



Arizona v. California ENFORCING ISLAMIC DOWRY AS PREMARITAL AGREEMENT



Culturally Speaking by Abbas Hadjian *Cultural Mediator & Consultant*

Questions:

Does the free exercise clause require
abstention from enforcing an Islamic dowry?

Does a family court have jurisdiction to enforce the financial provisions of a religious agreement?

Answers:

Courts of law may adjudicate disputes arising in religious contexts by applying neutral law principles without inquiry into religious doctrine and controversy.

\$ Most courts have found financial provisions in religious marriage contracts enforceable.

Case Name:

Alulddin V. Alfartousi, (2023) 532 P. 3d 1172,
Arizona Court of Appeals, 1st Division

Detail:

Before marriage, Husband (H) and Wife (W) signed an Islamic marriage agreement (Agreement) with a dowry provision of \$25,000.00, \$15,000.00 present, and \$10,000.00 upon demand.

Five (5) months later, they had two (2) separate marriage ceremonies: civil and Islamic. They separated after the second ceremony, and W petitioned to dissolve the marriage and sought enforcement of the agreement. H asserted he had already paid \$15,000, and the balance is waived due to W=s filing for divorce. H also argued that the agreement violated Arizona's UPAA (A.R.S.' 25-201-202): it was not in contemplation of marriage, and he did not sign it voluntarily. The trial court disagreed and ordered payment of \$25,000.00 in addition to attorney fees and costs.

Appeal:

The Court of Appeal noted three (3) trends in deciding financial provisions in a religious marriage agreement: valid [Parbeen (Fla.), Ravasizadeh (Mass.), Odatalla (N.J.), Nouri (Md.)]; invalid [Obeidi (Wash), Zawahiri (Ohio);

and California: against public policy [Noghrey (1985), Dajani (1988) criticized in Bellio (2003)], or in violation of statute of frauds (Shaban, 2001). The court followed the approach adopted in *Nouri v. Dadgar* (2020):

We find the neutral principles of law approach adopted in *Nouri v. Dadgar*. 245 Md. App. 324, 226 A.3d 797 (2020), particularly instructive. In that case, the Maryland Court of Special Appeals found religious premarital agreements enforceable in divorce cases if the agreements meet the requirements applicable to premarital agreements and other contracts between people in confidential relationships. *Nouri*. 226 A.3d at 802.

On application of the UPAA, the court stated:

A Husband contends that the parties did not enter into the agreement in contemplation of marriage because, under Islamic law, the agreement constituted their marriage.

The record controverts this contention... Next, Husband asserts that he did not sign the agreement voluntarily because it was a compulsory religious act... The spouse who seeks a declaration that a premarital agreement is unenforceable has the burden of proving the agreement is invalid. (Citation)... The husband failed to show that he did not voluntarily enter the agreement. He also failed to meet his burden of showing that it was unenforceable."

Culturally Speaking:

Arizona, a community property state under the Uniform Premarital Agreement Act (UPAA), opened the door for recognizing religious marriage agreements. California has poor laws addressing cultural/religious marriage gifts. IRMO Noghrey (1985) was a Jewish marriage between two (2) Iranians in San Jose. It does not represent a cultural marriage in, or based on, foreign jurisprudence. Per IRMO Bellio (2003), the validity of I.R.M. Dajani (1988) is in doubt.

IRMO Shaban (2001) is a defective contract case. California is home to an increasing number of Asians, Middle Easterners, Africans, and East Europeans, requiring an exchange of gifts upon marriage. It is common for those who arrived, born, converted, immigrated, raised, or died here. It is rooted in their cultural, familial, moral, religious, or social values. For many brides and grooms and their families, marital gifts are the most significant obligation assumed and entitled during life. Nearly 170 years into statehood, California remains at odds with the most important agreement of its inhabitants. It is the time and opportunity for change.

A more detailed version of this article appeared in the Los Angeles Daily Journal on August 21, 2023,
<https://www.arc4adr.com/articles-hadjian-cultural-divorce.pdf>

Contact Abbas Hadjian's Case Administrator Marjorie Luna,
Marjorie@arc4adr.com



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