the consensus of jurists (*ijma'*) and analogical deduction (*qiyas*) is used to analyze and respond to questions regarding how the Qur'an should be understood and practiced. Additional sources influencing legal rulings include public interest (*istislah*), common customs (*'urf*), juristic preference (*istisban*), necessity (*darura*), presumption of continuity (*istishab*), and independent reasoning (*ijtihad*) (Alwani 2007). Though there were originally many schools of Islamic thought, due to objective, social, and economic circumstances eventually only five

15. References to the Qur'an in this guide will be quoted as chapter and verse, e.g., (Qur'an 4:1). All Qur'anic verses listed are available in the *Resources* section.

16. Each narration within the *Sunnah* is known as a *hadith*. The science of accepting *hadith* attributed to Prophet Muhammad includes confirming the character of the narrator and the chain of narration.

17. The most respected collections of Sunni *hadith* are Sahih Bukhari and Sahih Muslim, and the most respected Shia collections were compiled by al-Kulayni, al-Saduq, and al-Tusi.

major schools of Islamic jurisprudence remained, including the Sunni *Hanafi*, *Maliki*, *Shafi*, *Hanbali* schools, and the Shia *Jafari* school. These five schools of thought influence law in Muslim countries around the world in addition to integrating elements of colonial law, customs, and specific traditions.¹⁸ Some American Muslims follow one of the five schools of thought while others do not subscribe to any particular school.

Traditionally, recognized Muslim jurists were predominantly men raised in societies steeped in tribalism, and patriarchy; so most Islamic jurisprudence that has been developed over the last 1,400 years has been grounded in a patriarchal paradigm. In addition, as was common in pre-modern societies, women were often restricted from holding public leadership roles, so there is a relative dearth of documented input from women scholars. However, there are many examples of Muslim women functioning in public spaces,¹⁹ including Prophet Muhammad's first wife Khadijah, who was a businesswoman, and his wife Aisha, daughter of Abu Bakr, who was a political strategist, military leader, and expert in Islamic jurisprudence. Other women of note during the Prophet's time were Al Shifa Bint Abdullah, who was a medical practitioner, political advisor, Islamic scholar, and a public administrator of commerce in Medina; Nusayba Umme Amara, who physically defended Prophet Muhammad as the first female Muslim soldier; and Ramlah Umme Salim, who nursed the wounded during battles.

Yet, since each generation of Muslim jurists utilizes the interpretations of their predecessors as a reference in legal decision-making, the framework of pre-modern Islamic jurisprudence continues to favor men (Ali 2006a). As a result, the Qur'an's feminist and egalitarian spirit towards women and gender relations has been largely lost in contemporary jurisprudence and practice. Today, many Muslim female and male scholars view the Qur'an as a rich text that can support the jurisprudence of equity, and are working to address and correct this imbalance.²¹ Their responses have included feminist exegesis of the Qur'an, reinterpreting jurisprudence on the basis of such exegesis, and calling for a new Islamic methodology distinct from traditional jurisprudence.

2. Gender

Prior to Islam being revealed in 7th century Arabia, abuse of women and girls was common. Women and girls had to contend with pervasive abuse including female infanticide, no legal right to own property or inherit, unlimited polygyny,²² and honor killings. In contrast, Islam brought about a fundamental change in the treatment of women, and provided a basic framework of rights and ideals through both immediate and gradual reforms.²³ A holistic understanding of Islam, as illustrated through the Qur'an, *Sunnah*, and Prophetic reforms, reveals an evolving path towards gender equality (Sayeh & Morse 1995).

18. This explains the wide range of religious practices among Muslims throughout the world. Since each Muslim country predominantly follows one school of thought, and has a unique historical and cultural heritage, marriage and divorce laws vary considerably.

19. See *From Aisha bint Abu Bakr to Asmaa Mahfouz: The Legacy of Muslim Women Roles in Populist Revolutions*, by Engy Abdelkader in the University of London's forthcoming *Yearbook on Islamic Law*.

20. Over 2,000 of the Sunni hadith were transmitted by Aisha, daughter of Abu Bakr.

21. Such scholars include K.A. El Fadl, A. al-Hibri, K. Ali, Z. Alwani, A. Quraishi, and A. Wadud.

22. Polygynous marriages, in which a man has two or more wives simultaneously, falls under the umbrella of polygamy, a marriage that includes more than two partners.

23. Gradualism is a concept illustrated through other reforms in the Qur'an, such as the prohibition of alcohol.

The Qur'an placed a strong emphasis on gender equality and treating women with dignity, and instructed all Muslims to "revere the wombs that bore them" (Qur'an 4:1). Women and men are described as being created from a single soul with similar natures (Qur'an 4:1), and are considered to be protectors and partners with equal responsibility for their actions and fulfillment of religious duties (Qur'an 3:195). Both Muslim women and men are required to enjoin what is good and forbid what is bad (Qur'an 9:71), and to uphold justice regardless of personal relationships or wealth (Qur'an 4:135). In addition, the Qur'an requires men to provide financial support for their wives and female relatives (Qur'an 4:34). On a practical level, Islam gave women specific rights that did not exist in that historical context, including the right to vote, own property, inherit, work, sexual satisfaction, and consent to their marriages (Alkhateeb 1997).

3. Marriage

Under traditional Islamic jurisprudence, marriage creates a unit of society that mutually accepts God as an integral part of every situation and decision, and recognizes mutual rights and obligations between spouses. Through marriage, couples commit to a lifelong bond that is based upon mutual mental, spiritual, and physical gratification. Such a home promotes and insures equity and harmony, and is a source of shelter filled with peace, comfort, security, and continuity (Alkhateeb 2004).

The five primary schools of traditional Islamic thought differ in their interpretation of *Shar'iah* and their rulings regarding each aspect of an Islamic marriage. These differences, however, tend to focus on the details rather than the overarching understanding Muslims have of a traditional Islamic marriage, which entails a proposal, acceptance, agreement upon the *mahr*,²⁴ signing of the marriage contract before two witnesses, and publicizing the marriage.²⁵ Family members play a significant role during the process as families have been regarded as the bedrock of society throughout Islamic history, providing the necessary physical and moral support to sustain healthy nuclear and extended families.

Marriage is defined in the Qur'an as a compassionate and peaceful relationship that is grounded in love (Qur'an 30:21). By describing spouses as "garments" for one another, Islam encourages supportive, protective, and nurturing marital relationships (Qur'an 2:187). In addition to being based upon gender equality, there is also a requirement for Muslim couples to consult with one another as a means of engaging in joint decision-making within their relationships (Qur'an 42:38). However, within traditional Islamic jurisprudence, there are jurists that maintain that women must be "obedient" to their husbands, citing Qur'anic verse 4:34, which refers to "righteous women" as being "devoutly obedient." Other scholars maintain

24. In Islam, the *mahr* or *sadaq*, sometimes translated as "dowry," is an obligatory gift given by the husband to the wife. Islamic marriage contracts can include a stipulation for an immediate *mahr* and a deferred *mahr*, payable upon demand, death or divorce. The immediate *mahr* becomes the wife's private property during and after the marriage, while receipt of the deferred *mahr* is likely unless she initiates divorce proceedings without cause, i.e., *darar* (harm). See the section on Primary Types of Marital Dissolution for details.

25. For further detail on the process and requirements of the marriage process, see the section on *Muslim Marriages & the Islamic Marriage Contract*.

that such an interpretation would contradict other verses citing equal responsibility for every individual before God,²⁶ and hence interpret "obedience" to be an act due to God, not man (al-Hibri 2003; Alwani 2007; Wadud 1999). Beyond the husband/wife relationship, parental responsibilities include being honest, just, and patient with children. Islamic law holds parents accountable for rearing children who are physically and psychologically healthy, and able to contribute positively to society. In the same vein children are charged with treating their parents with respect and gratitude (Qur'an 31:14).

4. Marital Conflict

In the event that conflict occurs within marriage, the Qur'an requires it be resolved through mutual consultation and open discussion. In extreme cases, when a wife has engaged in *nushuz*,²⁷ a multistep process must be followed, as outlined in the Qur'anic chapter Al-Nur, verse 4:34. *Nushuz* is a rare occurrence, but requires emphasis as the verse is often interpreted as a license for men to engage in some form of physical abuse against their wives. Also, within a pre-Islamic historical context where women were often subjected to unchecked cruelty, this multistep process was meant to limit the abuse extant at the time (al-Hibri 2003). First the couple is instructed to discuss the issue, but if they cannot come to an understanding they should sleep separately. If the issue is still not resolved, the husband can employ the act of "*daraba*," and as a final resort the husband and wife are each instructed to select a family member to assist in arbitration (Qur'an 4:35). The word *daraba* has been translated and interpreted in many different ways. All of the five primary schools of traditional Islamic jurisprudence are in agreement that *daraba* should be interpreted as "hit" or "beat"; yet there is a wide range of opinion on the form the hitting should take (Wadud 1999). Most commonly, traditional legal scholars agree that hitting should not leave any physical bruising or marks, and thus should be done with something small and weightless such as a toothbrush or handkerchief. Other scholars hold that as the verse was meant to limit wife abuse, it should be understood within the context of forbidding domestic violence (al-Hibri 2003; Alwani 2007; Barazangi 2004; Wadud 1999). Some contemporary exegetes and scholars, however, believe that *daraba* should be translated and interpreted as "leave," as *daraba* is used in 17 other places in the Qur'an with many other meanings (AbuSulayman 2003). These scholars believe such an interpretation to be a more rational step between sleeping separately and arbitration, as having time apart provides time to reflect, while hitting would escalate the situation and make arbitration more difficult.

When marital conflict cannot be resolved, divorce is available as a last resort. Islamic law offers several options once a couple has signed an Islamic marriage contract (which legalizes their marriage), and decide to divorce. If a marriage has not been consummated and the *mahr* amount has not been determined, the husband is required to bestow a suitable gift upon the wife (Qur'an 2:236). In the case of a couple with an unconsummated marriage and a specified *mahr*, the husband must remit half of the *mahr* unless the wife chooses to waive her right (Qur'an 2:237). For consummated marriages the following section outlines options for divorce that are available under Islamic law.²⁸

26. See Qur'anic verses 3:195 and 6:165.

27. Various Islamic scholars have interpreted *Nushuz* differently, with definitions ranging from a marital affair to immoral behavior to lack of marital commitment.

28. For a detailed analysis of the various types of divorce, and the steps to be taken in each, see articles in the references by Azizah al-Hibri, Kecia Ali, Zainab Alwani, Nimat Hafez Barazangi, Asma Barlas, and Amina Wadud.

5. Primary Types of Marital Dissolution²⁹

Unilateral (*Talaq*)³⁰

- Under traditional Islamic law, as the husband is financially responsible, and therefore the person the dissolution of the marriage would implicate financially, the law provides him with the unilateral, at will, and without cause right to dissolve the marriage. *Talaq* allows the husband to initiate divorce proceedings by saying, “I divorce you,” followed by a waiting period.³¹ Couples can divorce and remarry up to two times, as the first and second divorces are revocable, but the third divorce is irrevocable.³² Successive divorces should not occur within the same waiting period.
- At that point the *'iddah*, a cooling down and waiting period, commences, during which the couple remain in the same home (though in separate quarters) for three months.³³ The waiting period provides an opportunity for the couple to reconcile, and also confirms whether the wife is pregnant (Qur'an 2:228).
- If the wife is pregnant, the husband is financially responsible for her and their child for the duration of the pregnancy.³⁴
- If, at the conclusion of the waiting period the couple decides to reunite, a new marriage contract must be signed.
- Otherwise the divorce is finalized after 3 months, and the husband is required to give his wife her deferred *mahr*. Finalization of the divorce can be judicial, by registering the divorce with the court, or non-judicial, through the presence of two witnesses.

Delegated (*Tafwid or Ismah*)³⁵

- The husband can elect to delegate the right of *talaq* to his wife as a stipulation in the marriage contract, either prior to the contract being signed or during the marriage. This type of irrevocable divorce is initiated by the wife, as the delegated authority gives her the same rights to divorce, without losing her right to the *mahr*.
- A waiting period of 3 months is observed within separate quarters of the marital residence to provide an opportunity for reconciliation, and to confirm whether the wife is pregnant.
- If the wife is pregnant, the husband supports her until the child's birth, and the child until adulthood.
- If not pregnant, the divorce is finalized and the husband gives his wife her deferred *mahr*.

29. One additional but rare type of marital dissolution is *li'an* (mutual oath swearing), which occurs when a husband alleges, without proof, that his wife has committed adultery, and she absolves herself by swearing her innocence.

30. Most scholars agree that women can add a stipulation to their marriage contracts effectively giving them an equal right to divorce.

31. The statement must be made when the husband is calm and of sound mind.

32. If uttered three times the divorce becomes irrevocable and the couple is forbidden from remarrying unless the wife first marries and consummates her relationship with another man, and then divorces him.

33. See verses 65:1-6 in the *Resources* section from the Qur'anic chapter Al-Talaq (divorce).

34. The husband also bears full responsibility for the child upon its birth and for the length of childhood. He continues to bear varying levels of financial responsibility for his adult daughters.

35. Leading Islamic legal scholar Azizah al-Hibri is a proponent of the delegated divorce as the best means of protecting Muslim women's rights in divorce.

Wife-Initiated (*Khul'*)

- 🔗 If the wife wants to divorce, does not have a delegated clause in her marriage contract, and was not abused in any way by her husband, then she can initiate the divorce directly.
- 🔗 A waiting period of 1 month is observed within separate quarters of the marital residence to provide an opportunity for reconciliation, and to confirm whether the wife is pregnant.
- 🔗 If the wife is pregnant, the husband supports her until birth, and the child until adulthood.
- 🔗 If not pregnant, the divorce is finalized and the wife returns her *mahr* to her husband.

Judicial (*Tafriq* or *Faskh*)³⁶

- 🔗 The wife can file for divorce in court on the grounds that she was subjected to harm (*darar*).³⁷
- 🔗 A waiting period of 3 months is observed to confirm whether the wife is pregnant.
- 🔗 If the wife is pregnant, the husband supports her until birth, and the child until adulthood.
- 🔗 If not pregnant, the divorce is finalized and the husband gives his wife her deferred *mahr*.

6. Child Custody³⁸

Custody under traditional Islamic law is composed of three types of guardianship, *hadhana* (rearing), *'al-wilaya 'la al-nafs* (guardianship of child's person), and *al-wilaya 'al-mal* (guardianship over child's money/property). *Hadhana* tends to be awarded to the mother for boys until age 7-9, and for girls until the age of 12 under Sunni law,³⁹ and until age 2 for a boy and 7 for a girl under Shia law.³⁹ The mother's eligibility for rearing includes having an ethical and trustworthy character, the ability to protect the child's health and ensure a moral upbringing, and choosing to reside close to the father's residence. Generally, remarriage deems the mother ineligible to maintain guardianship. If the mother is not eligible or available, most legal scholars agree that the right of *hadhana* transfers to the maternal grandmother, then to the paternal grandmother. Under Shia law, guardianship passes to the father rather than the maternal line if the mother is ineligible or passes away. For both Sunnis and Shias, from birth to adulthood, the father is responsible for guardianship over the child's person and property, including their place of residence, education, religious upbringing, employment, legal representation, and marriage. When the father is not available, guardianship of the child's person and property transfers to the paternal line.

36. Almost universally applied to women, although abused men can also request a *tafriq* divorce.

37. *Darar* covers emotional, physical, and other forms of abuse and includes cruelty, injustice, adultery, and contagious disease (Alwani 2007). Additional grounds for a judicial divorce include character defects, prolonged absence, insanity, and lack of financial support.

38. Special thanks to Abed Awad for providing an in-depth review of child custody under traditional Islamic law.

39. Legal reforms have been increasing in Muslim countries in support of extending the period of *hadhana* to keep children with their mothers for longer periods of time.

Summary of Traditional Islamic Family Law

- ☞ Practicing Muslims base their beliefs and behavior upon the Qur'an and the *Sunnah*.
- ☞ When Islam was revealed, the religion gave women rights that did not exist at the time, including the right to vote, own property, inherit, work, sexual satisfaction, and consent to their marriages.
- ☞ The Qur'an's feminist and egalitarian spirit towards women and gender relations has been largely lost in contemporary jurisprudence and practice.
- ☞ Many contemporary Islamic scholars view the Qur'an as a rich, egalitarian text that supports the jurisprudence of equity, and are working to address and correct this imbalance.
- ☞ Marriage is defined in the Qur'an as an equitable, compassionate, and peaceful relationship that is grounded in love.
- ☞ In the event that conflict occurs within marriage, the Qur'an requires it be resolved through mutual consultation and open discussion.
- ☞ Some Muslims believe the Qur'anic verse 4:34 provides grounds for husbands to physically abuse their wives. Most scholars disagree, believing that the verse was meant to limit wife abuse, and that it should be understood within the context of forbidding domestic violence.
- ☞ There are 4 primary types of marital dissolution – unilateral (*talaq*), delegated (*tafwid/ismah*), wife-initiated (*khul'*), and judicial (*tafriq/faskh*).
- ☞ Custody of children covers child rearing and guardianship over the child's person and property. Mothers are generally favored for child rearing during early to mid-childhood, while guardianship over the child's person and property remains with the father from birth to adulthood.



B. U.S. Family Law

1. History

Family law in the U.S. is a wide body of law governing various family-related issues including marriage, civil unions, domestic partnerships, domestic violence and abuse, adoption, surrogacy, legitimacy, and termination of family relationships (such as divorce, annulment, property settlements, alimony, child support, custody, and visitation rights) (Atkinson 1996). The foundations of family law in the United States, particularly as they relate to the rights of women, have their roots in English common law where a woman lost her legal identity upon marriage; as it was joined with her husband's identity (Oldham 2004). Another important aspect of English common law that transferred over into the early U.S. legal system is the fundamental basis of reciprocity as opposed to equality of rights.

Although family law was traditionally the domain of the states, the federal government addressed various issues when federal legal institutions deemed it necessary. For instance, the federal government abolished polygamy and punished those who engaged in it by passing a series of laws between the 1860s and 1890s (Cherlin 2009). Additionally, the Federal income tax law had to address the various methods by which common law and community property states viewed marriage and marital property; with the result that income tax rates varied by marital status. But the primary impetus behind the federal government becoming involved with family law was the welfare of the individual. Particularly, as the federal government took more responsibility for the welfare of children and dependents, it focused more on family composition and regulation (Rubin 1986).⁴⁰

2. Marriage Laws

Legal requirements for marriage are state specific, providing them with the authority to determine what constitutes a valid marriage, how a valid marriage is created, how a valid marriage is to be regulated, and how a valid marriage may be terminated in that state (Atkinson 1996). However there are overarching aspects required in all states for a marriage to be considered valid, such as the consent, capacity, and age of each person. When an individual marries in one state and moves to another, most states will still recognize their marriage based upon the "full faith and credit" that states give to one another, even if their marriage laws vary (Cherlin 2009). Most states require a couple to obtain a marriage license before performing the marriage ceremony.

3. Nuptial Agreement Laws

A prenuptial agreement is an agreement entered into by a couple before the wedding vows, and a postnuptial agreement is an agreement entered after the wedding vows. Pre- and post-nuptial agreements determine the financial rights of both spouses including property rights, spousal support, inheritance rights, and laws to be applied in the event of a divorce (Cherlin 2009). If a marrying couple does not have a legally binding prenuptial or postnuptial agreement, in the event of a divorce, the state family code will control what will happen to spousal assets and debts (Atkinson 1996). Family courts then equitably distribute the marital property based upon the laws of the state.

40. For example, the Defense of Marriage Act (DOMA) is a statute enacted in 1996 that bans recognition of same-sex marriage in the United States.

Couples with valid prenuptial or postnuptial agreements can preset the distribution of their assets and debts in the event of divorce. The following criteria are required for a valid prenuptial agreement:

- ✧ Must be in writing
- ✧ Must be executed voluntarily
- ✧ Child-support and child-custody cannot be pre-determined (most states)
- ✧ Full and/or fair disclosure at the time of execution
- ✧ The agreement cannot be unconscionable
- ✧ It must be executed by both parties (not their attorneys) "in the manner required for a deed to be recorded", known as an acknowledgment, before a notary public
- ✧ Fair and reasonable provisions under the circumstances (some states)
- ✧ Cannot violate public policy

4. Divorce Law

Prior to the 1970s and the emergence of no-fault divorce laws, the process of getting a divorce was difficult and slow to produce equitable results (Hamilton 2006). Inaccessibility, particularly financial, to the courts was partly responsible for a lower percentage of individuals seeking to petition for divorce (Yegge 1994). While some states continue to use a fault-based system, all states utilize no-fault laws, which remove the need to find fault. In 1970 California enacted the first no-fault divorce law in the United States. Within a decade nearly every state had enacted some form of no-fault divorce. The no-fault divorce laws were created to enable a more civil, practical and accessible divorce process, and more uniformity in state laws (Cherlin 2009). While financial, custodial and other issues would still remain in the hands of the court unless a negotiated settlement between spouses was reached, a unilateral claim of "irreconcilable differences" was sufficient to end a marriage. In the event that the divorcing couple are in two different states, the variables of interstate divorce that can determine where the case will be heard include spousal positions on contested issues, the issues that will be litigated, legal advice, state laws, the state with jurisdiction and venue advantages, and the value of marital property.

5. Child Custody

Each state has their own child custody statutes, but courts in all states generally make their rulings on the basis of what is in the best interest of the child.⁴¹ The custody arrangement becomes part of the divorce decree, which states the name of the parent with whom the child will live, how visitation rights will be handled, who will provide financial support, and who has decision-making authority over the child (Atkinson 1996). Factors affecting custody rulings include the fitness of the parent, careers, childcare, disabilities, and which parent has been the primary caretaker (Cherlin 2009). Physical custody decisions affect the child's place of residence, while legal custody affects major life decisions of the child, such as health, education, and religious upbringing.

41. It should be noted that in the overwhelming majority of divorces, parents decide upon custody before reaching the courtroom.

In situations where the parents are unable to agree on custody, the court intervenes and makes a decision based on the child's best interest and well-being. Joint legal custody is the most common type of child custody (Miller 2009), where parents share responsibility, regardless of where the children are living, for making major decisions about a child's welfare including education, health care, and religious upbringing. Another option is for permanent residential or legal custody to be given to one parent with whom the child will mostly live, with the understanding that in general, courts seek the involvement of both parents in the child's life and upbringing, and non-custodial parents generally receive visitation rights (Atkinson 1996). In cases where a judge rules that it is in the best interest of the child for one parent to be given sole legal custody, that parent receives full legal and physical custody of the child. If significant changes occur in the child's environment, such as improper supervision, harmful conflicts with the custodial parent or stepparent, or a child preferring to live with the noncustodial parent, courts have the power to modify custody arrangements (Atkinson 1996).

Jurisdiction is another issue that plays a role in determining child custody. The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) is the primary law governing child custody rulings between jurisdictions, and states that the court and state in which child custody is determined continues to have exclusive jurisdiction until the court chooses to decline jurisdiction or other residential factors occur. Though not necessarily linked to child custody, laws of jurisdiction also govern child support. The Uniform Interstate Family Support Act (UIFSA) was passed to ensure that child support could only be modified by a single state at one time. If one or both parents move to another state, that state could then assume child support jurisdiction. All states have the power to enforce a legal order made by another state.

6. Spousal Support

Spousal support, also known as alimony, provides support for one spouse, typically wives who have devoted a number of years to raising children and/or homemaking. The four primary types of spousal support are temporary, permanent, rehabilitative, and reimbursement (Zeini 2007). Temporary support is meant to help the spouse transition into self-sufficiency. However, women who have been out of the workforce for many years, to raise children for example, can be put at a disadvantage as they work to establish themselves in the workforce. Rehabilitative support would provide these women with additional time to gain education or work skills to be able to successfully transition into the workforce. Permanent support is rare and typically awarded in cases of disability or inability to obtain necessary skills to enter the workforce. Reimbursement support awards spouses who provided support during the marriage to the other spouse as they completed their education or professional development (Hamilton 2006).

7. Marital Property Systems

Divorce property rights are different in each state, and the local court is the final authority to divide the property between spouses during the divorce. Most states adopted equitable distribution laws in the 1970s in fairness to unpaid work done by homemakers in contribution to the marriage (Cherlin 2009). There are two primary procedures that are followed by U.S. family courts for dividing property – common law property and community property. In community property systems, the marriage is treated similarly to a business entity. Each spouse's income during the marriage belongs to the community. Likewise, any property acquired during the marriage, with some exceptions, is considered community property. In common law states, a spouse might be said to own one set of property during the marriage, but upon divorce, the spouse might be deemed to have rights to a different set of property. So in a common law state, each spouse owns their own earnings and anything they acquire with those earnings or otherwise, unless they indicate some intent to share the ownership with their spouse.

8. Domestic Violence

When victims of domestic violence contact law enforcement, in most states the abuser will be taken from the home and held for 24 hours or more. Law enforcement may educate the victim regarding their legal rights under state law, as well as provide them with temporary and permanent options to prevent further abuse. While the abuser is detained, a victim can obtain a protective order from the court and/or secure assistance for themselves and their children from a domestic violence agency. Public and private domestic violence agencies and organizations provide direct services to victims and their children such as 24-hour hotlines, emergency shelter, transitional housing, court advocacy, counseling, financial assistance, and job skills training.

Federal and state laws have been passed to provide protection and services for women and families in the event of domestic violence. The Family Violence Prevention and Services Act (FVPSA), enacted in 1984 and reauthorized in 2003 and in 2010 funds emergency services for domestic violence victims and their children including shelters, crisis lines, counseling, and victim assistance. The Violence Against Women Act (VAWA), a federal law that was passed in 1994, improves criminal justice and community-based responses to domestic violence, sexual assault, dating violence, and stalking. The legislation was reauthorized in 2000 and again in 2005 and expanded its scope, to include, among other focus areas, prevention programs, and culturally and linguistically specific services. VAWA also includes provisions that allow immigrant spouses of green card holders or citizens to self-petition (without spouse's knowledge) for a green card.

In all states domestic violence laws and policies have been enacted to treat domestic violence as a serious crime necessitating an appropriate criminal justice response. Court decisions have also had an influential impact on policy and often have been a catalyst for change in the protection of the rights of victims of domestic violence. These changes have included mandatory arrest laws for domestic violence offenses, the compilation of extensive report filing systems to track domestic violence, mandatory in-service training on an annual basis for police officers, the establishment of specific domestic violence units in many prosecutorial offices, and specific training for judges on the intricacies of domestic violence laws (Little et al., 1998). The ultimate goal of the domestic violence laws in all states is to change the behavior of offenders, preferably through education and rehabilitation, but also, if necessary, through the imposition of monetary sanctions and incarceration.

Summary of U.S. Family Law

- § Legal requirements for marriage are state specific, providing them with the authority to determine what constitutes a valid marriage, how a valid marriage is created, how a valid marriage is to be regulated, and how a valid marriage may be terminated in that state.
- § Pre- and post-nuptial agreements determine the financial rights of both spouses including property rights, spousal support, inheritance rights, and laws to be applied in the event of a divorce.
- § All states utilize no-fault divorce law in the U.S. If the divorcing couple is in two different states, several variables of interstate divorce determine where the case will be heard, including contested issues, jurisdiction, and the value of marital property.
- § Courts in all states generally rule in the best interest of the child. Custody arrangement becomes part of the divorce decree, including their place of residence, visitation rights, and financial support.
- § Spousal support (alimony) provides support for one spouse, typically wives who have devoted a number of years to raising children and/or homemaking. The four primary types of spousal support are temporary, permanent, rehabilitative, and reimbursement.
- § To determine property distribution, courts treat marital property as common law property or community property.
- § Domestic violence is a crime that can result in offender rehabilitation, monetary sanctions, or incarceration.
- § Public and private domestic violence agencies and organizations provide direct services to victims and their children such as 24-hour hotlines, emergency shelter, transitional housing, court advocacy, counseling, financial assistance, and job skills training.



LAW, RELIGION & CULTURAL PRACTICES, CONT'D.



III. MUSLIM MARRIAGES & THE ISLAMIC MARRIAGE CONTRACT

A. Marriage Contracts under Islamic Jurisprudence

The most common form of an Islamic marriage begins with a proposal known as an *ijab* or *rishta*. Although a formal proposal is not a requirement in traditional Islamic jurisprudence, it is commonly observed.⁴² Once accepted, the engaged couple have an opportunity to familiarize themselves with one another. In a chaperoned environment the fiancés can see one another,⁴³ chat, socialize with family members, and determine if they are compatible.⁴⁴

Once the couple agrees to pursue the marriage, the next step is to sign the Islamic marriage contract in an official ceremony frequently referred to as *nikah*.⁴⁵ In traditional Islamic jurisprudence, the Islamic marriage contract solemnizes the physical connection between a man and woman, and serves as the foundation for their marriage. By signing the Islamic marriage contract, couples commit to nurturing an environment of love and mercy that is conducive to Islamic growth (Alkhateeb 2004). Although the marriage contract falls under civil contract laws in traditional Islamic jurisprudence, it is considered to be a sacred covenant⁴⁶ involving two consenting (*qubool*) parties making an agreement in the presence of two witnesses (al-Hibri 2005). Most schools of thought in traditional Islamic jurisprudence require women to have a guardian (*wali*),⁴⁷ based upon the rationale that male family members will protect the interests of the bride (al-Hibri 2005).⁴⁸ For the other schools of Islamic jurisprudence, fathers were considered to be the primary *walis* of their daughters, followed by grandfathers, brothers, or the next available male relative. In traditional Islamic jurisprudence, men proposing to women represented by *walis* must seek permission from the guardian to marry their daughter or female relative. The *wali* then asks the bride whether she consents to the marriage.

The marriage contract ceremony must include the consenting and competent couple (who are of marriageable age),⁴⁹ the person solemnizing the marriage⁵⁰ (typically an imam or *khateeb* in the U.S.), and two witnesses. Although traditional Islamic jurisprudence required two female witnesses to each male witness based upon Qur'anic verse 2:282, contemporary scholars commonly argue that the rule no longer applies given the level of engagement that women have today with legal and business practices. Before signing the contract the solemnizer asks the couple whether they consent and for the amount of the *mahr*. Under traditional Islamic

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42. The proposal can be made by either gender, e.g. Prophet Muhammad accepted a proposal of marriage from his first wife, Khadijah.
 43. Traditional Islamic law allows for a woman who wears *hijab* (head covering) to show her hair to a potential spouse once he has made an official proposal.
 44. It should be noted that in Muslim-majority countries, couples and families are most commonly concerned with government-sanctioned national laws rather than traditional Islamic jurisprudence.
 45. Each culture or region has its own name for the ceremony, including *waleemah*, *katb al-kitab*, *nikah nama*, *khutubah*, *milka*, and *nikah*.
 46. The marriage contract is also known as "*mithaqan ghalithan*," or "strong contract" in Arabic (Qur'an 4:21). See Azizah al-Hibri's 2005 article in the reference section for a detailed commentary.
 47. The *Hanafi* school is the notable exception regarding the requirement of having a *wali*, and allows women to sign a marriage contract without a guardian.
 48. Traditional Islamic law originated during a time when public law enforcement and social services did not exist. Families were regarded as the bedrock of society, so healthy nuclear and extended families provided the necessary physical and moral support for each family member.
 49. They must be of marriageable age according to the laws of the country in which the marriage is performed.
 50. In some Muslim countries the person solemnizing the marriage is a clerk of the court, since Islamic marriage contracts fall under civil law.

law grooms must provide a *mabr*, or marital gift, for their wives (Qur'an 4:20). There is no minimum or maximum amount specified for the *mabr*, and the gift can range from cash to gold to property.⁵¹ The *mabr* can be given at the onset of marriage, during the marriage, or divided into immediate and deferred portions, and is payable upon demand, divorce, or the husband's death.⁵² The *mabr* becomes the property of the bride, is hers to do with as she chooses, and can be an added source of support and protection. Traditional Islamic law requires men to financially provide for their wives in a manner to which they are accustomed to living so long as they are able. If the wife chooses to work during the marriage, the money she earns becomes part of her separate marital property, with no financial obligation incumbent upon her to financially support the family. In addition, household work and nursing any infants are optional and compensable (al-Hibri 2005).

In addition to determining the *mabr*, Islamic law allows stipulations⁵³ to be added to the marriage contract. The traditional Islamic schools of jurisprudence are diverse in their legal opinions regarding the types of stipulations that can be included in the Islamic marriage contract. As the legal rights of women in Muslim countries vary, typical stipulations tend to protect women's rights by bringing couples to an agreement regarding an equal right to initiate divorce, an agreement to remain monogamous,⁵⁴ the right to education and work, equal division of domestic responsibilities, and living conditions. Stipulations regarding property tend to be absent in most Islamic marriage contracts as marital or community property does not exist under traditional Islamic law; rather, a single person holds each property title. All traditional jurists are in agreement that no stipulations can be added that contradict the basic requirements of marriage or forbid that which is legally permissible (al-Hibri 2005).⁵⁵

Summary of Marriage Contracts under Islamic Jurisprudence

- ☞ The most common form of marriage in Islam is an offer, acceptance, signing the marriage contract in front of two witnesses, and publicizing the marriage.
- ☞ Islamic marriage contracts include a *mahr* (gift) stipulation from the groom to the bride that may be immediate, ongoing, or deferred, and is payable upon demand. There is no minimum or maximum, and it becomes the sole property of the bride.
- ☞ Traditional Islamic law requires a husband to financially support his wife. If the wife chooses to work, her earnings become part of her separate marital property.
- ☞ Islamic law allows for stipulations to be added to the marriage contract. Typical stipulations in the contract cover issues such as equal divorce rights, monogamy, education, work, domestic responsibilities, and living conditions.



51. Many professional women are more concerned about their divorce rights, as opposed to the *mahr*, which they view as more symbolic.

52. The *mahr* supplements other legal obligations between spouses, such as inheritance and property.

53. The Arabic word "*shart*" (pl. "*shuroot*") is used to refer to stipulations in Islamic jurisprudence, and can also be translated as "prerequisite" or "condition."

54. Based on the tradition of Prophet Muhammad's great-granddaughter, Sukayna bint Hussein, who included a stipulation in her marriage contract requiring her husband to remain monogamous.

55. Examples of stipulations that cannot be added include sexual abstinence, removing the husband's obligation to financially support his wife, and removing his obligation to provide her with a *mahr*.

B. Contemporary Marital Practices among American Muslims

This section covers common practices among American Muslims regarding marriage, family life, and divorce, to provide readers with the contemporary context in which Islamic marriage contracts are signed.⁵⁶ In addition to encompassing premarital practices of American Muslim couples that marry in the U.S., this section also includes common marital practices of practicing American Muslims in general.⁵⁷

American Muslims are diverse in their responses to *shari'ah* and traditional Islamic jurisprudence regarding the Islamic marriage contract. Some couples choose to sign basic Islamic marriage contracts that only include specification of the *mahr*, some expand the contract to cover a range of stipulations, and others ignore the Islamic marriage contract entirely by electing to just have a civil contract (Quraishi and Syeed-Miller 2004). A recent study on marriage and divorce among American Muslims found that they commonly turn to *shari'ah* to mark important passages during their lives, such as birth, marriage, divorce, and death (MacFarlane 2012).

There are many paths that American Muslims may take on the road to signing an Islamic marriage contract. Couples often meet by family introduction,⁵⁸ while attending university, in the workplace, at large Muslim gatherings,⁵⁹ through matrimonial services, and more recently online. Courtship may be pursued through formally chaperoned visits between families,⁶⁰ as friends in larger groups of young women and men, by dating without intimacy, and, less commonly among practicing Muslims, by dating with varying degrees of intimacy (Haddad, Smith & Moore 2006).⁶¹ While some religiously practicing American Muslim families allow for informal socializing⁶² prior to a formal engagement, others only permit casual interaction once a formal engagement has been announced. Many families allow this period of informal socialization to continue for an extended period of time, and wait to announce the engagement and/or marriage until the couple feels they have sufficiently gotten to know one another and agree to marry.

Depending upon the circumstances of the couple, the time period between the proposal, the engagement, the marriage contract ceremony, and the wedding party⁶³ may last for minutes, days, months or years (Haddad, Smith & Moore 2006).⁶⁴ However, couples are often encouraged to hold the marriage contract ceremony⁶⁵ and wedding party⁶⁶ within a short span of time, as once the contract is signed, consummation is legal, and complications can occur.⁶⁷

56. This section covers common religious and cultural practices of American Muslims who govern their lives by Islamic rituals and guidelines.

57. It is fairly common for American Muslims to engage in intercultural and interracial marriages. Regarding interreligious marriages, although traditional Islamic jurisprudence only allows for Muslim men to marry Christians and Jews, there is a growing trend of American Muslim women marrying non-Muslim men.

58. Introduction to a prospective spouse does not necessarily equate with an "arranged" marriage, as, in this case, the couple gets to know one another first to determine their compatibility.

59. The annual Islamic Society of North America convention, for example, has about 50,000 attendees, and is often used, as are other major regional and national gatherings, as an opportunity to find potential spouses.

60. Including the couple spending time with one another at the bride's home while other family members are in the vicinity, though not necessarily in the same room.

61. Though a subject of controversy, the 2012 publication of *Love, Inshallah: The Secret Love Lives of American Muslim Women* includes first person narratives revealing a range of experiences, from arranged marriages to typical American dating practices.

62. Informal socializing may cover a range of activities, including talking over the phone, spending time together in an un-chaperoned setting within the vicinity of other family members, and un-chaperoned socializing in public and private spaces.

63. Also known as *'irs*, *waleemah*, *valima*, *zawajj* or *farah* in various cultures.

64. Various factors are considered in determining the length of time between the proposal and wedding party, such as completion of education and financial viability.

65. This is often held as a private affair at the bride's home with extended family members.

66. Similar to the general public, wedding parties range from lavish events at hotels to small celebrations with close friends at a family member's home. The point is to honor the Islamic legal requirement of publicly announcing the union.

67. See the section on *Trends in Abuse* for further details on post-consummation divorce.

Most couples signing an Islamic marriage contract have an imam officiate their ceremony. Many imams will willingly perform the ceremony, but there is a growing pattern of imams being cautious about performing marriage contract ceremonies unless the couple first attends a few premarital counseling sessions. Common issues explored during premarital counseling include attitudes and beliefs towards gender, relationships, extended family, parenting, leisure activities, finances, conflict management, non-familial relationships, socializing, romance, behavioral expressions, domestic violence, health, and parenting.⁶⁸ Additional new initiatives include regional and national seminars and retreats for single young Muslims,⁶⁹ as well as online premarital counseling classes.⁷⁰

Though it is common for male imams to officiate the Islamic marriage contract ceremony, there is a new trend emerging among some second and later generation couples that request a female community leader to officiate their union. In both cases, the community leader has often registered with the state to secure a formal license that qualifies them as a marriage celebrant. Many imams who are not licensed by the state require proof of a civil marriage license before they will conduct the Islamic marriage contract ceremony, while others leave it up to the couple to ensure they register with the local government. Occasionally, a couple will consider having an Islamic marriage contract to be sufficient, and will not register for a civil marriage license. A recent four-year qualitative study by Julie Macfarlane of 212 Muslim community leaders, social service providers, and divorcees, found that 95% of those who were married had both an Islamic marriage contract and a registered civil marriage, while 3% had only an Islamic marriage contract (Macfarlane 2010b). In the event of divorce or death, couples without a civil marriage license risk their marriages not being recognized by the American legal system. Women in this situation typically lose any financial claim to the husband's property. Though it is illegal in the U.S., some women agree to polygynous marriages; in some cases for companionship and financial support with the benefit of limited domestic, spousal and childbearing responsibilities.

Though a rarity for most American Muslim families, there are some cases of temporary marriages, known as *mut'ab* or *sigheb* marriages among some Shia communities. Such marriages are engaged in for a preset time, oftentimes to avoid sexual behavior outside of marriage. These temporary marriages include *ajr*, or compensation, for the wife, but no financial maintenance, inheritance, or legal rights. While conception is typically avoided, any children resulting from the marriage are entitled to full rights and privileges from the father. Although most Sunni scholars consider temporary marriages forbidden, a few scholars allow for *misyar* marriages, or "travel" marriages, which are similar in nature to *mut'ab* marriages, but with a *mabr* rather than *ajr*. The practice typically exists overseas among some men while stationed away from their families for extended periods of time.

68. Imam Mohamed Magid developed a resource with 100 questions couples should consider before marriage that is available in the *Resources* section. Imam Magid requires couples to attend premarital counseling sessions with him before he will perform an Islamic marriage ceremony.

69. Imam Magid and his wife created a national program called *Companionships*, that provides a networking and educational platform for single Muslims interested in marriage.

70. For instance, a California mosque recently created the online class *Pre-Marriage: Before You Say "I Do."*

Like other American families, and Muslim families around the world, balancing work and family in American Muslim homes runs the gamut from stay-at-home moms to working parents. Attitudes towards family life and gender roles in each family vary, and, like other Americans, are influenced by the culture of the homes in which they were raised. Many Muslim families live a typical American lifestyle in terms of family relationships, gender roles, and expectations, while other families blend American culture with values and norms from their countries of origin. Like some orthodox Christians and Jews, a minority of American Muslims limit their social lives to religious enclaves, sometimes bounded by geography but more often centered on a mosque or community center (Haddad, Smith & Moore 2006).

Like every family, American Muslim families experience conflict, and the sources of conflict may include finances, parenting, domestic violence, and infidelity. Macfarlane's study found that leading factors contributing to divorce among American Muslims included gender roles and authority, relationships with in-laws, transnational marriages,⁷¹ differences in religious practices, infidelity, and domestic violence (Macfarlane 2010b). Similarly, in a 2010 online survey of 405 American Muslim divorcees by Soundvision, respondents indicated that incompatibility, abuse, financial disputes, tensions with in-laws, and infidelity were catalysts for divorce (Ghayyur 2010).

For couples that are unable to resolve their conflicts in a satisfactory manner, seeking outside assistance is the next step. Since Islam's social paradigm is family-centered, turning to immediate or extended family members is a logical step. Given that the majority of American Muslims today were born outside of the U.S.,⁷² their access to a family support system may be limited. However, 82% of the respondents in the Soundvision survey indicated that they had their family's support and blessing regarding their choice to divorce. Imams and professional counselors provide additional sources of support. A survey of 22 mosques in New York, for example, found that 96% of worshippers perceived imams to play the role of a counselor (Abu-Ras, Gheith & Cournos 2008). Professional marriage counseling is not a cultural norm in most Muslim countries, but couples in the U.S. are gradually accessing therapists more often in an effort to stay together.⁷³ Once the couple feels they have exhausted possible alternatives, if they still prefer to end the marriage, they may reach out to an imam, attorney, or a combination of both.

Attitudes and expertise vary widely among American imams who assist couples that request a divorce. Since formal training in counseling is rare among imams,⁷⁴ and marriage is an instrumental part of the Islamic faith, their common strategy is to try to keep the couple together, even in cases of abuse (Alkhateeb and Abugideiri 2007). Fortunately, advocacy efforts over the last decade have helped to raise awareness regarding domestic violence, and to improve community responses.⁷⁵ Imams with experience regarding the issue of domestic violence will ensure that the wife is safe before proceeding, will refer victims to therapists if they do not have experience in counseling, and will connect them with available private and

71. Couples engaged in transnational marriages, which occur between people from different countries, may experience conflict related to distinctions in values and norms.

72. According to the 2011 Pew study, 63% of American Muslims were born outside the U.S.

73. Informal counseling is also provided by community elders and leaders, and although they are not trained therapists, many view them to be "surrogate parents."

74. It should be noted that imams in Muslim countries typically lead prayer, and are rarely involved in providing counseling or any other social services to their communities.

75. The Peaceful Families Project, for example, has been conducting workshops for imams, community leaders, and community members since 2000.



Each imam differs in his approach to approval of a religious divorce in terms of perceived necessity and method.

public resources (Magid 2007). In cases with or without abuse, the issue sometimes becomes complicated as imams and the couple seeking divorce try to determine how an Islamic marriage contract based within traditional Islamic jurisprudence should be handled in a non-Muslim country.⁷⁶

Each imam differs in his approach to approval of a religious divorce in terms of perceived necessity and method. Some state that a religious divorce is unnecessary, and that since the Islamic marriage contract functions as a civil contract under traditional Islamic jurisprudence, the American civil divorce is sufficient. Other imams favor the husband's choice on the grounds that *talaq* is the right of the husband. Some imams even argue that a civil divorce filed by a wife is insufficient to finalize an Islamic divorce because the wife would, in effect, be forcing her husband into agreeing to the divorce, a practice also known as *talaq al-mukrah*.

Too often, when a wife has grounds for divorce but the husband does not want to divorce her, imams mistakenly rule the divorce to be a *kbul'* (wife initiated) divorce, requiring her to return her *mahr* (marital gift). Yet in traditional Islamic jurisprudence, *kbul'* is only implemented when a wife chooses to leave her husband without grounds. If there are any grounds at all for leaving the marriage, any type of *darar* (harm), whether emotional, verbal, physical, sexual, or otherwise, it should be ruled as a *tafriq* (judicial) divorce. Even in cases of *kbul'*, some imams, believing that Islamic jurisprudence requires the husband's approval, still will not approve the divorce unless they receive the husband's consent.⁷⁷ In an interview with Imam Mohamed Magid, he emphasized that *kbul'* has been the most abused form of divorce, that it puts women at a disadvantage, and that a civil divorce sufficiently dissolves the Islamic marriage contract.⁷⁸ Similarly, in 2010, Dr. Muzammil Siddiqi, former President of the Fiqh Council of North America, ruled that an American civil divorce was a valid means of dissolving an Islamic marriage, and that imams should honor that decision.

Still, due to differences of opinion, special circumstances, and community pressure, many women feel obligated to obtain an Islamic divorce directly through an imam. Community approval can be a powerful motivator, and has driven some women to "shop" around for a divorce from various imams until it is granted (Macfarlane 2010b). Some women who married outside the U.S. may need the Islamic divorce to be documented as "proof" when returning to that country, as it may affect her ability to enter or exit the country.⁷⁹

76. Issues of concern include whether alimony should be pursued or just the *mahr*, whether they are double-dipping if they take both, whether the wife would be violating *shar'iah* if she takes alimony or half of the property, and whether it is better for custody to be determined in court or based upon the Islamic school of law that they follow.

77. In cases of abuse, in addition to other reasons, husbands sometimes refuse to consent to the divorce as a means of extending the suffering of their wives, and to continue maintaining some semblance of control.

78. Imam Mohamed Magid, phone interview, November 2011.

79. In Saudi Arabia, for example, women must have the permission of a male family member to travel. If the Saudi government still believes her to be married to her ex-husband, he has the power to prevent her from exiting the country.

Summary of Contemporary Marital Practices among American Muslims

- Some American Muslim couples sign basic Islamic marriage contracts only specifying the *mahr*, some include a range of stipulations, and others have just a civil contract.
- The time period between a proposal, engagement, marriage contract ceremony, and wedding party may be minutes, days, months or years.
- Premarital counseling by imams and other community leaders is a growing trend. Common issues explored include gender, relationships, extended family, parenting, leisure activities, finances, conflict management, non-familial relationships, socializing, romance, behavioral expressions, domestic violence, health, and parenting.
- Islamic marriage contracts are typically solemnized by imams and community leaders, with a growing demand for female celebrants.
- Attitudes towards family life and gender roles in each Muslim family vary, and, as is true for other Americans, are influenced by the culture of the homes in which they were raised.
- Like every family, American Muslim families experience conflict, and the sources of conflict include finances, parenting, domestic violence, and infidelity.
- Leading factors contributing to divorce among American Muslims include gender roles and authority, relationships with in-laws, transnational marriages, finances, parenting, differences in religious practices, infidelity, and domestic violence.
- Professional marriage counseling is on the rise for American Muslim couples experiencing conflict. Once the couple feels they have exhausted possible alternatives, if they still prefer to end the marriage, they may reach out to an imam, attorney, respected community leader or a combination of any of these.
- When approached by individuals facing domestic violence for counseling, imams with experience in domestic violence will ensure that the wife is safe before proceeding, will refer victims to therapists if they do not have experience in counseling, and will connect them with available private and public resources.
- There is a growing trend of American Muslim scholars promoting civil divorce as a valid means of simultaneously dissolving an Islamic marriage.



C. Trends in Abuse

In some cases of marriage and divorce, there are Muslim men who abuse women's rights. Among the trends in abuse are domestic violence, non-civil marriage, forced marriage, temporary marriage, appropriated marriage, abandonment divorce, pre-consummation divorce, unilateral divorce, limping divorce, and polygynous divorce. The fact that such practices are widely condemned within the American Muslim community at large does not preclude them from occurring.

1. Domestic Violence

As in other faith communities, domestic violence is a reality for some Muslim women. A forthcoming web-based study conducted by the Peaceful Families Project and Project Sakinah in 2011 of 801 American Muslims found that 53% reported having some form of family abuse at some point in their lives, and 31%⁸⁰ reported having intimate partner violence (IPV) in their lifetime. Types of violence reported in intimate partner relationships, in order of prevalence, included emotional (45%), verbal (41%), physical (31%), financial (16%), and sexual (15%) abuse. Other types of abuse women may face include spiritual abuse,⁸¹ threats to her reputation,⁸² immigration abuse,⁸³ using children as bargaining chips,⁸⁴ and threats to harm extended family members.⁸⁵ More recently, zero tolerance for domestic violence has been an increasingly consistent message in Muslim communities throughout the U.S. Leading efforts include anti-violence sermons and scriptural study sessions, imam trainings, community awareness workshops, cultural sensitivity trainings for service providers, and the development of appropriate educational resources by organizations such as the Peaceful Families Project (Alkhateeb & Abugideiri 2007).

2. Non-Civil Marriage

These types of marriages involve couples that have only a religious marriage, not a civil marriage. Upon marriage they elect to sign the Islamic marriage contract without registering for a civil marriage license. In the event of divorce the wives are left with little recourse and typically no civil legal spousal rights. Among polygynous couples, for instance, wives without a civil marriage will lose any financial rights they may have upon their husbands; making it easy for the husband to avoid any financial responsibilities that may have been promised. Most imams and community leaders remain consistent in encouraging women to protect their rights by obtaining a civil marriage license.

80. This is comparable to the incidence of domestic violence among the general public and internationally.

81. In the form of a husband manipulating religious teachings to support his abusive behavior or ridiculing his wife's religious knowledge or spiritual growth.

82. Reputation is important for both spouses Islamically, but culturally, the onus is frequently upon the wife to prove her innocence of slander; a clear contradiction of Qur'anic verse 24:23.

83. By hiding important immigration related documents or threatening the wife with deportation.

84. By threatening to hire an expensive attorney to gain full custody of the children or to reside with them outside the U.S.

85. Threats may be made against family members living in the U.S. and overseas.

3. Forced Marriage

A 2011 national study showed that an estimated 3,000 women and girls with origins in 56 different countries had been forced into marriage within the past two years (Tahirih Justice Center 2011). Parents rationalize the practice with a variety of reasons including concern that their daughter is becoming “too Americanized,” protecting the family “honor,” and economic security. Forced marriages occur in the U.S. and transnationally. Victims are subjected to emotional blackmail, deception, violence, abduction, and even death threats. In some transnational cases, women travelling overseas with their families on the pretext of a “vacation” are forced to marry, and in some cases are restricted from returning to the U.S. until they are pregnant. Forced marriages may result in domestic violence, marital rape, unwanted pregnancies, and other forms of violence.

4. Appropriated *Mahr*

The *mahr* is a gift made from the husband to the wife upon marriage, and it typically includes an immediate and deferred gift that is payable upon demand. Under traditional Islamic law the entire *mahr* becomes the sole property of the bride. Yet in some cases, parents may appropriate the bride’s *mahr* in clear violation of Islamic teachings. Though less common in the U.S. than overseas, appropriating *mahr* is a cultural practice that continues to exist among some families, particularly with regard to the deferred *mahr*.

5. Abandonment Divorce⁸⁶

Spousal abandonment can take place when a husband leaves his wife either overseas or in the U.S., and most commonly occurs in one of the following forms: A) A man travels overseas, marries with a promise to secure necessary paperwork so his wife can join him in the U.S., then abandons the marriage upon returning stateside.⁸⁷ B) The husband brings his new wife back to the U.S. with him, and then files for divorce a few months later. C) A couple residing in the U.S. travels to their country of origin, the man returns to the U.S. leaving his wife behind, often without proper documentation. The husband files for divorce and the wife often does not contest due to lack of information or misinformation provided by the husband. Due to the lack of information and proper legal representation the wife may lose her right to alimony, child support, and equitable distribution of marital assets. In yet another example, D) A husband leaves his wife in the U.S. to return to his country of origin (or the country in which their marriage was originally registered) and files for divorce in his wife’s absence.⁸⁸

6. Pre-Consummation Divorce

Some couples have an extended period between signing the Islamic marriage contract and publicly celebrating the marriage with a wedding party. In effect, as they are married according to Islamic law, this period allows the couple to “legally date” without chaperones as they get to know one another. Though technically traditional Islamic law allows them to consummate the marriage at any point following completion of the marriage contract, consummation is culturally avoided in case the couple decides not to wed publicly. If the couple decides not to wed after signing an Islamic marriage contract, an actual Islamic divorce is required. Since divorcing at this point requires men to give their wives half of their deferred *mahr*, unfortunately, some

86. Also sometimes referred to as the “Marry and Dump” practice.

87. According to some Islamic jurists an absence of six months or more by the spouse is considered a violation of marriage and cause for dissolution of the marriage contract.

88. However, since the U.S. recognizes the marriage of a couple once they enter the U.S., the abandoned wife can still file for divorce in the U.S. to claim her rights.

husbands attempt to manipulate their wives by threatening slander. Maintaining a good reputation is an important attribute for any potential spouse, equally so for men and women under Islamic law, but primarily for women according to popular culture. Knowing that retaining a good reputation will be culturally imperative for his wife if she wishes to remarry, the husband threatens to accuse her of having consummated the marriage. Due to the patriarchal culture extant in most Muslim countries, the wife is put at a disadvantage regardless of whether or not the accusation is true. Strictly culturally speaking, virginity is considered by some suitors to be a woman's most prized "asset." In such cases the women often forgo their half of the *mabr*. In one Virginia case, a man attempted to sully his ex-wife's reputation after she held her ground, and her right to half of the *mabr*. As expected the news affected her ability to easily remarry due to the cultural stigma. Feeling compelled to prove her innocence and improve her chances of marriage; the woman felt forced to obtain written "proof" of her virginity from a physician after undergoing a virginity test.

7. Unilateral Divorce

Traditional Islamic law grants men the right to divorce their wives in the presence of two witnesses by uttering the words, "I divorce you." Although jurists strongly recommend uttering the pronouncement no more than once,⁸⁹ some men unilaterally pronounce it thrice, ending the possibility of resolution for the couple. In addition, some men utter the words carelessly and without meaning, but later retract their statement, leaving some women unsure as to whether they are genuinely divorced Islamically.

8. Limping Divorce

In a limping divorce the husband refuses to grant his wife an Islamic divorce either to harass her emotionally, or to secure concessions in the court in the event that the civil divorce has not been completed. The irony is that the leading legal opinion among American Muslim scholars is that an Islamic divorce is **not** required, as an Islamic marriage contract is considered a civil contract under traditional Islamic jurisprudence, and hence can be dissolved through the U.S. court system. Unfortunately, not all imams and scholars subscribe to this ruling, and as a result provide misinformation to women and men within their communities. The result is that many American Muslim women are "stuck in a myth" by believing they need the approval of an imam to be considered Islamically divorced. In addition, even if a woman marries in a country overseas but is divorced in the U.S., the divorce does not automatically transfer to that country. For example, in one case, after a civil divorce was completed in the U.S., the man successfully reversed the decision through a court in the country in which the marriage was originally registered. To address such cases, some American imams have provided expert testimony over the phone to overseas courts to confirm the validity of a specific divorce. As each country has their own laws and some would require the husband's consent to divorce, women are encouraged to add a clause to their divorce agreement stating that the U.S. civil divorce effectively terminates the marriage in the country in which it was registered.

89. See the section on divorce under *Traditional Islamic Family Law* for further details.

9. Polygynous Divorce

In addition to polygyny being a criminal act, women marrying men who are already married to other women will be unable to obtain a civil marriage license, and thus will have no legal spousal rights in the event of death or divorce. In addition, in states that do not recognize common law marriages, any children the couple may have would be considered born out of wedlock. In cases where the first wife, often estranged, may try to establish that her husband has entered a polygynous marriage, the husband may testify that his second wife is a “girlfriend.” Yet, some Muslim leaders believe that the fact that Islamic law requires men engaging in polygyny to treat all their wives equally,⁹⁰ makes it Islamically forbidden to have more than one wife in the U.S.⁹¹ In addition, as some women who divorce their husbands are unaware that they need a civil divorce in addition to an Islamic divorce, they unwittingly find themselves in a polygynous relationship upon remarriage.

10. Legal Manipulation

Manipulation of the legal system can occur when men attempt to twist religion in court to suit their purposes – namely, to avoid paying the *mabr*. In such cases, men may claim that they did not fully understand the meaning behind the *mabr* when they signed their marriage contract, or that the *mabr* is a “bride price” rather than a gift, or that the marriage is not valid. For example, in one court case, a man claimed that his marriage was not valid because his wife was previously married overseas, and her divorce that occurred in that country was technically invalid, thereby making her still married to her former husband. As a result, their marriage was annulled, and the wife lost her claim to her *mabr* gift in court.

11. Revictimization

Immigrant survivors of domestic violence sometimes experience abuse that is two-fold when they work with practitioners lacking in cultural sensitivity who do not understand how to best navigate the situation. First, survivors may be subjected to abuse within their communities, which could take the form of a batterer husband, unsympathetic parents, and an unhelpful imam. Then, survivors seeking to free themselves from an abusive situation may face revictimization by uninformed law enforcement, social workers, attorneys, and judges. For example, a police officer may not believe a wife’s claim of being abused because she is unsure of what to say, a social worker may suggest culturally inappropriate solutions, and a judge may award custody to the husband because his mastery of English allows him to better defend his interests.

90. This was a requirement meant to limit pre-Islamic Arabia society’s practice of having unlimited wives. (Qur’an 4:3).

91. Islam requires Muslims to obey the laws of the land in which they reside. Holding citizenship or a visa from the U.S. equates to maintaining an agreement to uphold American law, and Muslims are required to fulfill all agreements (Qur’an 17:34).



To date, the most common ways in which Islamic marriage contracts have been treated in American courts are either as simple enforceable contracts or as prenuptial agreements.

D. Islamic Marriage Contracts in the American Court Room

Every state in the U.S. requires that couples obtain a marriage license from a judge or court clerk when they marry. Once Muslim couples obtain a state marriage license, like the majority of Americans, most then have their union solemnized by an imam or religious leader. In the absence of a state marriage license, for couples with just the imam's solemnization, some states will recognize the marriage while others will declare it void. Marriages performed outside the U.S. must be considered valid as long as the laws of that jurisdiction comply with U.S. public policy (Oman 2011; Sizemore 2011; Spencer 2011).

Stipulations in Islamic marriage contracts related to compliance during the life of the marriage, such as agreements regarding gender roles or domestic chores, are generally considered to be personal service agreements; and since there is judicial preference not to interfere with ongoing marriages, such stipulations are rarely enforceable (Quraishi & Syeed 2004). Instead, Islamic marriage contracts are most often presented to courts with regard to the *mahr* clause, especially in cases where the amount of the *mahr* is substantial. Husbands tend to seek litigation in the interest of invalidating the contract to limit their financial liability upon divorce, while wives tend to seek enforcement to protect their deferred *mahr* and personal property (Oman 2011).

Several legal and academic scholars have conducted surveys of Islamic family law in the U.S., including the ways in which Islamic marriage contracts are being judged in American courts (Quraishi & Syeed-Miller 2004; Oman 2011; Blenkhorn 2002; Fournier 2010; Sizemore 2011; Spencer 2011). To date, the most common ways in which Islamic marriage contracts have been treated in American courts are either as simple enforceable contracts or as prenuptial agreements. To determine if an Islamic marriage contract is enforceable, judges look for comparisons with U.S. legal principles, consider precedent, and consult with experts in the field.

The following list of recent court cases compiled by Abed Awad, a New Jersey attorney who is a leading expert in litigating Islamic marriage contracts in U.S. courts, includes enforced and unenforced cases where the contract was ruled as either a prenuptial agreement or as a simple enforceable contract:

Courts Holding that the Muslim Marriage Contract is a Prenuptial Agreement

ENFORCED

(Muslim Marriage Contract is a Prenup and is Valid)

- 🔗 Aziz v. Aziz (1985-New York)
- 🔗 Odatalla v. Odatalla (2002-New Jersey)
- 🔗 Abdallah v. Sarsour (2006-Virginia)
- 🔗 In the Matter of the Marriage of Altayar (2007-Washington)

NOT ENFORCED

(Muslim Marriage Contract is a Prenup but Invalid)

- 🔗 Habibi-Fahnrich v. Fahnrich (1995-New York)
- 🔗 In Re Marriage of Obaidi (2010-Washington)

Courts Holding that the Muslim Marriage Contract is a Simple Contract

ENFORCED

(Muslim Marriage Contract is a Simple Contract and is Valid)

- 🔗 Chaudhary v. Ali (1995-Virginia) [conflict of law applying Pakistani law]
- 🔗 Akileh v. Elchahal (1996-Florida)
- 🔗 Afghani v. Ghafoorian (2010-Virginia)

NOT ENFORCED

(Muslim Marriage Contract is a Simple Contract and is not Valid)

- 🔗 In Re Marriage of Dajani (1988-California)
- 🔗 Chaudry v. Chaudry (1978-New Jersey)
- 🔗 Ahmed v. Ahmed (2008-Texas)
- 🔗 Zawahiri v. Alwattar (2008-Ohio)
- 🔗 In Re Marriage of Obaidi (2010-Washington)

While some attorneys prefer to treat Islamic marriage contracts as simple enforceable contracts, others view them as prenuptial agreements. Scholars, imams, and community leaders tend to agree with the latter, and typically recommend that couples draw up prenuptial agreements in addition to signing an Islamic marriage contract to ensure that their rights and intent are upheld in court in the event of divorce.⁹² Prenuptial agreements are guided by legal counsel, require full and fair detailed financial disclosure of earnings and property, and resolve all financial issues between a couple in the event of divorce or death. In contrast, when Islamic marriage contracts are treated as simple enforceable contracts, the *mahr* stipulation is considered a supplement to other legal obligations between spouses, including the wife’s right to inheritance, community property, and alimony. Awad argues for defining the Islamic marriage contract as a simple enforceable contract to ensure that additional rights that the wife may have, such as alimony, inheritance, community property, and equitable distribution of property, are not bargained away. In recent years Islamic marriage contracts are increasingly having greater success being enforced as simple contracts rather than prenuptial agreements.

The following table illustrates the distinction between Islamic marriage contracts and prenuptial agreements:

Mahr in Islamic Marriage Contracts (IMC)	Prenuptial Agreement
<ul style="list-style-type: none"> ☞ A simple debt with promise to pay a sum upon divorce ☞ If registered in foreign jurisdiction, expectation that it will be subject to property & divorce law in their country of origin ☞ <i>Mahr</i> is an effect of the IMC ☞ <i>Mahr</i> supplements other legal obligations between spouses ☞ Resolves the <i>mahr</i> and any stipulations ☞ Wife still has right to inheritance, community property, equitable distribution of property & alimony ☞ Individual property ownership not subject to equitable distribution ☞ Full disclosure & legal counsel not required as they are not “bargaining away claims to property of uncertain value” 	<ul style="list-style-type: none"> ☞ A claim on property of husband ☞ Expectation to be subjected to U.S. state law ☞ Financial agreement is a consideration for the contract ☞ Substitutes other legal obligations between spouses ☞ Resolves the <i>mahr</i> and any stipulations ☞ In lieu of inheritance, community property, equitable distribution of property & alimony ☞ Marital and & community property allow for equitable distribution ☞ Full and fair detailed financial disclosure of earnings and property & legal counsel

92. Imam Mohamed Magid, phone interview, November 2011.

Summary of Islamic Marriage Contracts in the American Court Room

- 🌀 When judging Islamic marriage contracts, a primary goal for judges is to ensure the U.S. constitutional amendment's prohibition on the establishment of religion is not violated, and that the contract complies with U.S. public policy.
- 🌀 Court rulings on the validity of an Islamic marriage vary depending upon whether it is accompanied by a civil marriage license, and if it has been registered in the U.S. or overseas.
- 🌀 Stipulations in Islamic marriage contracts regarding personal agreements, such as gender roles or domestic chores, are generally unenforceable as they are considered to be personal service agreements.
- 🌀 Islamic marriage contracts are most often presented to courts with regard to the *mahr* clause, especially in cases where the amount of the *mahr* is substantial.
- 🌀 To determine if an Islamic marriage contract stipulation is enforceable, judges look for comparisons with U.S. legal principles, consider precedent, and consult with experts in the field.
- 🌀 Some legal and religious experts recommend treating the Islamic marriage contract as a prenuptial contract, while others recommend considering the contract as a simple enforceable contract so that the *mahr* will serve as a supplement to other legal obligations.



LAW, RELIGION & CULTURAL PRACTICES, CONT'D.



IV. DRAFTING AN ISLAMIC MARRIAGE CONTRACT

The advent of Islam brought with it many advantages for women, including the right to vote, own property, inherit, work, and consent to their marriages. In the 7th century, it was rare for women to possess such rights; not only in Arabia but globally. Indeed, it is only in the past hundred years that women in the U.S. and Western Europe achieved equality before the law. Although the historical context in which the Islamic marriage contract was introduced made it a symbol of protecting and improving women's rights, that Islamic egalitarian spirit has largely been lost in contemporary Muslim societies (Alkhateeb & Abugideiri 2007). Case in point, viewed through today's lens, the structure of traditional Islamic jurisprudence and the Islamic marriage contract provides greater rights for men than women (Ali 2003). While there are many male and female Islamic scholars around the world working to bring Muslim practices back into balance with the Qur'anic spirit,⁹³ for now, there are certain precautions Muslim women must take to level the playing field. With the inclusion of clear stipulations regarding the *mahr*, the relationship during the marriage, and divorce rights, Muslim women can play a critical role in protecting their rights (al-Hibri 2005).

By the time a couple is ready to sign a marriage contract, they should be well prepared by having discussed all the major issues related to building a healthy and happy life together. In the *Resources* section are 100 questions that couples should discuss while considering marriage. In addition, in preparation for the marriage, the bride and groom should each consult with an attorney before signing the Islamic marriage contract. If they choose to add stipulations, their attorneys should draft the language for their preferred stipulations. Couples should also ensure that they register with the local government to obtain a civil marriage license before signing the Islamic marriage contract, as the Islamic marriage contract will be a supplement, not a substitute, to their civil marriage license.⁹⁴ By securing a civil marriage license **before** signing the Islamic marriage contract, the couple ensures that their civil rights are protected from the moment they sign the contract.

The sample marriage contract in this guide includes basic stipulations to protect women's rights and ensure that in the event of divorce, its execution will be gender neutral. Clauses in the basic contract include confirmation of legal ability to marry, consent to the marriage, delegation of divorce to the wife, confirmation that the civil divorce will conclude the religious divorce, and the wife's right to her *mahr*.

93. E.g., see writings under Publications by Azizah al-Hibri, Nimat Hafez Barazangi, and Amina Wadud.

94. Recommendation from Abed Awad in November 2011 interview.

A. Sample Islamic Marriage Contract

Marriage Certificate

In The Name Of God, The Beneficent, The Merciful

And among His Signs is this, that He created for you, mates, from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect. (Qur'an 30:21)

THIS IS TO CERTIFY:

That in the City of [city name], State of [state name], I, [imam's name], Imam of [mosque/Islamic Center], by virtue of the power vested in me on [day, month, year] A.H., [day, month, year] A.D.,

UNITE IN MARRIAGE

Mr. [groom's name], born on [day, month, year], of [country] citizenship, of [groom's street address, city, state & zip], son of [full names of groom's parents]

AND

Ms. [bride's name], born on [day, month, year], of [country] citizenship, of [bride's street address, city, state & zip], daughter of [full names of bride's parents]

according to the teachings of the Holy Qur'an.

MAHR

The immediate *mahr* of [immediate *mahr*] amount is due upon the signing of this contract, and the deferred *mahr* of [deferred *mahr*] amount is due upon demand, death or divorce.

In addition to the following vows, we also agree to all clauses specified in Attachment A (*Attachment A should include the stipulations and language as agreed upon by the couple based upon legal advice. See suggested stipulations in next section.*)

WE VOW:

	Bride's Initials	Groom's Initials
☞ That we fully understand the terms of this agreement.	_____	_____
☞ That this contract is based upon mutual consent and agreement.	_____	_____
☞ That we are of marriageable age according to U.S. law.	_____	_____
☞ That we are free to marry, are not married in any way to another person in any place, have not been promised to marry anyone, are not involved in a divorce, and any past divorces are valid in the place in which we plan to reside.	_____	_____

Marriage Certificate, cont'd

IN THE EVENT EITHER OF US WISHES TO CONCLUDE THIS MARRIAGE, WE VOW:

- ☞ That the husband will delegate his right to divorce repeatedly under Islamic law to his wife, creating a similar right for each spouse to divorce the other repeatedly.
- ☞ That we will file for a civil divorce in the United States.
- ☞ That upon the divorce being finalized, the civil divorce will automatically conclude the religious marriage, and any other form in which it may exist within a foreign jurisdiction.
- ☞ That the *mahr* is separately owned by the wife, and any remaining *mahr* will be due to the wife when the civil divorce is finalized.

SIGNATURES

BRIDE:

I.D. #:

FIRST WITNESS:

Printed Name:

Street Address:

City, State, Zip:

I.D. #:

IMAM:

Printed Name:

I.D. #:

City/County Where Authorized

to Perform Marriage:

Year of Authorization:

GROOM:

I.D. #:

SECOND WITNESS:

Printed Name:

Street Address:

City, State, Zip:

I.D. #:

Islamic Center:

Street Address:

City, State, Zip:

Email Address:

Telephone:



B. Stipulations

Following is an overview of some stipulations that couples may choose to incorporate into their Islamic marriage contract.⁹⁵ Once couples have decided upon their preferred stipulations, they should each consult with an attorney to advise them on the appropriate language before inserting them into the contract.

1. Equality

The Qur'an emphasizes equality between spouses (Qur'an 3:195), yet as culture influences the way in which an individual interprets and thus defines equality, and every family is different, it is important for the couple to discuss equality in advance. Traditional Islamic scholars viewed men as leaders of their households, with some level of obedience required from their wife, some authority to control her personal freedom, and primary responsibility for child rearing residing with the wife. Many contemporary Islamic scholars, however, have arrived at an entirely different understanding of gender equality after careful scriptural exegesis and reinterpretation of the issue.⁹⁶ Key issues for the couple to cover include values and beliefs regarding gender roles, authority, freedom of movement, and parenting. A stipulation can also be added regarding equal spousal rights to mutual sexual satisfaction, and to deciding upon matters of intimacy.

2. Conflict Resolution

Individual approaches to understanding and negotiating conflict will vary, so couples should discuss the ways in which they will navigate conflicts that arise during marriage. Qur'anic concepts and prophetic traditions should be used as guidelines. For instance, the Qur'an instructs couples to decide their affairs based upon "mutual consultation" (Qur'an 42:38), and Prophet Muhammad was known for being gentle and kind in his interactions with his wives (Barazangi 2004).

3. Domestic Duties

Many Islamic scholars, both contemporary and traditional, emphasize Islam's stance on domestic responsibilities, i.e., that cooking, cleaning, and laundry are not the responsibility of women (Wadud 1999). To protect this right, historically many women have included a clause in their marriage contract specifying equal responsibility for domestic chores, or a requirement to hire household help.

4. Finances

The Qur'an requires men to financially maintain women in their families, including their wives, daughters, mothers, and other female relatives (Qur'an 4:34). Under traditional Islamic jurisprudence if a woman chooses to work outside the home, any income she earns remains her property, and she bears no financial obligation to support the family. In addition, the wife can incorporate a stipulation providing a monthly stipend, or any other financial arrangement the couple may agree upon.

95. Stipulations can be submitted as "Attachment A" to the sample Islamic marriage contract in this guide.

96. See writings in the *Resources* section by Azizah al-Hibri, Nimat Hafez Barazangi, Amina Wadud, etc.

5. Education

Traditional and contemporary Islamic scholars almost unanimously agree on the importance of education for women and men alike (Esposito 2001). However, as scholars differ in their interpretation of gender roles, it is a common cultural occurrence for women to be expected to take primary responsibility for maintaining their homes and children. In such relationships, a wife is encouraged to pursue her education only after she has fulfilled her expected responsibilities as a mother and homemaker. To ensure an equal right to education, women are encouraged to stipulate the level to which both spouses are free to pursue their education, e.g., obtaining a doctoral degree.

6. Work

Traditional Islamic law requires men to financially care for their families (Qur'an 4:34), so traditional jurists often viewed women working outside of the home as unnecessary and detrimental to the overall health and wellbeing of the family. A clause regarding an equal right to work outside the home can or may be considered to protect a wife's rights.

7. Polygyny

Islam requires Muslims to follow the laws of the countries in which they reside. Since polygyny is illegal in the U.S., it is Islamically forbidden to engage in this practice in any form while residing in the United States. Additionally, under traditional Islamic law a man can only practice polygyny if he is able to treat all his wives equally. Yet, since an Islamic marriage that is not registered with the civil court is not considered a legal marriage in the U.S., co-wives will have no legal spousal rights in the event of death or divorce. A clause limiting the marriage to monogamy is recommended.

8. Domestic Violence

Though traditional Islamic scholars generally support healthy homes, they differ in their understanding of what type of behavior constitutes domestic violence. Many contemporary exegetes and jurists argue that when viewed holistically, Islam does not allow for emotional, verbal, financial, spiritual, physical, sexual, or any other form of abuse (al-Hibri 2005; Wadud 1999). Couples are encouraged to discuss their understanding and definition of various forms of abuse, and include a clause stating that neither spouse will use force, coercion, or violence of any form within the marriage.

Summary of Drafting an Islamic Marriage Contract

- ✧ By including clear stipulations regarding the *mahr*, the relationship during the marriage, and divorce rights, Muslim women can play a critical role in protecting their rights.
- ✧ The stipulations most common and relevant in the United States are the enforceability of the *mahr*, the right to divorce, and the removal of impediments to remarriage – as civil law offers protection for women regarding other issues.
- ✧ In preparation for the marriage, the bride and groom should each consult with an attorney before signing the Islamic marriage contract. If they choose to add stipulations, their attorneys should draft the language for their preferred stipulations.
- ✧ Couples should register with the local government to obtain a civil marriage license before signing the Islamic marriage contract, as the Islamic marriage contract will be a supplement, not a substitute, to their civil marriage license.
- ✧ Stipulations that women may wish to specify in the Islamic marriage contract include issues of equality, conflict resolution, domestic duties, finances, education, work, monogamy, and domestic violence.



LAW, RELIGION & CULTURAL PRACTICES, CONT'D.



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RECOMMENDATIONS

Legal professionals and advocates should keep the following in mind:

- ∞ Religion vs. Culture: Remember the distinction between Islam as revealed in the Qur'an, Islam in the various forms of Islamic law as interpreted by jurists, and Islam as interpreted by Muslims through the lens of their respective cultures.
- ∞ Diversity: American Muslims are the most diverse racial and ethnic group in the U.S. They are also represented all over the map socioeconomically, educationally, and religiously. This guide only relates to American Muslims who observe Islamic practices and/or sign Islamic marriage contracts.

I. RECOMMENDATIONS FOR LEGAL PROFESSIONALS

1. Education: Review the articles on Islamic law, Muslims, and gender that are listed in the *Resources* section to gain a more detailed understanding of American Muslims who may be involved in litigation regarding their marriage contracts, the foundation of the contract in traditional Islamic jurisprudence, and the ways in which marriage and divorce rulings may parallel U.S. laws.

- 2. Continuing Education:** Courts can arrange for trainings and seminars for judges and attorneys by experts in Islamic marriage contract litigation (see *Resources*) to learn more about Islam, culture, and divorce.
- 3. Briefings:** Attorneys can provide briefings for judges with background information on the Islamic marriage contract, and cultural aspects that may be involved in the litigation (see *Resources*).
- 4. Representation:** Courts can ensure that a local and state list of family law attorneys experienced in litigating Islamic marriage contracts is maintained and made available to individuals in need of legal representation (see *Resources*).
- 5. Cross-Referrals:** Attorneys can develop relationships with advocates and local imams through community advocates or Muslim attorneys who are connected to the local community. Imams, advocates, and attorneys can work together to ensure a complete range of services is made available to divorcing couples.
- 6. Precedent:** Review the court cases listed in the *Resources* section to gain a better understanding of the ways in which marriage and divorce among American Muslims has been dealt with in U.S. courts.
- 7. Expert Witnesses:** Seek input from well-qualified experts with experience in Islamic marriage contracts to help clarify the relevance of testimonies (see *Resources*).
- 8. Justice:** When judging Islamic marriage contracts, judges can make an effort to ensure they are not taking away any rights from the wife, so that justice is truly served. Particularly in cases of abuse, judges who ask the right questions can help to protect Muslim women.
- 9. Removing Barriers:** Inserting a stipulation upon settlement regarding the removal of barriers to remarriage, and, specifically, ensuring that the civil divorce will simultaneously dissolve the religious divorce can help alleviate significant potential challenges the wife may face in obtaining a religious divorce after the civil divorce.
- 10. Custody:** In cases of custody disputes, survivors of domestic violence may be at risk of judicial bias due to being stigmatized. The violence should be taken into account before awarding custody rights. The Battered Women's Justice Project (BWJP) provides numerous resources for legal professionals on this issue.

RECOMMENDATIONS, CONT'D.

II. RECOMMENDATIONS FOR ADVOCATES

- 1. Education:** It is important for advocates to understand the Muslim women they are working with, and the issues that they may be facing with their marriage contracts. Advocates can become more comfortable with the issues regarding marriage and divorce among American Muslims by attending cultural sensitivity trainings and reviewing the articles and books listed under *Publications* in the *Resources* section.
- 2. Outreach:** Make an effort to build relationships with imams and community leaders in your local Muslim community. Exchange information relevant to Muslim divorces with one another and coordinate your resources.
- 3. Build Referral Networks:** Advocates can develop relationships with attorneys and local imams through Muslim attorneys or advocates who are connected to the local community. Imams, attorneys and advocates can work together to ensure a complete range of services is made available to divorcing couples.
- 4. Training:** Seek out Muslim attorneys with experience in litigating Islamic marriage contracts to provide training for your staff members (see *Resources*). Experienced attorneys can help you identify the most effective strategies, and can provide legal research and information as a resource.
- 5. Courts:** Develop an outreach plan to courts and family law attorneys in your area to ensure they are aware of the issues and have access to available resources.
- 6. Dialogue:** Engage legal professionals, imams, community leaders, and advocates from other agencies in a dialogue on the Islamic marriage contract. Assess available resources in the community and strategize on methods for developing new responses, closing gaps in services, and monitoring effectiveness.
- 7. Protocols:** Develop interagency protocols for assessing and responding to cases involving Islamic marriage contracts.
- 8. Resources:** Maintain a local and state list of family law attorneys experienced in litigating Islamic marriage contracts for individuals in need of legal representation (see *Resources*).



III. RECOMMENDATIONS FOR IMAMS & COMMUNITY LEADERS

- 1. Legal Education:** Engage attorneys with experience litigating Islamic marriage contracts in U.S. courts to provide legal education for communities regarding asserting their Islamic rights and meeting their Islamic obligations related to divorce and its financial consequences (see *Resources*). Attorneys can also provide an overview of U.S. family law and requirements of divorce under your state laws.
- 2. Awareness:** Monitor community changes to identify and be proactive about any new issues that may arise.
- 3. Youth:** Ensure that the curricula used in weekend and full-time Islamic schools incorporate peaceful family dynamics emphasizing love, caring, and respect between family members. Encourage older students to go into law and law enforcement as a career. Encourage university-age students to organize seminars on campus by experts in Islamic and U.S. laws (see *Resources*).
- 4. Counseling:** Ensure a qualified counselor is available to provide premarital counseling sessions to couples before an Islamic marriage ceremony can be performed. Encourage couples to use the 100 questions in the *Resource* section of this guide under Questions for Muslim Couples to Consider Before Marriage. Refer couples experiencing marital conflict to qualified therapists. When approached for divorce counseling, advocate for the wife's right to divorce in a civil court as a method of dissolving the civil and Islamic marriage simultaneously.
- 5. Study Circles:** Use Islamic study circles and classes as a platform to invite therapists and experts in Islamic and U.S. law to present. In smaller women's groups, women facing challenges may be encouraged to directly ask for advice, or to follow up privately with the presenter following the session.
- 6. Resources:** Maintain a local and state list of family law attorneys experienced in litigating Islamic marriage contracts for individuals in need of legal counsel or legal representation (see *Resources*).
- 7. National Forums:** Incorporate discussion of the Islamic marriage contract into national conversations among American Muslim scholars, attorneys, advocates, health care providers, and other leaders at major conferences and conventions. Consider adopting a national standard Islamic marriage contract, using the sample contract in this guide as a starting point for the discussion.

- 8. Code of Ethics:** A national code of ethics should be developed regarding imams or other community leaders remarrying a man they know to have been abusive in a past relationship, beginning with notifying the prospective bride. Protocols regarding batterer rehabilitation should be incorporated for certain cases, as well as conditions under which an imam or leader would not agree to perform a marriage ceremony for a known abuser.
- 9. Licensing:** Ensure that each leader in your community that officiates Islamic marriage contracts is licensed by your state, and that marriage contracts are promptly registered with the civil court following the ceremony, if they have not already been registered before the ceremony.
- 10. The Contract:** Utilize or adapt the sample Islamic marriage contract in this guide when officiating marriage ceremonies.
- 11. Messaging:** Send a clear message through sermons, lectures, classes, study circles, and every other forum that emotional, verbal, physical, sexual, and all forms of abuse are un-Islamic. Emphasize that polygyny is unlawful in the U.S., as it does not abide by Islam's requirement to treat each wife equally since co-wives will not have the same legal rights as the first wife.
- 12. Arbitration:** Develop an arbitration committee with female and male experts in Islamic and U.S. marriage and divorce laws for couples who request assistance, and may not have extended family nearby.
- 13. Divorce:** Remember that in Islamic law *kbul'* only applies in cases where there is a complete absence of *darar* (harm). In addition to emotional, verbal, physical, and sexual abuse, *darar* includes character defects, prolonged absence, insanity, and lack of financial support. Cases involving *darar* must be ruled as *tafriq* divorces. (See section on *Contemporary Marital Practices Among American Muslims* for a discussion of civil and Islamic divorces).
- 14. Offer Support:** Make your community a welcoming place to divorced women. One of the greatest fears for women considering divorce is that their communities will ostracize them. Through sermons, lectures, classes, and study circles, imams and community leaders can make it clear that divorced women will continue to be respected members of the community. Community members can be encouraged to read and study the chapter in the Qur'an entitled *Al-Talaq* (Divorce), and should be reminded that divorce is an acceptable Islamic solution when spouses are not able to reconcile their differences, or when there is any *darar* (harm).

RECOMMENDATIONS, CONT'D.



IV. RECOMMENDATIONS FOR COMMUNITY MEMBERS

1. Education: Community members should have a basic understanding of their marital rights according to Islamic, state, and federal laws before signing an Islamic marriage contract. Community members can coordinate with Islamic center leaders to invite Islamic scholars and American family law attorneys to present (see *Resources*).

2. Preparation: Potential spouses should be selected with the utmost care. In addition to the typical characteristics that are considered, such as religiosity, character, education, profession, and physique, careful attention should be paid to compatibility, expectations, the role of extended family, and culture.

3. Drafting The Contract: The sample marriage contract in this guide can be utilized or adapted by couples.

4. Stipulations: The inclusion of stipulations in a couple's Islamic marriage contract should be discussed in-depth. The premarital questions in the *Resources* provide a good starting point for couples to explore their commonalities and differences. Once they have determined the issues that are most important to them, they can draft stipulations to include in their marriage contract with the advice of an attorney.

5. Registered Marriage: Couples can ensure their marriage is registered with the civil court by registering their marriage prior to obtaining the Islamic marriage contract.

6. Counseling: Every couple experiences conflict in their marriage. Rather than waiting for problems to grow, couples should seek assistance from therapists with training in marriage and family counseling. Having a neutral source to confide in is key for couples while they work through the process of improving their marriage.

7. Domestic Violence: Family violence occurs among every group of people, including Muslims. Towards preventing future abuse, a holistic framework is advised for each family. For the duration of childhood, parents should ensure they model and teach their children how to sustain healthy relationships, and how to address and resolve conflict in a peaceful way. Couples considering marriage should discuss emotional, verbal, physical, and sexual violence to ensure that they are in agreement about the types of behaviors that constitute abuse. In addition, families can request that their Islamic centers, weekend schools, and full-time Islamic schools provide educational opportunities that raise awareness regarding domestic violence, and emphasize peaceful family dynamics.

8. Consequences: Couples considering divorce should consider and plan for every aspect, including the consequences it will have on any children and extended family members. A peaceful divorce followed by courteous interactions between divorcees can go a long way towards easing the difficult transition for all family members involved.

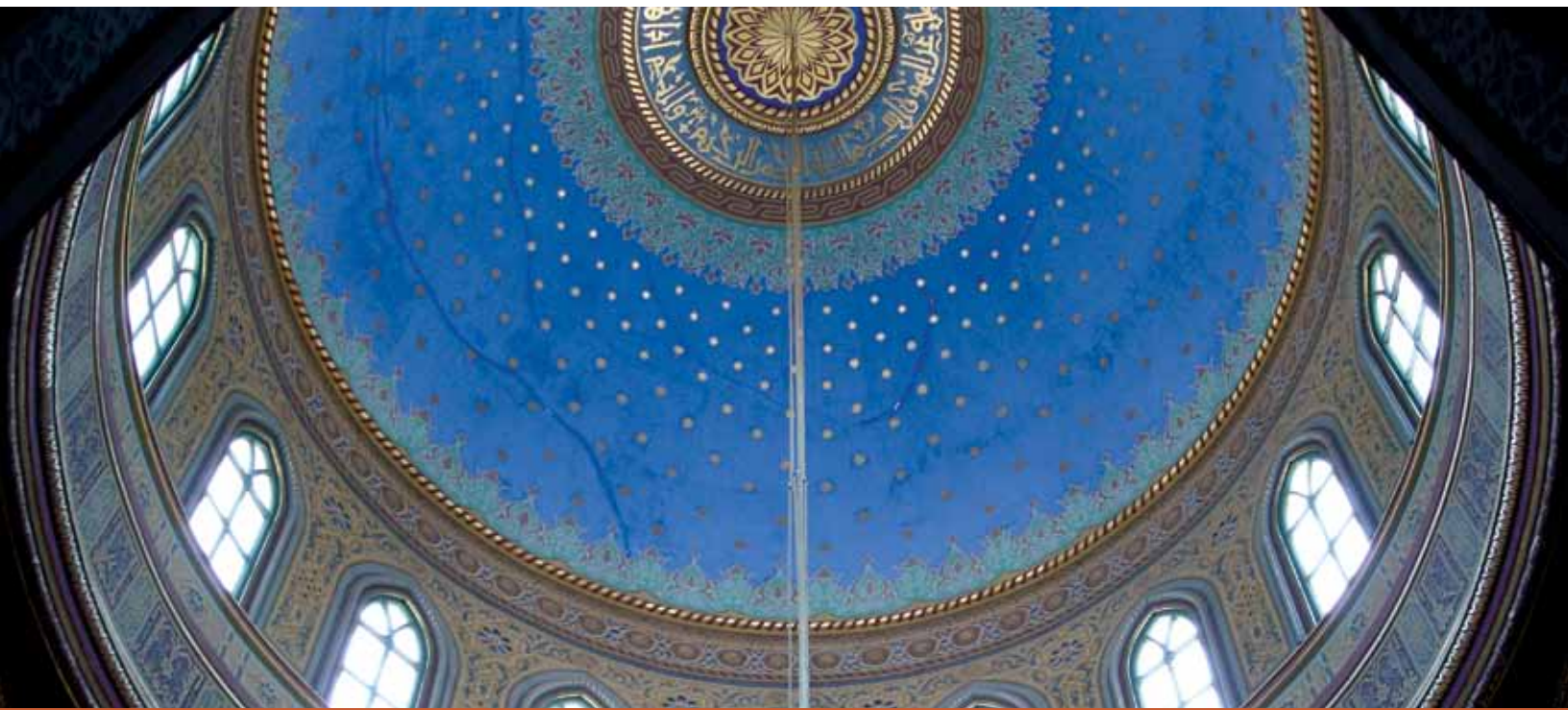
9. Arbitration: Prior to committing to a divorce, and as long as there is no abuse involved, couples with family members living nearby should consider bringing a preferred representative from each family together for an extended family intervention. In the case of active abuse, it is not recommended to bring the two spouses together because there is an increase in the risk of further abuse. In such cases, professional assistance should be sought.

10. Legal Representation: In the event that a divorce cannot be resolved peaceably, appropriate legal representation should be sought. Securing attorneys with experience in litigating Islamic marriage contracts is recommended. National and regional Muslim bar associations, listed in the *Resources* section, can provide local referrals.

11. Expert Witnesses: During litigation, if there is disagreement between the couple regarding some aspect of the Islamic marriage contract, an expert witness can be invited to testify (see *Resources*).

12. Support Groups: The process of divorcing and the experience of being a divorcee can be challenging. Individuals may wish to consider starting a support group at their Islamic center to bring other divorcees together, share experiences, and help one another.





RESOURCES

I. CASE LAW

The following legal cases relate to issues of marriage and divorce among American Muslims that are being litigated in family law courts around the United States. Judges and attorneys will find this resource useful in understanding the ways in which Islamic marriages and divorces are intersecting with the American legal system.

The following list was compiled by Karamah: Muslim Women Lawyers for Human Rights.

A. Marriage Contracts (*Mahr/Sadaq*)

Abdallah v. Sarsour (2006 - VA)

The court ruled that a marriage contract with no specific time of payment for the *mahr* was not void for vagueness or for lack of consideration.

Afghani v. Ghafoorian (2010 - VA)

The court, in favor of the Wife, enforced the terms of a marriage contract, ordering the Husband to pay the Wife 514 gold coins.

Ahmed v. Ahmed (2008 - TX)

The court, in favor of the Husband, ruled that a *mahr* agreement signed after the civil ceremony but before the Islamic ceremony was not a valid premarital agreement.

Avitzur v. Avitzur (1983 - NY)

The court, in favor of the Wife, enforced the terms of a religious document that was compatible with contract law.

Aziz v. Aziz (1985 - NY)

The court, in favor of the Wife, enforced the terms of a *mahr* agreement that conformed to New York contracts law.

Chaudhary v. Ali (1995 - VA)

The court, in favor of the Wife, held that a *nikah nama* with no provision for the Wife, disclosure of the Husband's assets, nor independent counsel was not an enforceable prenuptial agreement.

Habibi-Fahnrich v. Fahnrich (1995 - NY)

The court, in favor of the Husband, found invalid a *sadaq* that did not satisfy the requirements of the Statute of Frauds.

In re Altayar and Muhyaddin (2007 - WA)

The court, in favor of the Wife, ruled that a marriage contract including an agreement by Husband for payment in event of divorce or death was not a valid prenuptial agreement.

In re Marriage of Dajani (1988 - CA)

The court, in favor of the Husband, found the *mahr* provision of a foreign marriage contract void and against public policy when the beneficiary of the provision initiated divorce.

In re Marriage of Obaidi (2010 - WA)

The court, in favor of the Husband, found that a *mahr* agreement that the Husband signed without knowing the terms of the agreement was invalid and unenforceable.

In re Marriage of Shaban (2001 - CA)

The court awarded Wife assets in accordance to California community property law where the Husband could not prove the existence of a prenuptial agreement apart from the testimony of an Islamic Law expert.

Odatalla v. Odatalla (2002 - NJ)

The court, in favor of the Wife, held a *mahr* agreement enforceable where it was enforceable based on contracts law and met the state's standards for contracts.

Rahman v. Hossain (2010 - NJ)

The court, in favor of the Husband, ordered Wife to return the immediate paid portion of the *mahr/sadaq*.

Zawahiri v. Alwattar (2008 - OH)

The court invalidated a *mahr* agreement where the Husband entered into the agreement under coercion.

B. Divorce (Validity)**Ahmad v. Ahmad (2001 - OH)**

The court, in favor of the Wife, affirmed decisions granting her division of the marital assets, spousal support and attorney fees.

Aleem v. Aleem (2006 - MD)

The court, in favor of the Wife, held that a *talaq* divorce obtained in accordance to Pakistani law could not be enforced by comity because it was so contrary to Maryland public policy.

Chaudry v. Chaudry (1978 - NJ)

The court, in favor of the Husband, recognized a *talaq* validated by a Pakistani court and denied spousal support to the Wife.

Kapigian v. Der Minassian (1912 - MA)

The court recognized a divorce granted in a foreign country where both the Husband and his first Wife were domiciled.

Maklad v. Maklad (2001 - CT)

The court, in favor of the Wife, refused to grant comity to a foreign divorce obtained by the Husband in a hearing without proper due process to the Wife.

Sherif v. Sherif (1974 - NY)

The court, in favor of the Husband, recognized a divorce obtained in Egypt that was in accordance with Egyptian law. Both Husband and Wife were Egyptian citizens.

Shikoh v. Murff (1958 - NY)

The court held invalid a divorce obtained in an Islamic ceremony in New York.

Tarikonda v. Pinjari (2009 - MI)

The court, in favor of the Wife, denied recognition to a foreign divorce that violated the Wife's rights to due process.

C. Marriage (Validity)

Aghili v. Saadatnejadi (1997 - TN)

The court, in favor of the Wife, reversed the trial court's grant of annulment of marriage and held that the Husband and Wife's Islamic marriage was valid.

Farah v. Farah (1993 - VA)

The court, in favor of the Husband, held that a proxy marriage held in England in accordance with Islamic Law was invalid.

Ellehaf v. Taffaf (2006 - MI)

The court determined that a religious ceremony was insufficient for a legal marriage where it failed to satisfy other statutory requirements.

Yaghoubinejad v. Haghighi (2006 - NJ)

The court invalidated a marriage where the couple failed to obtain a marriage license as required under New Jersey law.

D. Child Custody

Ahmad v. Naviwala (2003 - NY)

The court granted the Mother custody of four children after the Father sought to remove the Mother from the children's lives.

Amin v. Bakhaty (2001 - LA)

The court, in favor of the Mother, affirmed that it was in the best interests of her son to remain with her. The court affirmed the lower court's refusal to defer to the Egyptian courts in the custody matter.

Jabri v. Jabri (1993 - NY)

The court refused to mandate religious upbringing in Islam for the children where there was no written agreement between the father and the mother.

RESOURCES, CONT'D.



II. EXPERTS

The expertise of the following scholars covers issues related to Islamic family law such as jurisprudence, legal theory, gender, women's rights, leadership, and human rights. These scholars are an excellent resource and can be invited as expert witnesses, or to present to legal professionals, providers, and communities alike.

Azizah al-Hibri

Founder, Karamah: Muslim Women Lawyers for Human Rights
 Professor of Law, T.C. Williams School of Law, University of Richmond
 202.234.7302
 karamah@karamah.org
 www.karamah.org

Dr. al-Hibri has written extensively on issues of Muslim women's rights, human rights in Islam, and Islam and democracy. She is currently completing a book on the Islamic marriage contract in American courts. Karamah is one of the central sources of scholarship on Islamic law. Through original and gathered content, their research department educates Muslims and the general public about Shar'iah in general and the rights afforded to women under Islam in particular.

Zainab Alwani

Vice Chairman, Fiqh Council of North America
 Assistant Professor of Islamic Studies, Howard University School of Divinity
 zainab.alwani@howard.edu

In her work with the Fiqh Council of North America, Dr. Alwani provides education and advice for the American Muslim community regarding living a Shar'iah informed life within the framework of the U.S. legal system.

Abed Awad

Attorney
 Adjunct Professor, Rutgers Law School & Pace Law School
 201.462.9500
 info@abedawad.com
 www.abedawad.com

Mr. Awad combines his academic knowledge of Shar'iah and the laws of Arab countries with practical litigation strategy. He has testified and provided expert reports concerning the interpretation and application of Shar'iah, Egyptian law, Syrian law, Qatari law, Kuwaiti law, United Arab Emirates law, Moroccan law, Palestinian law, Jordanian law, Lebanese law, Saudi Arabian law, Iraqi law, Libyan law and Ja'fari law.

Wael Hallaq

Avalon Foundation Professor in the Humanities, Columbia University
wh2223@columbia.edu

Wael Hallaq is a scholar of Islamic law and Islamic intellectual history. His teaching and research deal with the problematic epistemic ruptures generated by the onset of modernity and the socio-politico-historical forces subsumed by it, with the intellectual history of Orientalism and the repercussions of Orientalist paradigms in later scholarship and in Islamic legal studies as a whole, and with the synchronic and diachronic development of Islamic traditions of logic, legal theory, and substantive law and the interdependent systems within these traditions.

Ingrid Mattson

London and Windsor Chair in Islamic Studies, Huron University College, University of Western Ontario

Dr. Ingrid Mattson's areas of specialization include early Islamic history and Islamic law. Her research is focused on Islamic law and society, and her publications have covered Islamic legal theory, slavery, poverty, and gender and leadership issues in contemporary Muslim communities.

Asifa Quraishi

Assistant Professor of Law, University of Wisconsin Law School
aquraishi@wisc.edu

Dr. Asifa Quraishi teaches courses in Islamic law and U.S. constitutional law. Her research and publications address comparative legal theory, Islamic law, and Islamic constitutionalism, in the context of separation of legal authority as well as methodologies of textual interpretation.

RESOURCES, CONT'D.



III. GLOSSARY

Term	Description
Ajr	Compensation
Al-wilaya 'al al-mal	Guardianship over a child's money or property
Al-wilaya 'a al-nafs	Guardianship of a child's person
'Alim	A Muslim scholar
Daraba	To hit, or to depart
Darura	Necessity
Darar	Harm
Faqih	Person trained in fiqh
Faskh	Judicial divorce
Fatwa	An Islamic legal decision by Islamic scholars
Fiqh	Islamic jurisprudence
Fuqaha	Jurists qualified in Islamic legal theory
Hadhana	Child rearing
Hadith	Saying or behavior of Prophet Muhammad
Halaqa	Religious discussion classes
Hanafi	The largest of the four main schools of Sunni jurisprudence, named after Imam Abu Hanifa an-Nu'man bin Thabit
Hanbali	A school of Sunni jurisprudence, named after Imam Ahmad ibn Hanbal
Hijab	A head covering worn by many Muslim women
Ibadah	Worship
Iddah	Waiting period following initiation of divorce
Ijab	Marriage proposal
Ijma	Unanimous consensus or agreement
Ijtihad	The process of independent reasoning
Imam	Leader of prayer (in U.S. also community leader)

Term	Description
'Ismah	Delegated divorce
Isnad	Chain of people who reported a hadith as compiled in the Sunnah
Istihsan	Juristic preference
Istishab	Presumption of continuity
Istislah	Public interest
Jafari	The sixth Shi'a Imam
Katb Al-Kitab	Signing of marriage contract
Khateeb	Preacher
Khul'	Wife initiated divorce
Khutubah	Signing of marriage contract
Li'an	Marital dissolution by mutual oath swearing as a declaration of innocence against an allegation of adultery
Mahr	Gift given by husband to wife
Maliki	The second largest of the four main schools of Sunni jurisprudence, named after Malik bin Anas
Madhhab	Legal school of thought
Milka	Signing of marriage contract
Misyar	A form of temporary marriage practiced by Sunnis
Mu'amalat	Transactions
Muakhara	Postponed mahr
Mufti	Legal scholar providing legal responses (fatwas) to people's questions
Mula'anah	Divorce upon oaths by husband accusing and wife protesting infidelity
Mut'ah	A form of temporary marriage practiced by Shias
Nikah	Marriage contract signing ceremony
Nushuz	Extramarital affair or immoral behavior or lack of marital commitment
Qadi	Judge
Qiyas	Analogical deduction
Qubool	Consenting to marriage
Qur'an	The Islamic holy book
Ra'y	Private opinion or judgment

Term	Description
Rishta	Marriage proposal
Sadaq	Gift given by husband to wife
Shafi'	One of the four main schools of Sunni jurisprudence, named after Imam al-Shafi'
Shar'iah	Qur'anic code of conduct
Shart	Stipulation, condition, or prerequisite added to the Islamic marriage contract (pl. shuroot)
Shia	Denomination of Islam
Sigheh	A term used by Shias to define temporary marriages
Sunnah	Documented sayings and behavior of Prophet Muhammad
Sunni	Denomination of Islam
Tafriq	Judicial divorce
Tafsir	Explanation of Qur'an, or exegesis
Tafwid	Delegated divorce
Talaq	Divorce initiated by husband
Talaq Al-Mukrah	Forced divorce
'Urf	Custom or habit
Usul al Fiqh	Sources of Islamic jurisprudence
Wali	Guardian (non-marriageable)
Zawaj	Marriage
Zawj	Spouse



RESOURCES, CONT'D.

IV. LEGAL ORGANIZATIONS

A. National

Resources, legal expertise, and referrals can be accessed through these national groups of Muslim lawyers.

Association of Muslim American Lawyers

info@theamal.org / www.theamal.org

Karamah: Muslim Lawyers for Human Rights

karamah@karamah.org / www.karamah.org

Muslim Advocates

info@muslimadvocates.org / www.muslimadvocates.org

National Association of Muslim Lawyers

www.namlnet.org

National Muslim Law Students Association

nmlsa.org@gmail.com / www.nmlsa.org

B. Regional

Among other resources, these regional groups can provide referrals for local family law attorneys.

Capital Area Muslim Bar Association (CAMBA)

www.dcmuslimbar.org / Listserve: muslimlawyer@yahoogroups.com

Florida Muslim Bar Association

info@floridamuslimbar.org / www.floridamuslimbar.org

Muslim Bar Association of Chicago (MBAC)

info@muslimbar.org / www.muslimbar.org

Muslim Bar Association of New York (MuBANY)

president@muslimbarny.org / www.muslimbarny.org

New England Muslim Bar Association (NEMBA)

info@ne-mba.org / www.ne-mba.org

New Jersey Muslim Lawyers Association (NJMLA)

www.njmla.com



V. PUBLICATIONS

The publications below cover Islamic legal history and jurisprudence, advocacy-based and legal approaches to addressing domestic violence, cultural and religious aspects of gender, and general information regarding Islam and Muslims. The publications covering the widest and most concise topical range under each focus are noted with an asterisk.

A. Legal

The following publications include the history of Islamic law and jurisprudence, aspects of Islamic marriage contracts, and comparative analyses between Islamic and American family laws.

- al-Hibri, Azizah. (1997).** Islam, Law and Custom: Redefining Muslim Women's Rights. *American University International Law Review*, 12(1), 1-44.
- al-Hibri, Azizah. (2000).** Muslim Marriage Contract in American Courts. Retrieved Nov 11, 2011 from www.minaret.org/azizah.htm.
- *al-Hibri, Azizah. (2005).** The Nature of the Islamic Marriage: Sacramental, Covenantal, or Contractual. In John Witte Jr. and Eliza Ellison (Eds.), *Covenant Marriage in Comparative Perspective* (182-216). Grand Rapids: Eerdmans Publishing Company.
- *Ali, Kecia. (2003).** Progressive Muslims and Islamic Jurisprudence: The Necessity for Critical Engagement with Marriage and Divorce Laws. In Omid Safi (Ed.), *Progressive Muslims on Justice, Gender and Pluralism* (163-189). Oxford: Oneworld Publications.
- Ali, Kecia. (2006a).** *Sexual Ethics & Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. Oxford: Oneworld Publications.
- *Ali, Kecia. (2009).** Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines. In Asifa Quraishi and Frank E. Vogel. (Eds.), *The Islamic Marriage Contract: Case Studies in Islamic Family Law (Harvard Series in Islamic Law 6)* (11-45). Cambridge: Harvard University Press.
- *Alkhateeb, Sharifa. (1996).** *The Muslim Marriage Contract*. Retrieved November 11, 2011, from <http://www.beliefnet.com/Faiths/Islam/2001/04/The-Muslim-Marriage-Contract.aspx>.
- Alkhateeb, Sharifa. (2004).** *The marriage contract in Islam*. Unpublished manuscript.
- *Alwani, Zainab. (2007).** The Qur'anic Model for Harmony in Family Relations. In Maha B. Alkhateeb and Salma Elkadi Abugideiri (Eds.), *Change from Within: Diverse Perspectives on Domestic Violence in Muslim Communities* (33-66). Great Falls: Peaceful Families Project.
- *Awad, Abed. (2002).** Court Enforces *Mahr* Provision in Muslim Marriage Contract: Odatalla Recognizes the Secular Terms of a Religious Agreement. *New Jersey Law Journal*, 169(11), 28-31.
- Awad, Abed. (2006).** Declaring Muslim Marriage Void will have Ruinous Effect on Wives. *New Jersey Law Journal*, November 20, 2006

- Awad, Abed. (2010).** Religion-Based Claim in Abuse Case Wisely Pierced by Appeals Court. *New Jersey Law Journal*, September 17, 2010.
- Awad, Abed. (2011).** In Re Farraj: *So you think you're married, but are you really?* Retrieved December 1, 2011 from <http://shariaindex.com/2011/11/17/so-you-think-youre-married-but-are-you-really-read-on/>
- Awad, Abed and Jebara, Noura. (2011).** *Sharia Law: Zawahiri v. Alwattar: Is a Muslim Marriage Contract a Prenup or a Simple Contract?* Retrieved on December 2, 2011 from <http://shariaindex.com/2011/11/23/muslimmarriage-contract/>.
- Bakhtiar, Laleh. (1996).** *Encyclopedia of Islamic Law: A Compendium of the Major Schools*. Chicago: Kazi Publications.
- Bix, Brian. (2011).** *Mahr* Agreements: Contracting in the Shadow of Family Law (and Religious Law) – a Comment on Oman. *Wake Forest Law Review*, 1, 61-68.
- Blenkhorn, Lindsey E. (2002).** Notes – Islamic Marriage Contracts in American Courts: Interpreting *Mahr* Agreements as Prenuptials and their Effect on Muslim Women. *Southern California Law Review*, 76(1), 189-235.
- Esposito, John L., and DeLong-Base, Natana J. (2001).** *Women in Muslim Family Law*. Syracuse: Syracuse University Press.
- Fournier, Pascale. (2006).** In the (Canadian) Shadow of Islamic Law: Translating *Mahr* as a Bargaining Endowment. *Osgoode Hall Law Journal*, 44(4), 649-677.
- Fournier, Pascale. (2010).** Flirting with God in Western Secular Courts: *Mahr* in the West. *International Journal of Law, Policy and the Family*, 24(1), 67-94.
- Freeland, Richard. (2000-01).** The Islamic Institution of *Mahr* and American law, *Gonzaga Journal of International Law*, 4.
- *Hallaq, Wael. (2009).** *An Introduction to Islamic Law*. Cambridge: Cambridge University Press.
- Miller, Kathleen A. (2009).** Who says Muslim Women Don't Have the Right to Divorce? *New York International Law Review*, 22, 201-248.
- Oman, Nathan B. (2010).** *Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization*. Williamsburg: College of William and Mary Law School Faculty Publications. Paper 1126.
- * Oman, Nathan B. (2011).** *How to judge Shari'a contracts: A guide to Islamic marriage agreements in American courts*. Williamsburg: College of William and Mary Law School Faculty Publications. Paper 1182.
- *Quraishi, Asifa, and Syeed-Miller, Najeeba. (2004).** No Altars: A Survey of Islamic Family Law in the United States. In Lynn Welchman (Ed.), *Women's Rights and Islamic Family Law* (177-229). London: Zed Books.
- Quraishi, Asifa, and Vogel, Frank E. (Eds.). (2009).** *The Islamic Marriage Contract: Case Studies in Islamic Family Law*. Cambridge: Harvard University Press.
- Sizemore, Chelsea A. (2011).** Enforcing Islamic *Mahr* Agreements: The American Judge's Interpretational Dilemma. *George Mason Law Review*, 18, 1085-1116.
- Spencer, Katherine. (2011).** *Mahr* as Contract: Internal Pluralism and External Perspectives, *Oñati Socio-Legal Series*, 1(2).
- Thompson, Emily L. and Yunus, F. Soniya. (2007).** Choice of laws or choice of culture: How Western nations treat the Islamic marriage contract in domestic courts, *Wisconsin International Law Journal*, 25, 361-395.
- *Zeini, Marwa. (2007).** A Legal Guide to Marriage and Divorce for the American Muslim Woman. In Maha B. Alkhateeb and Salma Elkadi Abugideiri (Eds.), *Change from Within: Diverse Perspectives on Domestic Violence in Muslim Communities* (203-219). Great Falls: Peaceful Families Project.

B. Domestic Violence

These resources explore family law in traditional Islamic jurisprudence, contemporary exegesis, and the reality of abuse in the lives of American Muslim families. Bibliographies, fact sheets, and directories of service programs and country-specific resources are listed under *Resources | Websites*.

AbuSulayman, AbdulHamid. (2003). *Marital Discord: Recapturing the Full Islamic Spirit of Human Dignity*. Herndon: International Institute of Islamic Thought.

* **al-Hibri, Azizah. (2003).** An Islamic Perspective on Domestic Violence. *Fordham International Law Journal*, 27, 195-224.

Ali, Kecia (2006b). "The best of you will not strike:" Al-Shafi'i on Qur'an, Sunnah, and Wife-Beating. *Comparative Islamic Studies* 2(2), 143-155.

***Alkhateeb, Maha, B., and Abugideiri, Salma Elkadi. (2007).** Introduction. In Maha B. Alkhateeb and Salma Elkadi Abugideiri (Eds.), *Change from Within: Diverse Perspectives on Domestic Violence in Muslim Communities* (13-30). Great Falls: Peaceful Families Project.

***Alkhateeb, Sharifa. (1999).** Ending Domestic Violence in Muslim Families. *Journal of Religion and Abuse*, 1, 49-59.

Alkhateeb, Sharifa. (2002). Who has the Right to Save Muslim Women from Abuse? *Journal of Religion and Abuse*, 4, 17-20.

Mubarak, Hadia. (2004). Breaking the Interpretive Monopoly: A Re-examination of Verse 4:34. *Hawwa*, 2(3), 261-289.

C. Gender

A list of publications by and about some of the leading authors who are writing about gender issues in Islam.

Abou El Fadl, Khaled. (2003). *Speaking in God's Name: Islamic Law, Authority and Women*. London: OneWorld Publications.

Afsaruddin, Asma. (1999). Hermeneutics and Honor: Negotiating Female "Public" Space in Islamic/ate Societies. Cambridge: *Harvard Middle East Monographs XXXII*.

***al-Hibri, Azizah Y. (2000).** An Introduction to Muslim Women's Rights. In Gisela Webb (Ed.), *Windows of Faith: Muslim Women Scholar-Activists in North America* (51-72). Syracuse: Syracuse University Press.

al-Hibri, Azizah. (1997). Islam, Law and Custom: Redefining Muslim Women's Rights. *American University International Law Review*, 12(1), 1-44.

Barazangi, Nimat Hafez. (2004). *Woman's Identity and the Qur'an: A New Reading*. Gainesville: University Press of Florida.

Barlas, Asma. (2006). Women's and feminist readings of the Qur'an. In Jane McAuliffe (Ed.), *Cambridge Companion to the Qur'an* (255-272). Cambridge: Cambridge University Press.

Bullock, Katherine. (2007). *Rethinking Muslim Women and the Veil: Challenging Historical & Modern Stereotypes*. East Sussex: Vine House Distribution.

Haddad, Yvonne, Smith, Jane, and Moore, Kathleen. (2006). *Muslim Women in America: The Challenge of Islamic Identity Today*. Oxford: Oxford University Press.

- Kahf, Mohja. (1999).** *Western Representations of the Muslim Woman: From Termagant to Odalisque*. Austin: University of Texas Press.
- Khan, Shahnaz. (2000).** *Muslim Women: Crafting a North American Identity*. Gainesville: University Press of Florida.
- Roald, Anne S. (2001).** *Women in Islam: The Western Experience*. London: Routledge.
- Wadud, Amina. (2006).** *Inside the Gender Jihad: Women's Reform in Islam*. London: Oneworld.
- *Wadud, Amina. (1999).** *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*. New York: Oxford University Press.
- Webb, Gisela (Ed.). (2000).** *Windows of Faith: Muslim Women Scholar-Activists in North America*. Syracuse: Syracuse University Press.

D. Islam & Muslims

These resources include scholarly and autobiographical accounts of Islam and the American Muslim experience.

- Abdo, Geneive. (2006).** *Mecca and Main Street: Muslim Life in American after 9/11*. Oxford: Oxford University Press
- *Armstrong, Karen. (2002).** *Islam: A Short History*. New York: Random House.
- Ebrahimji, Maria M., and Suratwala, Zahra T. (Ed.). (2010).** *I Speak for Myself: American Women on Being Muslim*. Ashland: White Cloud Press.
- Esposito, John L. (2002).** *What Everyone Needs to Know About Islam*. New York: Oxford University Press.
- Gehrke-White, Donna. (2006).** *The Face Behind the Veil: The Extraordinary Lives of Muslim Women in America*. New York: Citadel Press Books.
- Hasan, Asma Gull. (2001).** *American Muslims: The New Generation*. New York: Continuum.
- Khan, Muqtedar. (2002).** *American Muslims: Bridging Faith and Freedom*. Beltsville: Amana Publications.
- Moezzi, Melody. (2007).** *War on Error: Real Stories of American Muslims*. Fayetteville: University of Arkansas Press.
- Patel, Eboo. (2007).** *Acts of Faith: The Story of an American Muslim, the Struggle for the Soul of a Generation*. Boston: Beacon Press.
- Wolfe, Michael. (2002).** *Taking Back Islam: American Muslims Reclaim their Faith*. Emmaus: Rodale Books.

RESOURCES, CONT'D.



VI. QUESTIONS FOR MUSLIM COUPLES TO CONSIDER BEFORE MARRIAGE

This list of 100 questions was compiled by Imam Mohamed Magid, imam of the All-Dulles Area Muslim Society Center (ADAMS) in Virginia, and President of the Islamic Society of North America (ISNA). Imam Magid is a prominent advocate of premarital counseling and Muslim women's rights in the American Muslim community.

1. What is your concept of marriage?
2. Have you been married before?
3. Are you married now?
4. What are your expectations of marriage?
5. What are your goals in life? (long and short term)
6. Identify three things that you want to accomplish in the near future.
7. Identify three things that you want to accomplish, long term.
8. Why have you chosen me/other person as a potential spouse?
9. What is the role of religion in your life now?
10. Are you a spiritual person?
11. What is your understanding of an Islamic marriage?
12. What are you expecting of your spouse, religiously?
13. What is your relationship between yourself and the Muslim community in your area?
14. Are you volunteering in any Islamic activities?
15. What can you offer your *zawj* (spouse), spiritually?
16. What is the role of the husband?
17. What is the role of the wife?
18. Do you want to practice polygamy?
19. What is your relationship with your family?
20. What do you expect your relationship with the family of your spouse to be?
21. What do you expect your spouse's relationship with your family to be?
22. Is there anyone in your family living with you now?
23. Are you planning to have anyone in your family live with you in the future?
24. If, for any reason, my relationship with your family turns sour, what should be done?
25. Who are your friends (identify at least three)?
26. How did you get to know them?
27. Why are they your friends?

28. What do you like most about them?
29. What will your relationship with them after marriage be?
30. Do you have friends of the opposite sex?
31. What is the level of your relationship with them now?
32. What will be the level of your relationship with them after marriage?
33. What type of relationship do you want your spouse to have with your friends?
34. What are the things that you do in your free time?
35. Do you love to have guests in your home for entertainment?
36. What are you expecting from your spouse when your friends come to the house?
37. What is your opinion of speaking other languages at home that I do not understand? (with friends or family)
38. Do you travel?
39. How do you spend your vacations?
40. How do you think your spouse should spend vacations?
41. Do you read?
42. What do you read?
43. After marriage, do you think that you are one to express romantic feelings verbally?
44. After marriage, do you think that you want to express affection in public?
45. How do you express your admiration for someone that you know now?
46. How do you express your feelings to someone who has done a favor for you?
47. Do you like to write your feelings?
48. If you wrong someone, how do you apologize?
49. If someone has wronged you, how do you want her/him to apologize to you?
50. How much time passes before you can forgive someone?
51. How do you make important and less important decisions in your life?
52. Do you use foul language at home? In public? With family?
53. Do your friends use foul language?
54. Does your family use foul language?
55. How do you express anger?
56. How do you expect your spouse to express anger?
57. What do you do when you are angry?
58. When do you think it is appropriate to initiate mediation in marriage?
59. When there is a dispute in your marriage, religious or otherwise, how should the conflict get resolved?
60. Define mental, verbal, emotional and physical abuse.
61. What would you do if you felt that you had been abused?
62. Who would you call for assistance if you were being abused?
63. Do you suffer from any chronic disease or condition?
64. Are you willing to take a physical exam by a physician before marriage?

65. What is your understanding of proper health and nutrition?
66. How do you support your own health and nutrition?
67. What is your definition of wealth?
68. How do you spend money?
69. How do you save money?
70. How do you think that your use of money will change after marriage?
71. Do you have any debts now? If so, how are you making progress to eliminate them?
72. Do you use credit cards?
73. Do you support the idea of taking loans to buy a new home?
74. What are you expecting from your spouse financially?
75. What is your financial responsibility in the marriage?
76. Do you support the idea of a working wife?
77. If so, how do you think a dual-income family should manage funds?
78. Do you currently use a budget to manage your finances?
79. Who are the people to whom you are financially responsible?
80. Do you support the idea of utilizing baby sitters and/or maids?
81. Do you want to have children? If not, how come?
82. To the best of your understanding, are you able to have children?
83. Do you want to have children in the first two years of marriage? If not, when?
84. Do you believe in abortion?
85. Do you have children now?
86. What is your relationship with your children now?
87. What is your relationship with their other parent?
88. What relationship do you expect your spouse to have with your children and their parent?
89. What is the best method(s) of raising children?
90. What is the best method(s) of disciplining children?
91. How were you raised?
92. How were you disciplined?
93. Do you believe in spanking children? Under what circumstances?
94. Do you believe in public school for your children?
95. Do you believe in Islamic school for your children?
96. Do you believe in home schooling for your children?
97. What type of relationship should your children have with non-Muslim classmates/friends?
98. Would you send your children to visit their extended family if they lived in another state or country?
99. What type of relationship do you want your children to have with all their grandparents?
100. If there are members of my family that are not Muslim, that are of different race or culture, what type of relationship do you want to have with them?

RESOURCES CONT'D.



VII. QUR'ANIC VERSES RELATED TO FAMILY LAW

The following excerpted verses covering marriage and family issues in Islam are taken from the Abdullah Yusuf Ali translation of the Qur'an, as it is widely used and accepted by Muslims. More recent recommendations include *The Message of the Qur'an* by Muhammad Asad, and *The Sublime Qur'an* by Laleh Bakhtiar.

Chapter Name	Verse	Quote
Al Baqarah	2:187	...They are your garments and ye are their garments...
Al Baqarah	2:223	Your wives are as a tilth unto you; so approach your tilth when or how ye will; but do some good act for your souls beforehand; and fear Allah. And know that ye are to meet Him (in the Hereafter), and give (these) good tidings to those who believe.
Al Baqarah	2:226	For those who take an oath for abstention from their wives, a waiting for four months is ordained; if then they return, Allah is Oft-forgiving, Most Merciful.
Al Baqarah	2:227	But if their intention is firm for divorce, Allah heareth and knoweth all things.
Al Baqarah	2:228	Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what Allah Hath created in their wombs, if they have faith in Allah and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in Power, Wise.
Al Baqarah	2:229	A divorce is only permissible twice: after that, the parties should either hold Together on equitable terms, or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she give something for her freedom. These are the limits ordained by Allah; so do not transgress them if any do transgress the limits ordained by Allah, such persons wrong (Themselves as well as others).

Chapter Name	Verse	Quote
Al Baqarah	2:230	So if a husband divorces his wife (irrevocably), He cannot, after that, re-marry her until after she has married another husband and He has divorced her. In that case there is no blame on either of them if they re-unite, provided they feel that they can keep the limits ordained by Allah. Such are the limits ordained by Allah, which He makes plain to those who understand.
Al Baqarah	2:231	When ye divorce women, and they fulfill the term of their ('Iddat), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage; if any one does that; He wrongs his own soul. Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favors on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things.
Al Baqarah	2:232	When ye divorce women, and they fulfill the term of their ('Iddat), do not prevent them from marrying their (former) husbands, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in Allah and the Last Day. That is (the course Making for) most virtue and purity amongst you and Allah knows, and ye know not.
Al Baqarah	2:233	The mothers shall give such to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be Treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear Allah and know that Allah sees well what ye do.
Al Baqarah	2:234	If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days: When they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. And Allah is well acquainted with what ye do.
Al Baqarah	2:235	There is no blame on you if ye make an offer of betrothal or hold it in your hearts. Allah knows that ye cherish them in your hearts: But do not make a secret contract with them except in terms Honorable, nor resolve on the tie of marriage till the term prescribed is fulfilled. And know that Allah Knoweth what is in your hearts, and take heed of Him; and know that Allah is Oft-forgiving, Most Forbearing.
Al Baqarah	2:236	There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing.

Chapter Name	Verse	Quote
Al Baqarah	2:237	And if ye divorce them before consummation, but after the fixation of a dower for them, then the half of the dower (Is due to them), unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness. And do not forget Liberality between yourselves. For Allah sees well all that ye do.
Al Baqarah	2:240	Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence; but if they leave (The residence), there is no blame on you for what they do with themselves, provided it is reasonable. And Allah is Exalted in Power, Wise.
Al Baqarah	2:241	For divorced women Maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous.
Al Baqarah	2:256	Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things.
Al Imran	3:104	Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity.
Al Imran	3:195	I shall not lose sight of the labor of any of you who labors in My way, be it man or woman; each of you is equal to the other.
Al Nisa'	4:1	O mankind! reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women; reverence Allah, through whom ye demand your mutual (rights), and (reverence) the wombs (That bore you): for Allah ever watches over you.
Al Nisa'	4:3	...Marry women of your choice, Two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one...that will be more suitable, to prevent you from doing injustice.
Al Nisa'	4:4	And 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.

Chapter Name	Verse	Quote
Al Nisa'	4:5	To those weak of understanding Make not over your property, which Allah hath made a means of support for you, but feed and clothe them therewith, and speak to them words of kindness and justice.
Al Nisa'	4:19	O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may Take away part of the dower ye have given them, except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good.
Al Nisa'	4:20	But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, Take not the least bit of it back: Would ye take it by slander and manifest wrong?
Al Nisa'	4:21	And how could ye take it when ye have gone in unto each other, and they have Taken from you a solemn covenant?
Al Nisa'	4:23	Prohibited to you (For marriage) are: Your mothers, daughters, sisters; father's sisters, Mother's sisters; brother's daughters, sister's daughters; foster-mothers (Who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in, no prohibition if ye have not gone in; (Those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-forgiving, Most Merciful.
Al Nisa'	4:24	...seek (them in marriage) with gifts from your property, desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree Mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise.
Al Nisa'	4:32	And in no ways covet those things in which Allah Hath bestowed His gifts More freely on some of you than on others: To men is allotted what they earn, and to women what they earn: But ask Allah of His bounty. For Allah hath full knowledge of all things.
Al Nisa'	4:33	To (benefit) every one, We have appointed shares and heirs to property left by parents and relatives. To those, also, to whom your right hand was pledged, give their due portion. For truly Allah is witness to all things.

Chapter Name	Verse	Quote
Al Nisa'	4:34	Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).
Al Nisa'	4:35	If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things.
Al Nisa'	4:128	If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best; even though men's souls are swayed by greed. But if ye do good and practice self-restraint, Allah is well-acquainted with all that ye do.
Al Nisa'	4:129	Ye are never able to be fair and just as between women, even if it is your ardent desire: But turn not away (from a woman) altogether, so as to leave her (as it were) hanging (in the air). If ye come to a friendly understanding, and practice self-restraint, Allah is Oft-forgiving, Most Merciful.
Al Nisa'	4:130	But if they disagree (and must part), Allah will provide abundance for all from His all-reaching bounty: for Allah is He that careth for all and is Wise.
Al Nisa'	4:135	O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do.
Al Maidah	5:1	O ye who believe! fulfill (all) obligations...
Al Maidah	5:5	This day are (all) things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. (Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book, revealed before your time, when ye give them their due dowers, and desire chastity, not lewdness, nor secret intrigues if any one rejects faith, fruitless is his work, and in the Hereafter he will be in the ranks of those who have lost (all spiritual good).

Chapter Name	Verse	Quote
Al Maidah	5:8	O ye who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do.
Al An'am	6:165	And whatever wrong any human being commits rests upon himself alone; and no bearer of burdens shall be made to bear another's burden...
Al Tawbah	9:71	The Believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is Exalted in power, Wise.
Al Isra'	17:23	Thy Lord hath decreed that ye worship none but Him, and that ye be kind to parents. Whether one or both of them attain old age in thy life, say not to them a word of contempt, nor repel them, but address them in terms of honor.
Al Isra'	17:24	And, out of kindness, lower to them the wing of humility, and say: "My Lord! bestow on them thy Mercy even as they cherished me in childhood."
Al Isra'	17:32	Nor come nigh to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils).
Al Nur	24:2	The woman and the man guilty of adultery or fornication - flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment.
Al Nur	24:3	Let no man guilty of adultery or fornication marry but a woman similarly guilty, or an Unbeliever: nor let any but such a man or an Unbeliever marry such a woman: to the Believers such a thing is forbidden.
Al Nur	24:6-9	And for those who launch a charge against their spouses, and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth; And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie. But it would avert the punishment from the wife, if she bears witness four times (with an oath) By Allah, that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the truth.

Chapter Name	Verse	Quote
Al Nur	24:19	Those who love (to see) scandal published broadcast among the Believers, will have a grievous Penalty in this life and in the Hereafter: Allah knows, and ye know not.
Al Nur	24:23	Those who slander chaste women, indiscreet but believing, are cursed in this life and in the Hereafter: for them is a grievous Penalty.
Al Nur	24:32	Marry those among you who are single, or the virtuous ones among yourselves, male or female: if they are in poverty, Allah will give them means out of His grace: for Allah encompasseth all, and he knoweth all things.
Al Rum	30:21	And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect.
Luqman	31:14	And We have enjoined on man (to be good) to his parents: in travail upon travail did his mother bear him, and in years twain was his weaning: (hear the command), "Show gratitude to Me and to thy parents: to Me is (thy final) Goal.
Luqman	31:15	But if they strive to make thee join in worship with Me things of which thou hast no knowledge, obey them not; yet bear them company in this life with justice (and consideration), and follow the way of those who turn to me (in love): in the end the return of you all is to Me, and I will tell you the truth (and meaning) of all that ye did.
Al Ahzab	33:35	Verily, for all men and women who have submitted themselves to God, and all believing men and believing women, and all truly devout men and truly devout women who are patient in adversity, and all men and women who humble themselves (before God), and all men and women who give in charity, and all self-denying men and women who are mindful of their chastity, and all men and women who remember God unceasingly: for all of them has God readied forgiveness of sins and a mighty reward.
Al Ahzab	33:49	O ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of 'Iddat have ye to count in respect of them: so give them a present. And set them free in a handsome manner.
Al Shura	42:38	Those who hearken to their Lord, and establish regular Prayer; who (conduct) their affairs by mutual Consultation; who spend out of what We bestow on them for Sustenance;

Chapter Name	Verse	Quote
Al Hujarat	49:13	O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other)). Verily the most honored of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).
Al Qamar	54:2	And when they have fulfilled their prescribed term, take them back on equitable terms, and keep your testimony upright for Allah....
Al Mumtahinah	60:11	And if any of your wives deserts you to the Unbelievers, and ye have an accession (by the coming over of a woman from the other side), then pay to those whose wives have deserted the equivalent of what they had spent (on their dower). And fear Allah, in Whom ye believe.
Al Talaq	65:1	When you (men) divorce women, divorce them keeping in view 'Iddat' (prescribed period of waiting) and reckon the period, and fear Allah your Lord. Expel them not from their houses, nor shall they themselves leave unless they are guilty of open lewdness. Such are the limits (imposed by Allah); and whoso transgresses Allah's limits, he verily wrongs his soul.
Al Talaq	65:2	Thus when they fulfill their term appointed, either take them back on equitable terms or part with them on equitable terms; and take for witness two persons from among you, endued with justice, and establish the evidence (as) before Allah. Such is the admonition given to him who believes in Allah and the Last Day. And for those who fear Allah, He (ever) prepares a way out.
Al Talaq	65:4	And for such of your woman as despair of menstruation, if you have doubts, their period (of waiting) shall be three months, along with those who have it (menstruation) not. And for those who carry (child in their wombs) their period of 'Iddat' shall be till they deliver their burdens.
Al Talaq	65:6	Lodge them (women in Iddat) where you dwell according to your means and harass them not so as to straighten their circumstances. And if they are with child, then spend for them till they deliver their burden. Then if they give suckle (to the child) for you, give them their due payment and consult together in kindness, but if you make difficulties for one another then let some other woman give suck on behalf of the child.
Al Talaq	65:7	Let the man of means spend according to his means; and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what He has given him.

RESOURCES, CONT'D.



VIII. WEBSITES

Asian & Pacific Islander Institute on Domestic Violence

www.apiidv.org/violence/muslimwomen.php

The Asian & Pacific Islander Institute compiled the following resources because so many Muslim immigrants living in the U.S. come from various regions in Asia: Central, East, South, Southeast and West Asia, i.e. the Middle East. (1) Domestic Violence Programs for Muslim Communities: Services, Advocacy & Training Directory (2) Muslim Forums on Women's Issues: A Resource Directory (3) Muslim Women and Domestic Violence: Three Key Topics: Bibliography (2 pages) (4) Gender, Domestic Violence & Muslim Women: Bibliography (11 pages).

Ask Zahra

www.karamah.org/resources/ask-zahra

Ask Zahra is a web-based advice column provided by Karamah: Muslim Women Lawyers for Human Rights that is based on Islamic scholarship and culture throughout the Muslim world. Ask Zahra provides balanced and credible access to information from Karamah's experts on Islamic family law. Karamah is one of the central sources of scholarship on Islamic law. Through original and gathered content, their research department educates Muslims and the general public about shari'ah in general and the rights afforded to women under Islam in particular.

Peaceful Families Project

www.peacefulfamilies.org <http://peacefulfamilieas.org/resources.html>

Founded by Sharifa Alkhateeb, a pioneer advocating for the civil rights of Muslims in the U.S., and Muslim women's rights in particular, Peaceful Families Project's resources include: directories, statistics, *Change from Within: Diverse Perspectives on Domestic Violence* (book), *Garments for One Another* (documentary and curriculum guide), and several other important resources. It co-hosts, along with the API Institute, the Muslim Advocacy Network Against Domestic Violence, <http://peacefulfamilies.org/manadv.html>.

Shari'a Index Blog: The Role Of Shari'a Law In U.S. Courts

www.shariaindex.com

The Shari'a Index Blog provides legal nuances and analysis for specific cases related to Islamic law in the U.S. court system. The case summaries found in their digest are professionally prepared by lawyers or law students without editorializing. Ultimately, their goal is to provide an objective resource and destination for lawyers, professionals, and anyone interested in learning about shari'ah in the United States.

Battered Women's Justice Project

www.bwjp.org

BWJP is a national resource center on civil and criminal justice responses to domestic violence. Articles and information on U.S. laws and family court practice related to divorce, custody, visitation and parenting arrangements in cases involving domestic violence are available on the website at: <http://www.bwjp.org/articles/article-list.aspx?id=8>.



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