

## **Islamic Shari'a Contracts: Pre-Nuptial and Custody Protections**

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*The addition of a Shari'a-compliant parenting plan to American child custody orders can reduce the risk of abduction to Islamic countries where there are obstacles to securing a child's return. Determinations of custody in disputed divorce actions between parents seeking relief in American, secular courts can be complicated when those parents are dual nationals or citizens of other cultures and legal traditions. In Islam, marriage is formed by contract, responsibilities are defined by culture, and terms of divorce are set forth in the original marriage contract. A growing population of Muslim households in the United States needs legal practitioners, judges, mediators, and custody evaluators who understand the legal, sociocultural, and religious aspects that are the foundation of the Muslim family.*

**KEYWORDS** *parenting contracts, child custody, Muslim, Islamic family law, prenuptials agreements, marriage contracts, religious divorce, international custody abduction, Non-Hague Countries*

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The information relating to the legal requirements of specific foreign countries is obtained from past experience and is not necessarily authoritative. Questions involving interpretation of specific foreign laws should be addressed to foreign counsel.

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## ISLAMIC CONTRACTS IN FAMILY LAW

### Introduction

Islamic law is the most widely applied family law system in the world today.<sup>1</sup> Individuals guided by the Islamic traditions often hold expectations that contradict the traditional American values that are a part of our legal system. The role of women and the responsibility for children in Islam differs from Western traditions. When a parent experiences his or her religious and cultural identities are threatened by a secular process, such as an American divorce or custody determination, there is a risk that the parent will not comply with the American orders.

Islamic family law allows for the determination of a woman's right to divorce, as well as the amount of future alimony in the case of divorce—these rights are set forth in her original marriage contract. In many states that marriage contract may—or may not—be enforceable as a prenuptial agreement. In addition, the application of Islamic contracts to define custody and parenting plans carries the potential to help resolve international custody cases and protect the child's relationship with both parents. American courts have attempted to protect parenting plans by ordering parents to secure mirror orders in Islamic jurisdictions to address custody. Because Islamic law does not recognize secular orders originating outside the Islamic legal system, Islamic contracts are taking the place of unenforceable American court decisions. In this article, we discuss what can and cannot be included within an Islamic marriage and parenting contract.

Islamic Law sets forth rules regarding marriage, divorce, child custody, and many other matters of family and community relations. The Islamic marriage contract is a powerful instrument to enforce women's rights in their marriages and during divorce.

Unfortunately, the importance of these contracts is often not appreciated, with dire results. For example, without an Islamic marriage contract reserving the woman's right to divorce, the wife of a Muslim man residing in an Islamic country may have no legal means to leave her marriage. In some Islamic countries she also may have no legal right to leave the country. Thus, absent an enforceable marriage contract, a non-Muslim woman married to a Muslim man can find herself essentially imprisoned in an unhappy marriage in a foreign land. There are many stories of American women taking extreme and sometimes dangerous steps to escape such predicaments.

### ISLAMIC CONTRACTS

Shari'a, the Arabic term for Islamic law, first appears in the Qur'an to mean "path" or "way."<sup>2</sup> A divine law considered the expression of God's will and

justice, Shari'a governs all aspects of life.<sup>3</sup> Although some Islamic countries have revised their legal systems to incorporate other secular systems, Shari'a continues to influence and shape marriage and family law in almost all Islamic nations.

Islamic law and custom dictate, "For those in a contract, the law is the contract." Various authorities are cited to support this, most importantly in the Qur'an, *Al-Baqarah 2:177*:

وَأَتَى النَّبِيَّ وَالْكِتَابَ وَالْمَلَائِكَةَ الْآخِرَ وَالْيَوْمَ بِاللَّهِ آمَنَ مِنَ الْبِرِّ وَلَكِنَّ الْمَغْرِبَ الْمَشْرِقَ قَبْلَ وَجْهِكُمْ تُؤَلُّوا أَنْ الْبِرِّ لَيْسَ  
وَالْمُؤْمِنُونَ الزَّكَاةَ وَأَتَى الصَّلَاةَ وَأَقَامَ الرِّقَابَ وَفِي السَّائِلِينَ السَّبِيلَ وَأَبْنِ الْمَسَاكِينِ وَالْيَتَامَى الْفَرِيضَى ذَوِي الْمَالِ  
الْمُتَّقُونَ هُمْ وَأَوْلَادُكُمْ الَّذِينَ يَكْفُلُونَ الْبِئْسَاءَ وَحِينَ وَالضَّرَّاءَ الْبِئْسَاءَ فِي وَالصَّابِرِينَ عَاهَدُوا إِذَا بَعْدَهُمْ

The passage states, "... it is righteousness—to believe in God and the Last Day ... and ... to fulfil the contracts which ye have made."<sup>5</sup> Contracts are addressed throughout the Qur'an and the *Hadiths* (oral traditions relating to the words and deeds of the Prophet Mohammad) with examples given for contracting terms for taking on debt and terms of trade,<sup>6</sup> for the emancipation of slaves,<sup>7</sup> share cropping of dates and barley,<sup>8</sup> cultivation of land,<sup>9</sup> and the terms under which a contract is to be documented and witnessed.<sup>10</sup> But the most complete discussion and repeated direction within both the Qur'an and numerous *Hadiths* is given for the Islamic marriage contract.

## THE ISLAMIC MARRIAGE CONTRACT

In Islam, marriage is a civil contract between husband and wife legalizing intercourse and the procreation of children.<sup>11</sup> This aspect of Islam sets it apart from religions in which marriage is considered a spiritual, not civil, union. Marriage is considered essential to the stability and growth of the family and the basic unit of the Islamic community.<sup>12</sup> Under Shari'a, marriage is incumbent on Muslim men and women unless they are financially or physically unable to lead a married life.<sup>13</sup> Although marriage in Islamic legal traditions has much in common with marriage in other faiths, it also has unique characteristics that distinguish it in significant ways.

### Preconditions of and Prohibitions on Marriage

Shari'a prescribes the preconditions for a valid marriage contract and prohibits marriage on various grounds. To contract a valid marriage a Muslim man or woman must be sane and must have reached puberty. The woman must be unmarried. Aside from this, a marriage may be prohibited on grounds of religion and kindred affinity. While all the juristic schools allow a Muslim man to marry a Jewish or Christian woman, they prohibit Muslim women from marrying non-Muslim men. Men are generally forbidden from marrying their ascendants, descendants, the ascendants or descendants of

their wives, or the wives of their ascendants or descendants.<sup>14</sup> Children breast-fed from the same woman are prohibited from marriage to each other when they come of age and are considered related as “milk-brother” or “milk-sister.”

### Attributes of the Marriage Contract

In general, the Islamic marriage contract consists of an offer (*ijab*) and acceptance (*qabul*) that occur at the same meeting. In order for the contract to be valid, the man and woman must both hear and understand the offer and acceptance.<sup>15</sup> In most interpretations of Shari’a,<sup>16</sup> a woman must have a legal guardian to conclude the marriage contract on her behalf, even if she is an adult.<sup>17</sup> There is no requirement under any school that the marriage contract be made in a particular form or ceremony. Thus, although the Qur’an recommends that marriage contracts be in writing, oral contracts are valid.<sup>18</sup>

The marriage contract is not a service contract, and it does not provide the husband with someone to cook and perform housework. The intent of the contract is to clarify the amount and transaction of the bride dowry, to identify contract stipulations that are important to each in the relationship, and to provide a financial safety net to the wife if a divorce occurs.

### Bride Dowry—*Mahr* and *Sadaq*

Whether or not it is specified in the marriage contract, a groom must pay his bride dowry, a sum of money or other property that is useful, of monetary value—*Mahr*.<sup>19</sup> The dowry is not a bride-price and is considered the property of the wife (not her guardian or relatives) to spend as she pleases. Although it becomes payable to the wife due to the marriage, a dowry may be paid immediately in full, or all or part of it may be deferred—*Sadaq*. A deferred dowry is payable to the wife upon a date agreed to by the couple, or upon divorce or death, whichever occurs first.<sup>20</sup> A large deferred dowry specified in the marriage contract can function as a safeguard for wives against divorce; a husband who wants to divorce his wife may opt to stay married rather than pay her deferred dowry upon divorce. A married Muslim woman is legally entitled to financial independence, and her husband may not touch her financial assets. In addition, the husband must support her, and she is under no obligation to support him during the marriage.<sup>21</sup>

### Contract Provisions and Stipulations

The imposition of regional customs and traditions in the name of Islam is common across the Islamic world. One almost universal Islamic custom is the subordination of women. Ironically, the Qur’an—considered the direct

word of God—states that the only distinction between men and women is in their marriage. The Qur'an says as every unit must have a leader, the male is seen as the leader of the family unit.<sup>22</sup>

الأخر واليوم بالله يؤمن كُنَّ إِنْ أَرْحَمِيهِنَّ فِي اللَّهِ خَلَقَ مَا يَكْتُمُنَّ أَنْ لَهُنَّ جِلْدٌ وَلَا فَرْوَةٌ ثَلَاثَةٌ بَأْنَفْسِيهِنَّ يَبْرَبْنَ وَالْمَطْلَقَاتُ  
حَكِيمٌ عَزِيزٌ وَاللَّهُ دَرَجَةٌ عَلَيْهِنَّ وَلِلرَّجَالِ بِالْمَعْرُوفِ عَلَيْهِنَّ الَّذِي مِثْلُ وَلَهُنَّ صِنَالِحًا أَرَادُوا إِنْ ذَلِكَ فِي بَرْدَهِنَّ أَحَقُّ وَبُعُولَتَهُنَّ<sup>23</sup>(2:228)

The ultimate result of the subordination of women is that the husband generally has the final authority over the wife. Furthermore, standard Islamic marriage contracts automatically favor the husband. For example, in Islam the husband may *unilaterally* divorce his wife at any time without specifying any reason. However, a woman may do so only if she acquires this right when contracting her marriage, or if other specified conditions occur (such as impotence on part of the husband, disease, imprisonment, witnessed excessive physical abuse, or financial abandonment). That is why it is so important for wives to insist on delineating their rights in the contract.

The bride and groom have the right to add provisions to the marriage contract at the time of marriage, or any time afterward, by including additional contract clauses. However, not all contract terms will be upheld. In order to be valid, such clauses must further the object of the marriage and not violate the Shari'a.<sup>24</sup> For instance, conditions that the husband need not maintain the wife<sup>25</sup> or that the husband must divorce a previous wife<sup>26</sup> are deemed void. However, clauses that grant the wife greater freedom of movement and travel, the right to work, or the power to divorce her husband at will are valid.<sup>27</sup> A valid clause is enforceable by the party who made it; that party has the power to cancel the contract if the clause is violated.<sup>28</sup>

Islamic law allows a man to marry up to four wives simultaneously, but the man must treat all wives equally. The man is not required to seek the permission of his current wives to take a second wife or additional wives. Including a restriction on additional marriage within one's civil marriage contract has not been upheld when disputed in Shari'a courts.<sup>29</sup> However, a wife can include the husband's remarriage as a cause for divorce within her contract. Thus, upon his remarriage she could at least obtain a divorce.

There is a Qur'anic verse that appears to explicitly permit husbands to punish their wives, and this verse has been used by many male scholars to argue in favor of the man having the right to "beat" his wife, as found in *Al-Nisa* 4:34:

بِمَا لِلغَيْبِ حَافِظَاتٍ فَاذْنَابُهُنَّ فَالصَّالِحَاتُ أَمْوَالُهُنَّ مِنْ أَنْفُسِهِنَّ وَمِمَّا بَعْضٌ عَلَى بَعْضِهِمْ اللَّهُ فَضَلَّ بِمَا النِّسَاءُ عَلَى قَوْمُونَ الرِّجَالِ  
اللَّهُ إِنْ سَبِيلًا عَلَيْهِنَّ تَبَعُوا فَلَا أَطْعَمَكُمْ فَإِنْ وَأَضْرَبُوهُنَّ الْمَضَاجِعَ فِي وَأَهْجُرُوهُنَّ فَعَطْوَهُنَّ نَشُوزَهُنَّ تَخَافُونَ وَاللَّاتِي اللَّهُ حَفِظَ  
بِرَّالْكِبْرِيَّ كَانَ  
كَانَ عَلِيًّا كَبِيرًا<sup>30</sup>

Because of the controversy among Arabic scholars over how to accurately translate this important verse into English, this article provides both the Yusuf Ali English translation,<sup>31</sup> as well as the following:

As to those women on whose part you fear *nushuz* (to rise above or act superior to), admonish them (first), (then) *wahjurubanna fi'l madbaji'l* (abandon them in beds), (and last) *wadbrububunna* (hit them lightly): and if they obey you, seek not against them means (of annoyance or harm), for God is most high and Great (above you all). [Qur'an 4:34]<sup>32</sup>

A woman can generally seek judicial divorce for physical abuse, and under Jordanian and Kuwaiti law, verbal abuse is sufficient grounds. However, rules of evidence requiring a specified numbers of witnesses (the testimony of a woman witness is often of less value than that of a man) often limit a woman's access to divorce due to domestic abuse. Stipulating in the marriage contract that any evidence of domestic violence is grounds for divorce would allow the wife to leave the marriage with less worry that the Shari'a court would find that the husband's abuse was unproven—or within his right.

Other provisions that may be included in the marriage contract include the right to decide if, and when, the wife may work; specific conditions for divorce; and separation of property obtained during the marriage. Implicit in the marriage contract is that husbands have to support wives and provide them with food, clothing, and lodging, but it may be included in the contract that a husband would not leave his wife for any period of time without specified maintenance, or that the separation not exceed an agreed-to term. Marriage contracts from the early decades of the seventeenth century have included seasonal wardrobe and housing requirements, conditions that the husband not be absent for extended periods, that the husband not beat the wife, monthly financial allowances, specified travel, and the wife's wish not to move far from her family.<sup>33</sup>

Other stipulations may reflect individual concerns and situations, including agreeing that a wife's child from another marriage live with them. Child custody after divorce is not usually considered within the marriage contract; however, some modern contracts are reported to specify custodial arrangements to favor the mother. Although not tested in application, custodial agreements that contradict the Islamically prescribed automatic transfer of custody to the father are believed to be enforceable.<sup>34</sup>

### Islamic Marriage Contracts and Prenuptial Agreements

American family and appellate courts have differed in treatment of the Islamic marriage contract and the dower provisions. Some jurisdictions have held that contracted Islamic dower agreements are similar to a prenuptial

agreement and are enforceable because they satisfy the requirement of a contract. Other states have found that dower agreements are not prenuptial agreements and that they facilitate divorce or separation by providing for a settlement and are void because such agreements promote profiteering from divorce. Premarital agreements are limited by the public policy of the state regarding support, custody, and visitation.

### Contract Enforceability

The refusal of some American courts to enforce Islamic marriage contracts can cause problems for many immigrant Muslim women in the United States, especially those who rely upon the *sadaq* as a financial security net.

*In re Dajani*<sup>35</sup> interpreted the *mahr* of a Muslim marriage contracted in Jordan to be a prenuptial provision facilitating divorce because payment was only upon dissolution of the marriage. Because this was considered profiteering by divorce and against public policy, the court held the contract unenforceable. The court in *In re Shaban*<sup>36</sup> rejected a husband's attempt to enforce the *sadaq* (of approximately \$30) listed in his Egyptian contract, instead awarding the wife \$1.5 million in community property. In *Aziz v. Aziz*,<sup>37</sup> the court found a Muslim marriage contract, with its dower provision of \$5,000 *sadaq* (due at divorce) and \$32 *mahr* (at contract signing) enforceable because it conformed to the requirements of New York general contract law. And, in *Akileh v. Elchahal*<sup>38</sup> the Florida Court of Appeals also upheld the *sadaq*.<sup>39</sup>

## LEGAL AND PHYSICAL CHILD CUSTODY AFTER DIVORCE

Most western states distinguish between the two aspects of child custody: legal custody and physical custody. Legal custody is the right to make decisions regarding the health, education, and welfare of a child. This includes decisions about religious education. Physical custody relates to where the child will reside and responsibility for the child's daily care and supervision. American custody orders typically distinguish legal and physical custody, and many states grant parents joint legal custody, even though the child may reside primarily with only one parent.

Under Shari'a Law, a father is the natural guardian (*al waley*) of his child's person and property. The father always retains legal custody and the right to determine where the child will live, how the child will be educated, and whether the mother may travel with the child.

In Islamic law and tradition, after divorce a mother generally has a right to physical, *not legal*, custody of her child until the child reaches the age of custodial transfer (generally around the age of 7 years, sometimes to

the age of 12 years for a girl child), at which time the child is returned to the physical custody of the child's father or the father's family. The right to physical custody of a young child is not an absolute right in the sense that a father can challenge the mother's ability to provide an appropriate upbringing if the father asserts the mother has dishonored the family or has been disobedient.

It is considered in the best interest of the child to be raised as a Muslim, and any action on the part of the mother to interfere with the child's Islamic upbringing could jeopardize the mother's physical custody of the child. This understanding of best interest is often in conflict with Western family law, which seeks to make custody and visitation orders that are in the best interest of the child, and which foster frequent and continuing contact with both parents, taking into consideration consistent patterns of care.

### The Hague Abduction Convention

The Hague Convention on the Civil Aspects of International Child Abduction<sup>40</sup> is a multilateral treaty developed by the Hague Conference on Private International Law. The Convention provides a process to secure return of a child internationally abducted by a parent from one member nation to another. Proceedings on the Convention concluded in 1980, and it entered into force between the signatory nations in December of 1983. The Convention was drafted to ensure the prompt return of children who have been wrongfully removed from their country of habitual residence or wrongfully retained in a signatory state not their country of habitual residence in violation of the left-behind parent's rights of custody.

The Hague Abduction Convention does not provide a method to establish court orders regarding custody and visitation and has no provisions for recognition and enforcement of custody orders. It offers the summary remedy of return of the child to the country of the child's habitual residence (sometimes analogized to extradition).

The challenge with Islamic countries is that they are not signatories to the Hague Abduction Convention. Consequently, private international law offers no remedy when a child is removed to an Islamic country or retained in an Islamic country in violation of what the child's habitual residence views as the left-behind parents' rights of custody. The Islamic countries do not recognize secular law or contracts that are against Islamic principles or are contraindicated by Shari'a law. For example, Islamic law prohibits legal custody of a child by a mother and prohibits a mother's right of physical custody if challenged by the father. An order providing joint legal and physical custody of a child would violate Islamic principles. Similarly the shared custody rights that apply by operation of secular law in U.S. jurisdictions where there are no custody orders will not be recognized in Islamic countries



Domestic American law (49 of the 50 U.S. states have adopted the Uniform Child Custody Jurisdiction and Enforcement Act,<sup>41</sup> or UCCJEA) provides for retention of exclusive and continuing custody jurisdiction, with narrow exceptions, in the first state that properly exercises custody jurisdiction. Sister states must recognize, enforce, and refrain from modifying each other's custody decrees. The UCCJEA requires U.S. courts to treat most foreign countries as sister states, unless the child custody laws of the other country violate fundamental human rights. This leaves American courts with the dilemma of considering whether gender-based religious custody laws and custody proceedings that do not afford due process violate fundamental human rights. When an American court treats an Islamic country as a UCCJEA sister state, it may be required to defer to the jurisdiction of that country and thus recognize and enforce the custody orders of the religious courts in an Islamic country.

Although the United States is not a party to any treaty requiring recognition and enforcement of American custody orders,<sup>42</sup> many Western countries will afford comity to U.S. orders, although they generally reserve the right to modify those orders or decline to enforce orders that they view as failing to protect the children's best interests. By contrast, there is no mechanism for Islamic courts to voluntarily adopt and enforce the customary U.S. custody orders.

Because of the gender-based custody and divorce laws in Islamic countries and the lack of recognition of foreign secular family laws and family court orders, no litigation processes exist to secure the return of a minor child held in an Islamic law country. In addition, were parents to dispute custody or parenting time while in an Islamic country, Islamic law would prevail.

### Registration of Parenting Plans in Shari'a Jurisdictions

Shari'a-compliant contracts mirroring American custody orders and parenting plans have been found to be protective of children in contested custody disputes. Although not fully tested as to enforceability, requiring registration of mirror orders in the foreign jurisdiction demonstrates intent to comply with the American orders and affords a measure of assurance that the foreign jurisdiction will enforce the contract. In the Islamic court, since the father always retains legal custody of the children of a marriage, the parenting plan must be filed by the father and include the signatures of three Muslim witnesses, in addition to the signature of the mother.

The following example contract has been filed in Saudi Arabia after being developed in the Arizona courts. To date there have been no disputes in this shared custody agreement:

I, \_\_\_\_\_, am the father of \_\_\_\_\_ [date of birth]; \_\_\_\_\_ [date of birth]; and, \_\_\_\_\_ [date of birth]. I am irrevocably divorced from the children's mother, \_\_\_\_\_, a citizen of the United States, by Shari'a declaration

dated \_\_\_\_\_. We, \_\_\_\_\_ and \_\_\_\_\_, by our signatures below, agree to and will comply with the following parenting plan:

- The children will reside with their mother in the United States, and will travel to and reside with their father in the Kingdom of Saudi Arabia for 6 weeks of the year. This will apply to each child until he/she reaches the age of eighteen, or if a written modification of this agreement is reached by the parties.
- [mother]\_\_\_\_\_ will escort the younger children while traveling to and from the Kingdom of Saudi Arabia, until the youngest reaches the age of 14 years, or as mutually agreed upon by the parties in a written modification of this agreement.
- [father]\_\_\_\_\_ will provide the “Letter of no Objection” for the issuance of an entry and exit visa to the Kingdom of Saudi Arabia for [mother] prior to and for each yearly visit and will facilitate the issuance of such visas, as necessary and required by the Government of the Kingdom of Saudi Arabia.

It should be noted that a non-Saudi, divorced wife of a Saudi citizen is prohibited from traveling to the Kingdom without a Letter of No Objection from the ex-husband. In addition, divorce in Islam is revocable until the third, irrevocable declaration.

Agreements registered in other Shari’a jurisdictions have taken the following general form:

I, \_\_\_\_\_ (foreign jurisdiction citizen passport #\_\_\_\_\_ and United States citizen passport #\_\_\_\_\_), am the father of \_\_\_\_\_ [date of birth]. I was married to the child’s mother, \_\_\_\_\_, a citizen of the United States, on \_\_\_\_\_, and irrevocably divorced on \_\_\_\_\_. We, by our signatures below, agree to and will comply with the following parenting plan:

- [child]\_\_\_\_\_ shall reside with her mother in the United States. This will apply until she reaches the age of eighteen, or if a written, notarized modification of this agreement is reached by the parties.
- [child]\_\_\_\_\_ shall not be allowed to leave the United States with either parent by any means or for any reason without a written, notarized change to this agreement.

This contract is entered into upon the full understanding of both parties as to its terms and their meaning, and without any undue influence or duress. WE AGREE to be bound by the terms set out above in this Parenting Contract.

As part of the final orders, requiring a full, irrevocable Islamic divorce in addition to the registration of a parenting plan in the foreign jurisdiction allows a measure of protection from abduction in addition to providing the mother standing in the foreign jurisdiction if an abduction occurs.

## CONCLUSION

For a woman entering marriage to a Muslim man, ignorance of her rights to negotiate favorable terms in her Islamic marriage contract may result in severely restricted freedoms if she finds herself wishing for divorce in the Islamic world. Because of the gender-based divorce and custody laws in the Islamic jurisdictions, and due to the lack of recognition of foreign secular, non-Islamic family court decisions, no legal processes exist to protect the interests of a woman entering into marriage to a Muslim man other than those rights she reserves in her original Islamic marriage contract. To reduce the risk of international custody abduction following divorce, registration of both the irrevocable Islamic divorce and the parenting plan within the foreign jurisdiction is necessary. Any woman entering into a Muslim marriage in the United States (or elsewhere) should obtain guidance from an attorney to ensure the enforceability of her contract in her home state (and potential home states) and confirm her personal legal status if she were to travel or relocate to an Islamic country.

## NOTES

1. *Islamic Family Law*, EMORY LAW SCHOOL, <http://www.law.emory.edu/IFL> (last visited July 29, 2013).
2. Fatima Akaddaf, *Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG Compatible with Islamic Law Principles?*, 13 PACE INT'L L. REV. 16 (2001).
3. JAMAL L. NASIR, *THE ISLAMIC LAW OF PERSONAL STATUS* (1990).
4. THE HOLY QUR'AN: TEXT, TRANSLATION AND COMMENTARY 2:177 (a. Yusuf Ali trans., 1983) (hereinafter "THE HOLY QUR'AN").
5. Translated by Yusuf Ali as: "*It is not righteousness that ye turn your faces towards east or West; but it is righteousness- to believe in God and the Last Day, and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practice regular charity; to fulfil the **contracts** which ye have made; and to be firm and patient, in pain (or suffering) and in adversity, and throughout all periods of panic. Such are the people of truth, the God-fearing.*" *Id.* (emphasis added).
6. *Id.* at 2:282.
7. SAHIH BUKHARI vol. 3, bk. 46, no. 737 (Muhammed Muhsin Khan trans.), available at <http://www.usc.edu/org/cmje/religious-texts/hadith/bukhari/046-sbt.php>.
8. *Id.* at vol. 3, bk. 39, no. 521, available at <http://www.usc.edu/org/cmje/religious-texts/hadith/bukhari/039-sbt.php>.
9. *Id.* at vol. 3, bk. 36, no. 464, <http://www.usc.edu/org/cmje/religious-texts/hadith/bukhari/036-sbt.php>.
10. Al-Baqarah, translated by Yusuf Ali, Chapter 2, Verse 282, in part: "... *And get two witnesses out of your own men. And if there are not two men (available), then a man and two women, such as you agree for witnesses, so that if one of them (two women) errs, the other can remind her. And the witnesses should not refuse when they are called on (for evidence). You should not become weary to write it (your **contract**), whether it be small or big, for its fixed term, that is more just with Allah; more solid as evidence, and more convenient to prevent doubts among yourselves, save when it is a present trade which you carry out on the spot among yourselves, then there is no sin on you if you do not write it down. But take witnesses whenever you make a commercial **contract**.*" THE HOLY QUR'AN, *supra* note 4, at 2:282 (emphasis added).
11. NASIR, *supra* note 3.
12. Joelle Entelis, *International Human Rights Regarding Women's Equality and Islamic Law*, 20 FORDHAM INT'L L.J. 1269, 1269-70 (1997).

13. JOHN L. ESPOSITO & NATANA J. DELONG-BAS, *WOMEN IN MUSLIM FAMILY LAW, CONTEMPORARY ISSUES IN THE MIDDLE EAST* (1982).
14. *Id.*
15. NASIR, *supra* note 3.
16. Except some communities in Turkey, Afghanistan, Pakistan, India, China, Bangladesh, Iraq, Albania as well as the countries of Syria, Egypt, and Jordan. NASIR, *supra* note 3, at 15; ANNE-MARIE HUTCHINSON & HENRY SETRIGHT, *INTERNATIONAL PARENTAL CHILD ABDUCTION 14* (1998).
17. HUTCHINSON & SETRIGHT, *supra* note 16, at 50. The Hanafi school does, however, require a guardian if the woman is of no or limited legal capacity. *Id.*
18. ESPOSITO & DELONG-BAS, *supra* note 13.
19. NASIR, *supra* note 3.
20. *Id.*
21. Azizah Y. al-Hibri. *Understanding Muslim Marriage Contracts*, *ISLAMIC HORIZONS*, March/April, at 30–34 (2001).
22. Al-Baqara 2:228: “... and the divorced women shall undergo, without remarrying, a waiting-period of three monthly courses: for it is not lawful for them to conceal what God may have created in their wombs, if they believe in God and the Last Day. And during this period their husbands are fully entitled to take them back, if they desire reconciliation; but, in accordance with justice, the rights of the wives [with regard to their husbands] are equal to the [husbands'] rights with regard to them, although men have precedence over them [in this respect]. And God is almighty, wise.” THE HOLY QUR’AN, *supra* note 4, at 2:228.
23. *Id.*
24. ESPOSITO & DELONG-BAS, *supra* note 13.
25. *Id.*
26. NASIR, *supra* note 3.
27. ESPOSITO & DELONG-BAS, *supra* note 13.
28. NASIR, *supra* note 3.
29. DAWOUD SUDQI EL ALAMI & DOREEN HINCHCLIFF, *ISLAMIC MARRIAGE AND DIVORCE LAWS OF THE ARAB WORLD* (1996).
30. THE HOLY QUR’AN, *supra* note 4, at 4:34.
31. Translated by Yusuf Ali as: “*MEN SHALL take full care of women with the bounties which God has bestowed more abundantly on the former than on the latter, and with what they may spend out of their possessions. And the righteous women are the truly devout ones, who guard the intimacy which God has [ordained to be] guarded. And as for those women whose ill-will you have reason to fear, admonish them [first]; then leave them alone in bed; then beat them; and if thereupon they pay you heed, do not seek to harm them. Behold, God is indeed most bigh, great!*” *Id.*
32. Azizah Y. al-Hibri, *An Islamic Perspective on Domestic Violence*, 27 *FORDHAM INT’L L. J.* 195 (2003). (quoting and translating The HOLY QUR’AN, *supra* note 4, at 4:34).
33. *WOMEN, THE FAMILY, AND DIVORCE LAWS IN ISLAMIC HISTORY* (Amira El-Azhary Sonbol ed., 1966).
34. Interview with M. Radwan, Assistant Director for Political and Congressional Affairs, The Royal Embassy of Saudi Arabia, in Washington D.C. (May 2005).
35. *Marriage of Dajani*, 204 Cal. App. 3d 1387 (1988).
36. *Marriage of Shaban*, 88 Cal. App. 4th 398 (2001).
37. *Aziz v. Aziz*, 488 N.Y.S.2d 123 (Sup. Ct. 1985).
38. *Akileh v. Elchahal*, 666 So. 2d 246 (Fla. Dist. Ct. App. 1996).
39. al-Hibri, *supra* note 27.
40. Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89 [hereinafter Hague Abduction Convention].
41. Uniform Child Custody Jurisdiction and Enforcement Act, CAL. FAM. CODE §§ 3400–3465 (West 2004 & Supp. 2013).
42. The U.S. is in the process of ratifying the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Oct. 19, 1996, 35 I.L.M. 1391 (Hague Protection Convention). That treaty does contain provisions for recognition and enforcement of foreign custody orders, but differs from American domestic law in that it vests modification jurisdiction in a child’s new country of habitual residence. No Islamic country is a party to the Protection Convention.