The marriage contract in the Sharī'ah and in the Aḥwāl Shakhshīyyah laws of Egypt and Morocco: A comparative study.

Dawoud Sudqi El Alami
Department of Arabic and Islamic Studies
University of Glasgow

Thesis submitted for the degree of Ph.D. in the Faculty of Arts at the University of Glasgow.

March 1990.

© Dawoud Sudqi El Alami 1990
بسم الله الرحمن الرحيم
to my mother
Acknowledgements

My thanks are due first of all to Professor John Mattock, my supervisor, who has helped and guided me through all the stages of this work and who was always prepared to listen and to advise.

I am grateful to Professor John Davis for his patient support, his good friendship and his good advice.

Mrs Doreen Hinchcliffe has read parts of the text and has made some very helpful comments for which I thank her.

I should also thank the Libraries of the University of Glasgow, the University of Kent and the School of Oriental and African Studies in London.

I am grateful to His Highness Prince Ahmad b. Turki al-Sudairy for whom I formerly had the honour of working and who sponsored and encouraged me during the difficult early stages of this work.

I would like to express my gratitude to my teachers in Cairo who were my early models: to Professor Yusuf Qasim, Head of the Department of Shari'ah at Cairo University whose chance word of praise to a student under examination, one of many-long forgotten, gave that student the courage to devote himself to the study of Shari'ah; to Professor Jamil al-Sharqawi, former Dean of the Faculty of Law at Cairo University; to Dr. Ibrahim Nasr al-Din, Doctor of Political Science at the Institute of African Studies in the Faculty of Economics and Political Science at Cairo University whose refusal to compromise gave me motivation; to Dr Nazih al-Sadiq Mahdi, Doctor in Civil Law at Cairo University, who helped and encouraged me in my early studies. I would like to thank Dr. Muhammad Asfour, the Lawyer, Doctor in Administrative Law for his guidance and support. I am grateful also to Mr. Muhammad Abu Fadl al-Gezawi who treated me as a son and helped me in my early career as a lawyer and who has always shown interest and encouraged me in my research.

I wish to thank Mrs Amal Shukri, of the Cairo University Library. I am grateful also to Muhammad Qurayim, the head of the Library of the Faculty of Usul al-Fiqh at al-Azhar whose help in obtaining references has been invaluable.
I would like to thank Dr. Mustapha Al-Alami who teaches Comparative Commercial Law in the Law Faculty at the University of Rabat, a colleague and friend who has helped me to obtain reference works on Moroccan Law.

I want to thank my wife. I want to thank also a very dear friend who prefers to remain nameless whose efforts in obtaining and sending material from Egypt in the earlier stages were vital to the work, and who is a constant support. I am grateful to all the members of my family and to my wife's family for their unfailing support.

Finally I would like to acknowledge my father, Sudqi Naman El Alami, who passed away in October 1988. He was a lawyer and my first inspiration. He graduated from the University of Montpelier in the 1920's as one of the first Arab students to graduate from a European university. It was his wish that one of his sons should become a lawyer after him; I regret only that he did not see the completion of this work.

وَمَا تَوَفَّيْقِي إِلاَّ بِالله
Contents

Abstract ......................................................... 11
Notes on transliteration ....................................... 12
Glossary .................................................................. 13
Note on names of some of the Ḥanafī jurists ................. 30
Introduction .......................................................... 31

Part One. The Establishing of the Contract of Marriage
............................................................................. 36

Chapter One. The Prelude to the Contract of Marriage -
Khiṭbah .................................................................. 37

Conditions for the propriety of khiṭbah ...................... 38

Position of the Egyptian and Moroccan Aḥwāl Shakhṣīyyah
with regard to khiṭbah .............................................. 44
Position of the Egyptian Aḥwāl Shakhṣīyyah ............. 45
Position of the Moroccan Mudawwanah ................... 47

Notes to Chapter One. .............................................. 48
Chapter Two. Conditions for the Establishment of the Contract of Marriage ........................................ 52

The form of the contract and the wording by which it may be concluded ........................................ 52
Conditions with regard to the form of the contract ........ 55

The position of the Egyptian and Moroccan Āhwāl Shakhsīyyah with regard to the form of the contract . . 66

Conditions with regard to the subject of the contract . . .67

Muḥarramāt min al-nisā' ‘alā ṣifat al-ta'bīd ............... 67
Muḥarramāt min al-nisā' 'alā ṣifat al-ta'qīr ............... .80

The position of the Egyptian and Moroccan Āhwāl Shakhsīyyah with regard to muḥarramāt min al-nisā' ................. 85

Case study concerning riddah ..................................86

Wilāyah ........................................... 91
Wilāyah ījbārīyyah fī al-zawāj .............................. .93
Wilāyah ikhtiyārīyyah ...................................... 99

The position of the Egyptian and Moroccan Āhwāl Shakhsīyyah with regard to wilāyah .............................. 101

The position of the Egyptian and Moroccan Āhwāl Shakhsīyyah with regard to ‘āqīl .......................... .103

The position of the Egyptian and Moroccan Āhwāl Shakhsīyyah with regard to minors and the insane ............ 104

Wikālah in marriage ........................................ 108
The position of the Egyptian and Moroccan Āḥwāl Shakhṣīyyah with regard to wikālah in marriage .... 110

Mahr ........................................................ 111

The position of the Egyptian Āḥwāl Shakhṣīyyah with regard to mahr ...................................... 118

The position of the Moroccan Mudawwanah with regard to mahr ........................................... 119

Shahādah .......................................................... 122

The position of the Egyptian Āḥwāl Shakhṣīyyah with regard to shahādah .............................. 126

The position of the Moroccan Mudawwanah with regard to shahādah ........................................ 129

Kafā'ah ............................................................... 132

The factors which are taken into consideration in kafā'ah .................................................... 133

The position of the Egyptian and Moroccan Āḥwāl Shakhṣīyyah with regard to kafā'ah .......... 139

Notes to Chapter Two ........................................ 141
Part Two. The Consequences of the Contract of Marriage .......................... 170

Chapter One. The Consequences of the Valid Contract ......................... 171

Mutual rights ................................................................. 172

The rights of the husband with regard to the wife .......................... 181

The rights of the wife with regard to the husband .......................... 185

The position of the Egyptian and Moroccan  
Aḥwāl Shakhṣīyyah with regard to the rights which result 
from the contract .......................................................... 201

The position of the Egyptian Aḥwāl Shakhṣīyyah 
with regard to muʿāsharah jinsiyyah .................................. 201

Case study concerning non-consummation of marriage .................... 203

The position of the Moroccan Mudawwanah with 
regard to muʿāsharah jinsiyyah ......................................... 205

The position of the Egyptian Aḥwāl Shakhṣīyyah with 
regard to nasab and wirāthah ........................................... 206

Case study concerning nasab ................................................. 207

Case study concerning establishment of nasab and 
entitlement to wirāthah .................................................... 209

The position of the Moroccan Mudawwanah with regard to 
nasab and wirāthah ......................................................... 213

The position of the Egyptian Aḥwāl Shakhṣīyyah with 
regard to ʿayb .................................................................. 214
Case study concerning divorce on grounds of 'ayb ........ 217

The position of the Moroccan Mudawwanah with regard to 'ayb ...................................................... 221

The position of the Egyptian Aḥwāl Shakhṣīyyah with regard to ṭā'ah ........................................ 222

Case study concerning ṭā'ah ........................................... 225

The position of the Moroccan Mudawwanah with regard to ṭā'ah ...................................................... 229

The position of the Egyptian Aḥwāl Shakhṣīyyah with regard to nafaqah ........................................... 230

Case study concerning nafaqah ........................................... 234
Case study concerning compensatory nafaqah for a divorced woman ........................................... 237

The position of the Moroccan Mudawwanah with regard to nafaqah ........................................... 239

The position of the Egyptian Aḥwāl Shakhṣīyyah with regard to ḍarar ........................................... 240

Case study concerning ḍarar ........................................... 241

Case study concerning ghaybah ........................................... 247

The position of the Moroccan Mudawwanah with regard to ghaybah ........................................... 250

The position of the Egyptian Aḥwāl Shakhṣīyyah with regard to polygamy, qasm, and ḍarar due to polygamy... 251
Abstract

This work is essentially an examination of the conclusion of the 'aqd al-Zawāj according to the shañṭah, firstly from the theoretical point of view, starting with the main sources, the Qurān and sunnah, and comprising the views of the major madhāhib, and secondly from the point of view of its application in practice in two Arab-Islamic countries, Egypt and Morocco.

The work is to consist in two main parts. The first part will comprise the formation of the contract of marriage, from the khitbah, the prelude to the contract, and including its foundations and conditions. One of the ways in which the jurists have traditionally looked at the conditions of the contract is to divide them into what are effectively stages in its completion, that is conclusion, validity, effectiveness and being binding. An alternative method of looking at the contract, however, is to identify its key elements and then to examine the conditions attached to each of these. It is this method which it is intended to follow in the main in this work.

The second part will comprise the consequences of the contract, and this will be divided in turn into two sections. The first of these will deal with the consequences of the valid contract, that is when all the requirements of the contract as stipulated by the shañṭah are met, and the second, the case where some flaw occurs in the formation of the contract, as a result of which the contract is rendered invalid.

Following the theoretical and practical examination of each aspect of the contract, it is intended to illustrate certain points by reference to some case studies from the Egyptian Aḥwāl Shakhṣīyyah Courts.
Note on Transliteration

<table>
<thead>
<tr>
<th>Arab</th>
<th>Latin</th>
</tr>
</thead>
<tbody>
<tr>
<td>ف</td>
<td>f</td>
</tr>
<tr>
<td>ق</td>
<td>q</td>
</tr>
<tr>
<td>ك</td>
<td>k</td>
</tr>
<tr>
<td>ل</td>
<td>l</td>
</tr>
<tr>
<td>م</td>
<td>m</td>
</tr>
<tr>
<td>ن</td>
<td>n</td>
</tr>
<tr>
<td>ه</td>
<td>h</td>
</tr>
<tr>
<td>و</td>
<td>w</td>
</tr>
<tr>
<td>ي</td>
<td>y</td>
</tr>
<tr>
<td>ء</td>
<td>h / t</td>
</tr>
<tr>
<td>ئ</td>
<td>a</td>
</tr>
<tr>
<td>ئ</td>
<td>i</td>
</tr>
<tr>
<td>ش</td>
<td>u</td>
</tr>
<tr>
<td>ئ</td>
<td>a</td>
</tr>
<tr>
<td>ئ</td>
<td>u</td>
</tr>
<tr>
<td>ئ</td>
<td>ay</td>
</tr>
<tr>
<td>ئ</td>
<td>aw</td>
</tr>
<tr>
<td>ئ</td>
<td>i</td>
</tr>
<tr>
<td>غ</td>
<td>gh</td>
</tr>
</tbody>
</table>
Glossary

‘aḍl : The prevention of a woman from marrying (usually by her wali). In the case of a woman with full ahliyyah this is unlawful.

ahliyyah : Eligibility - the full legal capacity to act in legal or financial transactions.

aḥwāl ‘aynīyyah : Financial affairs (from the legal standpoint).

aḥwāl shakhṣīyyah : Personal Status, comprising all that is related to the individual and his personal affairs such as marriage, divorce, ‘iddah, nafaqah, nasab and inheritance. The term arose as a result of the creation of the civil law as a separate branch of law; it was then divided into aḥwāl shakhṣīyyah and aḥwāl ‘aynīyyah (financial affairs, see above).

‘aqd; pl. ‘uqūd : Contract.

arkān : see rukn.
aşl; pl. usūl : Root, origin, source or basis.

aşl : The first element of qiyās, the source which provides the ruling which by qiyās is applied. The source of any Qiyās must be found in the Qur'ān, sunnah or ijmā'.

‘atāh : Mental condition, corresponding approximately to dementia.

‘ayb; pl. uyūb : Defect, physical or mental, in one of the parties to the contract which affects the rulings on the contract.

bāṭil : Void (of a contract)

bulūgh : Maturity or the attainment of the legal majority according to the majority of the jurists, implies puberty, that is when the reproductive ability is attained, on the basis of Sūrah 4, verse 6 (al-Nisā'). If the natural signs have not appeared before then the Sāhibān say that the ages are fifteen years both for boys and girls. Abū
Hanifah says however that it is eighteen years for a boy and seventeen for a girl.

дарار: Harm, prejudice or detriment.

dharā'ah pl. dharā'ī: Means or expedient.

sadd al-dharā'ī: The prohibition of something which may lead to a prohibited action, thus looking at the body of a woman which may lead to the sin of adultery is forbidden.

fāsid: Irregular (of the contract).

faskh: Dissolution of marriage.

ghaybah: Absence. The absence of the husband which in certain circumstances may be grounds for the wife to seek divorce.

ḥadd; pl. ḥudūd: The divinely decreed penalties for certain offences, including adultery and false accusation of adultery. Ḥadd is "God's right", the rightful punishment for an offence against God.
ḥajr : Limitation, restriction, containment. Husband's desertion of the marriage bed; it may be used as a form of rebuke to the wife

hibah : Gift, present, donation, grant.

‘ibādāt : Religious observance.

ibtidā‘ : Initial, primary. Mahkamah Ibtidā‘iyah : Court of the First Instance. This consists of three judges, the senior of these being appointed by the Maḥkamat al-Isti‘nāf (under the auspices of which it functions), or by any local Maḥkamat al-Isti‘nāf under its jurisdiction. This is regulated by Article 9 of Law 46 of 1972 on Judicial Authority and has jurisdiction in any matters concerning the sha‘i‘ah which are not dealt with by the Maḥkamah Juz‘iyyah, thus it attends to final rulings in appeals referred to it by rulings issued by the Maḥkamah Juz‘iyyah. This is according to Article 8 of Law 78 of 1931.

‘iddah : The "waiting period" for a woman
following divorce or widowhood during which she is not permitted to remarry. The period differs for widows and divorcees. This is dealt with in more detail in the main text.

**ījāb**: Proposal. (see also acceptance). The first of the two formal expressions of intention, proposal and acceptance, which must coincide for the conclusion of the contract of marriage.

**ījmāʿ**: The consensus of opinion of the jurists which is taken as a ruling on matters of jurisprudence for which no specific Qur'anic verse or ḥadīth may be found. It rates next to the Qur'ān and sunnah as a source of the sharī'ah.

**īnā**: An oath on the part of the husband that he will abstain from sexual intercourse. If a period of four months passes and this oath is kept then the marriage is dissolved irrevocably.

**istiḥsān**: One of the secondary sources of the sharī'ah. The avoidance of ruling on the basis of precedent due to some factor which outweighs the call for precedent to be applied. Ibn al-'Arabī defines it slightly differently as: "The instance
where it is preferable to reject certain evidence and to admit something which contradicts it in order to be able to reject some other evidence where this is required. It may be desirable to reject certain evidence from convention where there is an *ijmāʿ* which contradicts it, or on grounds of interest or benefit or of avoiding burden or hardship.

**istimtāʿ** : Enjoyment, gratification.

**isti'nāf** : Appeal.

Maḥkamat al-Isti'nāf: Appeal Court. This is located in major cities (Egypt) and consists of three judges, one of whom presides. It is regulated by Article 61 of Law of Judicial Authority. It deals with appeals against rulings of the *Maḥkamah Ibtidā'iyyah* on the basis of Article 10 of the Ordinance regulating the organisation of the *Shari‘ah Courts* of 1931.

**jihāz** : Trousseau, furniture and household goods prepared for the marital home.

**juz'ī** : Partial.

Maḥkamah Juz'īyyah: District Court. This consists of one
judge and its function is to deal with small claims concerning nafaqah for the wife and for children in all its forms, if the amount disputed in each of the forms does not exceed one hundred piastre. This court also deals with initial rulings in the right to custody, the movement of child by the person having custody. Regulation of this court can be found in Articles 5 and 6 of the Draft Ordinance to Statute 78 of 1931.

kafā'ah: Equivalence or equality. The equality of social status required between the two parties to a marriage.

kafīl: Guarantor.

khīṭbah: Engagement.

khiyār al-bulūgh: The "option of maturity", that is the right of a person given in marriage whilst a minor to continue or annul the marriage upon reaching maturity.

khul': Divorce at the instigation of the wife in which she pays a price in return for being released from the contract of marriage.

khulwah: The state of being alone together (of a husband and wife) which carries the same consequences as actual
consummation, whether or not this has taken place.

kitābīyyah: A woman of the Ahl al-Kitāb, the "people of the book," that is those who belong to one of the accepted religions, Judaism and Christianity, which have their revealed books.

lāzim: Legally binding (of a contract).

li`ān: Mutual imprecation. Testimony between husband and wife in the form of customary phrases comprising the accusation of adultery made by the husband, and angry denial by the wife, both repeated four times. The term is taken from the fifth and final expression in which the accuser states that his accusation is true and invokes God's wrath upon himself if he is lying. The accused then denies the accusation and invokes God's wrath on herself if she is lying. The marriage is then irrevocably dissolved. This is used in the case where adultery cannot be proved, as it is necessary to produce four witnesses to do so. Where the li`ān is used there is no punishment incurred for adultery as it is not proved and none for slander of a virtuous woman as would otherwise be the case.
mahall:
Place, site, object

mahall al-‘aqd:
The object of the contract.

mahr:
(also šadāq). Bride-price, paid by the husband to the wife, in either cash or kind. The wife retains the mahr upon divorce, except in case of khul' or divorce on grounds of her misconduct.

mahr al-mithl:
The mahr appropriate to the status of a woman. In cases where the amount is not agreed before the conclusion of the contract, in cases of dispute and certain other circumstances the mahr al-mithl may be applied.

mahkamah:
Court;
see definitions of various courts.

mašlaḥah; pl. mašāliḥ:
Benefit or interest. The principle of benefit is one which is indicated clearly by the Qur'ān. There are different categories of benefit. The first is acknowledged or specific benefit, comprising protection of religion, of the person, of the intellect, of lineage and of property, these being five key features of man's life.

The second category is: mašāliḥ mursalah which is any benefit appropriate to the aims of the shari‘ah but for which there is no specific
evidence.

mawqūf: Suspended. Of a marriage contract, due to a flaw which may be eliminated.

milk: Property, that which is owned or possessed.

milk yamin: That which the right hand possesses.

"mā malakat aymānukum" (Sūrah 4, verse 3,) refers to slave girls over whom their master would have had conjugal rights but who did not have the status and rights of lawfully married free women.

mu'aqqat: Temporary
zawāj mu'aqqat: Temporary marriage. Form of marriage contracted for a fixed period.

mu'āsharah bi'l-ma'rif: Just treatment.

mu'āsharah jinsiyyah: Conjugal relations, lawful sexual intercourse between man and wife.

Mudawwanat
al-Āhwāl al-Shakhsīyyah
al-Maghribīyyah: Moroccan Personal Status Code

al-muḥarramāt min al-nisā': Women with whom marriage is forbidden on various grounds, particularly relationship by blood, by
marriage or by suckling.

muḥsin - ah : Chaste person.

mulḥid; malāḥidah : Atheist.

murtadd - ah : Apostate (See also riddah )

muṣāharah : The condition of being related by marriage.

mushrik: Polytheist, one who denies the oneness of God or ascribes partners to God

mut‘ah : Literally enjoyment or gratification.

zawāj al-mut‘ah : According to the Imāmi Shi‘ah, a temporary marriage for a period specified or unspecified, but involving no mahr, no nafaqah, no ḍiddah and no inheritance. Children of the union are not recognised by the father unless this is stipulated beforehand.

nafaqah: Maintenance (financial).

nāfidh : Effective.

naqḍ: cassation.

Maḥkamat al-Naqḍ : Court of Cassation.

(Egypt) The court consists of five judges and comprises two divisions, one concerned with criminal matters and the other concerned with civil,
commercial and *Aḥwāl Shakhṣīyyah* matters.

An appeal to the *Maḥkamat al-Naqḍ* is not merely a third stage in the judicial process. Its function is a purely judicial one; it does not concern itself with details of the case itself or the establishment of fact, and it does not consider any new evidence. The principle in Egyptian Law is that appeals to the *Maḥkamat al-Naqḍ* may only be made following a ruling of the *Maḥkamat al-Istī'naḥ*; exceptionally however an appeal may be heard against a definitive ruling of the *Maḥkamah Juz'iyyah* or *Ibtidā'iyyah* where this ruling contradicts an earlier definitive ruling by the same court in a preceding case where the parties, causes and subject of the case are identical. On the basis of the Law on Judicial Authority, the *Maḥkamat al-Naqḍ* comprises two general committees, one dealing with civil, commercial and *Aḥwāl Shakhṣīyyah* matters, and one dealing with criminal matters. Each of these general committees consists of eleven judges. If the committee concerned with civil matters wishes to amend a principle issued by the civil division, or one of the other divisions under its jurisdiction, the amendment must be supported by a majority of seven of the
eleven members of the committee. If the committee for civil matters wishes to amend a principle based on several rulings of the criminal division, the two committees must sit together and the amendment must be supported by a majority of fourteen of the twenty two members.

**nasab:** Lineage, descent, kinship.

**nikāh:** Marriage

**Niyābah ʿĀmmah:** The function of the *Niyābah ʿĀmmah* with regard to the various courts, with the exception of *Maḥkamat al-Naqd*, is undertaken by the *Nāʿib ʿĀmm* (Public Prosecutor) or an Assistant Public Prosecutor. The *Niyābah ʿĀmmah* may participate in *Aḥwāl Shakhṣiyah* matters brought before the *Maḥkamah Juzʿiyah*. This is according to Law 628 of 1955, Article1. The *Niyābah ʿĀmmah* may also appeal against any ruling or decision of the Appeal Court.

**nushūz:** Disobedience of the wife.

**qadhf:** Slander or the bearing of false witness (particularly in connection with adultery).

One of the offences for which a ḥadd punishment is applicable.
rukn; pl. arkan : Column, basis, support.

arkan al-aqd : The bases or essential elements of the contract

radah : Suckling

riddah : Apostasy, the rejection of Islam by a Muslim.

safah : Mental or psychological state in which a person is incompetent to handle his own money.

shar; pl. shurūt: A condition, term or stipulation; the imposition of something as obligatory.

shart in-iqād al-aqd: Condition for the conclusion of the contract.

shart shīhāt al-aqd : Condition for the validity of the contract.

shart nafādh al-aqd: Condition of effectiveness of the contract

shart luzūm al-aqd : Condition for the contract to be binding.

shubhah: Judicial error, doubt concerning true facts of a situation.

shīghar: reciprocal intermarriage.

šīhāh : Validity (of the contract).
taḥlīl : Literally "untying". A marriage which upon dissolution makes it possible for an irrevocably divorced wife to remarry her former husband.

talīf; pl. takālīf: Religious duties or observations.

ṭalāq rajī: Revocable divorce.

ṭalāq bā’in bi-baynūnah šughrā : Lesser irrevocable divorce.

ṭalāq bā’in bi-baynūnah kubrā : Greater irrevocable divorce.

thayyib : A woman who is not a virgin, having been married previously and widowed or divorced.

ʿuqūbah; pl. ʿuqūbāt : Punishment.
ʿuqūbāt asliyyah : Fundamental punishments established for certain crimes, such as the death penalty for murder, stoning for adultery, and the amputation of a hand for theft.

ʿuqūbāt badliyyah : Alternative punishments. These take the place of fundamental punishments in certain circumstances. An example of this is the "bloodwit " which may sometimes be an alternative to the death penalty

ʿuqūbāt tabāʾiyyah : Secondary punishments. These are
punishments to which a criminal is automatically liable on the basis of being sentenced to the fundamental punishment. An example of this is that a convicted murderer is automatically deprived of the right to inherit.

`uqūbāt takmīliyyah : Supplementary punishments. These are punishments which may be applied on the basis of the sentence of the fundamental punishment but which must be specified as part of the sentence.

`urf: Custom, convention.
zawāj `urfī: Customary marriage

`uṣbah (coll.); sg. `uṣab: Paternal relations in the male line. Agnates.

wakīl: Proxy.
wali; pl. awliyā' : The guardian who acts on behalf of a minor or any person not qualified to act in legal matters on his own behalf.

wilāyah : Guardianship, the appointment of a person to act on behalf of and in the interests of a minor or other person of limited legal capacity.
wirāthah : Inheritance.

Wizārat al-ʿAdl : Ministry of Justice.

zawāj : Marriage; a derivative of the root meaning pairing.

Zawāj al-mutʿah : See mutʿah.
Zawāj muʿaqqat : See muʿaqqat.

zināʾ : Fornication or adultery.
A note on the names of some of the Ḥanafi jurists.

Muḥammad:
Muḥammad b. al-Ḥasan al-Shaybāni
One of the 'ulamā' of the Ḥanafi madhhab.
b. 132 AH. d. 189 AH.
Lived in Kūfah, pupil of Abū Ḥanīfah.

Abū Yūsuf:
Abū Yūsuf Yafqūb b. Ibrāhim al-Anṣārī al-Kūfī
Known as Faqīh al-Iraqiyin the Jurist of the Iraqis.
b. 113 AH. d. 182 AH.
Pupil of Abū Ḥanīfah.

Al-Ṣāḥibān: Abū Yūsuf and Muḥammad.
Al-Shayhkān: Abū Ḥanīfah and Abū Yūsuf.
Al-Ṭarafān: Abu Ḥanīfah and Muḥammad
Introduction

The principle aims of this work are firstly, to examine the contract of marriage in the Shari’ah, analysing its establishment and the consequences which it entails in theoretical terms, that is according to the main sources, the Qur’ān and Sunnah; secondly to examine the practical application of the shari‘ah in the Ḥwāl Shakhṣīyyah Laws of two Muslim Arab countries. I have chosen for this to look at Egypt and Morocco. Throughout the theoretical and practical sections I shall point to the other important sources of the shari‘ah and their influence on the contract, including ijtihād, which was the basis for the formation of the madhāhib, the views of which we shall refer to frequently with regard to the marriage contract. It is well known that the Qur’ān and Sunnah refer in many places to matters concerning the family and in particular, women. The regulation of the contract of marriage appears in the form of comprehensive principles, the definition of which was left to the ijtihād of the jurists and scholars who spared no effort in analysing these comprehensive principles, employing qiyās and other tools of jurisprudence upon them, in order to find solutions appropriate to their societies and to address themselves to developments which occurred in their times.

Thus we find in our hands a great treasure in the form of resources in all the branches of fiqh. It may, nevertheless, be noted that with regard to matters concerning the family, legislators in most Muslim Arab countries have been conservative in their adherence to the fiqh of the madhāhib and consequently, this area of law has remained somewhat detached from the realities which have affected other fields, as may be observed from some of the amendments in Ḥwāl shakhṣīyyah which have been made in response to changing social conditions in Muslim Arab societies. It is in no way intended to imply that any changes which might be made
should involve contradiction or neglect of the Qur’ān or its commands, rather an attempt should be made to overcome the problem of interpretation of the texts and of the views of *ijtihād* in relation to the family. This problem manifests itself in the conservative attitude towards subjecting these texts to the principles of interpretation and *ijtihād* which are applied in other areas.

In the practical areas of the work we shall refer to the Egyptian *Qānūn al-Āhwal al-Shakhṣīyyah* which relies essentially on the most appropriate views of the four main *madhāhib*, and particularly on those of the Mālikis, in matters concerning divorce, and which provides for reference to the most appropriate views of the Ḥanafīs where no specific ruling can be found in the law. We shall also refer to *Mudawwanat al-Āhwal al-Shakhṣīyyah al-Maghribīyyah* which relies on the views of the Mālikis.

Egypt was chosen because it is one of the leaders amongst the Arab Islamic countries in having attempted to produce a comprehensive body of *āhwal shakhṣīyyah* law. The amendments which have been made in this area call for some theoretical analysis, following which we shall attempt to look at the the position of the Egyptian judiciary by examination of some cases which have come before the courts which have involved conflict with the conditions of the marriage contract. Morocco merits attention in that it has drawn up its *āhwal shakhṣīyyah* law in a complete codified form.

This work is to consist in two main parts. The first part will comprise the formation of the contract of marriage, from the *khīṭbah*, the prelude to the contract, and including its foundations and conditions. One of the ways in which the jurists have traditionally defined the contract is in terms of
shurut or conditions, dividing them into what are effectively stages in its completion. The Hanafi jurists specify these as:

*shurūt in*‘iqād, that is, conditions for the conclusion of the contract connected to its basic requirements. This means the tarafān (parties), the šīghah (form) and the maḥall (subject), without which the contract cannot exist;

*shurūt siḥṭah*, that is, conditions of validity of the contract as the basis of its legal consequences, including that the woman should not be muḥarramah and the requirement of witnessing;

*shurūt nafādh*, that is, conditions required for the contract to be effective. This means that the parties should have ḥull ahliyyat al-ada‘ (competence to marry) or be represented by a wali who has wilāyat ibrām al-aqd (the authority to conclude a contract);

*shurūt luzūm*, that is, conditions without which the contract is not binding, such as kafā’ah;

The Hanafi jurists state the hukm al-*aqd* on the basis of the fulfilment or non-fulfilment of these conditions, and specifically make a distinction between the fāsid (irregular) and the bāṭil (void) contract depending on the stage at which the conditions are breached. A feature of their approach to fiqh is their method of analysing and classifying topics in terms of concepts in this way.

The other madḥāhib do not distinguish in the same way between the fāsid and the bāṭil. The Mālikīs look at the contract in terms of arkān or foundations, that is factors required for its very existence in legal terms. These comprise the šīghah, the maḥall (being the tarafān) the mahr and the wali. Certain conditions are then required with regard to all of these without which the contract is bāṭil. The Shāfi‘īs similarly specify five arkān which are the wali, husband, wife, shahīdān (two witnesses) and the šīghah, likewise with conditions attached, whilst the Ḥanbalīs name the
specification of the wife, freedom of choice for the wife, the wali, shahādah (witnessing) and the absence of mawāni (impediments).

Of these treatments of contract, the Mālikī view would appear to be the most logical and the most appropriate as the basis for this text. These factors, the șighah, tarafān, mahr and wali are the fundamental elements essential to the conclusion of the contract; they are of equal importance and there is no substitute for any one of them.

If we then compare the ways in which the Hanafīs on the one hand and the Mālikīs and Shāfiīs on the other look at the contract we find that the former, in making the distinction between the irregular and the void contract, and moreover between the absolutely void and the partially void, the invalid but effective, or effective but not binding, appear to contradict the Islamic principle in the formation of laws in that any action which conflicts with the stipulations of the law cannot be considered valid nor acknowledged as effective. If an action is considered harām or unlawful this implies that the law has given a command forbidding it; this is described in fiqh as a definitive prohibition. Is it then logically possible for such an action to be iarēm and at the same time to be considered valid or effective?

The latter, however, seem to see the conditions of the contract in fairly black and white terms as being all alike and the contract itself as being essentially either valid or not. It seems more appropriate in dealing with such an essentially practical subject as the contract of marriage which is related to everyday life to look at it from the more straightforward point of view of the Mālikīs where the emphasis is on the basic validity or otherwise of the contract, rather than becoming entwined in the philosophical complexities of the classifications of the Hanafīs.
The second part will then deal with the consequences of the contract and will also be divided into two chapters, the first dealing with the consequences of the valid contract which meets all the requirements outlined in the first part, and the second with the invalid contract, that is the case where there is some flaw in the essence of the contract or in the factors attached to it.

We may note that the Egyptian and Moroccan Ḥāwāl Shakhṣīyyah laws have different approaches to the consequences of the contract. Moroccan law specifies the consequences strictly in terms of mutual and individual rights essentially in the same terms as those outlined in the theoretical section of this work. It is not intended to discuss this in detail as to do so would simply be repetition. Egyptian Law does not however specify the consequences in detail, although the same elements are effectively embodied in the law, but provides what is essentially a system for redress in the case where some problem occurs in the contract or in the implementation of its consequences. This based as we shall see to a large extent on the principle of ḍarar.
Part One.
The Establishing of the Contract of Marriage.
Any contract must be preceded by some kind of initial agreement and in the case of the contract of marriage this agreement is the khīṭbah or engagement. Khīṭbah comprises essentially the proposal of marriage made by a suitor to a woman and her agreement to marry him.

In order that the khīṭbah should provide a sound basis for the establishment of the marriage contract, it is important that each of the contracting parties should have a good knowledge of the situation and the character of the other, and for this reason the sharīʿah allows a suitor to see the woman whom he wishes to marry. This is indicated in a hadīth about Mughīrah ibn Shuʿbāh, that when he proposed to a woman the Prophet said to him: "Look at her, for this is appropriate in order to ensure agreement and harmony between you" (1). Jābir is also reported to have said that he heard the Prophet say: "If any of you becomes engaged to a woman and is able to see something of her which makes him wish to marry her then let him do so" (2).

It may be assumed from these hadīth which stress the importance of the suitor seeing the woman he seeks to marry that the same also applies to the woman and that she should also be able to see him, for in the same way that he should be pleased by her appearance, so should she be pleased by his.
The Shāfiʿis are of the opinion that the man should see the woman before the proposal so that if he is not pleased by her appearance there is no injury to her feelings as there would certainly be if the proposal were made and then withdrawn. (3)

Conditions for the propriety of *khīṭbah*.

In view of the fact that *khīṭbah* is a preliminary step towards marriage, it is not permitted for the parties to become engaged unless they are free to marry immediately and without impediment.

With regard to the woman it goes almost without saying that it is not permitted to propose to the various categories of *muḥarramāt min al-nisāʾ*. It may be noted that this applies equally to women with regard to whom the prohibition is temporary, including married women and the *muʿtaddah*. It is not permitted to propose to a woman who is already married on the basis of Sūrah 4, verses 23,24 (*al-Nisāʾ*).(4) Married women are in the keeping of their husbands and, in deference to the rights of their husbands, there is no scope for proposing to them. The details on the rulings concerning the *muʿtaddah* vary depending on whether her *ʿiddah* is following the death of her husband, or divorce. *khīṭbah* during the *ʿiddah* of widowhood is essentially forbidden in deference to the right of the deceased husband that mourning be shown for him and out of respect for the feelings of his family. It should be noted that these are in fact only social considerations and do not relate to any actual infringement of rights, except from this ethical point of view. It is, however, indicated in Sūrah 2, verse 235 (*al-Baqarah*) that there is no sin in suggesting *khīṭbah* or alluding to it in this
case providing that there is no open discussion concerning marriage, or encouragement to the woman to marry (5). Sayyid Quṭb says in interpretation of this verse that before Islam a woman who was widowed used to suffer hardship and maltreatment. She would wear poor clothes and touch nothing pleasant for a whole year. She would then come out and perform various rites such as riding on a donkey. The Qur'ān did away with all this and rationalised the situation by prescribing for her an ʿiddah of four months and ten days so that it may be established whether or not she is pregnant and so as not to injure the feelings of the divorced husband. After this she has complete freedom providing she conducts herself in a normal way within the established bounds of the sunnah. She is permitted to dress in fine clothes, such as are permitted for Muslim women, and she is permitted to accept a proposal of marriage and to marry herself to whomsoever she wishes.

In the case of the ʿiddah of ṭalāq rajāʾ, that is, divorce where the authority of the husband has not been terminated, the jurists are in agreement that proposal either by suggestion or by declaration in this case is not permitted as the legal status of the woman is still that of a married woman (6). With regard to the ʿiddah of ṭalāq bāʾin bi-baynunah ṣughrā, and ṭalāq bāʾin bi-baynūnah kubrā, the Mālikis and some of the Shāfiʿīs are of the opinion that proposal is permissible by means of insinuation as this kind of divorce severs the matrimonial ties and because there is no open declaration (7). The woman will not therefore depend on it and it will not lead to false declaration of the completion of the ʿiddah. The Ḥanafis are of the opinion however that it is not permitted as the Qur'ān forbids it for both kinds of irrevocable divorce. This is because it is feared that it may lead to false declaration of
the completion of the 'iddah even if the proposal is by suggestion.(8).

Evidence for the extent of the 'iddah of widowhood is taken from Sūrah 2, verse 234 (al-Baqarah )⁹ and Sūrah 65, Verse 4 (al-Ṭalāq ).¹⁰ These verses have caused some juristic confusion. The majority of earlier scholars are of the opinion that the 'iddah of a widow who is pregnant is completed when she gives birth, even if this is before the prescribed four months and ten days. There are certain ḥadīth which support this.

It is reported by Umme Salimah that a woman from Aslam by the name of Subay'ah was married and her husband died while she was pregnant. Abū Sanābil ibn Ba'kak proposed to her but she declined to marry him. He said, "By God, it would not be proper for you to marry until you have observed the 'iddah to the later of the two times. She remained about ten days before giving birth and then went to the Prophet who told her to marry (11).

It is related by Ibn Ka'ab that he asked the Prophet, "The 'iddah of a pregnant woman is until she gives birth; does this apply to a woman divorced three times (irrevocably) and to a widow". The Prophet replied, "It is for a woman divorced three times and for a widow." (12)

Al-Zubayr ibn al-ʿAwwām related that Umme Kulthūm was his wife and that she asked him, while she was pregnant: "Be good to me and grant me a divorce." He divorced her and went out to pray. When he returned she had given birth. He said: "How she has cheated me, may God let her be cheated likewise." He went to the Prophet who said: "Her 'iddah is complete so go and propose to her". (13)
Others are of the opinion that the completion of the 'iddah is reckoned as the later of these two times and it is related on the authority of 'Aīî ibn Abī Tālib that this is the case(14). The reason for taking the later date is an attempt to obey both of the above verses . The first of the two verses appears to apply to any woman whose husband has died, whether or not she is pregnant, whilst the second applies to both divorced and widowed women. The two verses may be brought together by confining the second to divorced women only, on the basis of the reference to the 'iddah of divorced women at the beginning of the verse.

Where a suitor has proposed marriage to a woman it is a general principle that it is not permitted for another to do so until the matter is settled with regard to the first suitor. The reasoning for this is to avoid creating animosity between the two suitors. If the first proposal is rejected, there is no disagreement between the jurists that proposal by a second suitor is permissible. If however the first proposal is under consideration then the predominant view is that it is forbidden for a second suitor to propose. The evidence for this comes from the ḥadīth related by Abū Hurayrah that the Prophet said:

"A man should not propose to a woman to whom his brother has proposed until he either marries her or gives up his suit." (15)

'Uqbah ibn Nāfi' relates that the Prophet said: "One believer is the brother of another and it is not permitted for a believer to undercut the trade of his brother or to propose to a woman to whom his brother has proposed until he gives up his suit."(16) The majority of the jurists are of the opinion that this is evidence for prohibition (17). Their opinions vary on the conditions of prohibition however as follows.

41
The Ḣanafīs and Mālikīs are of the opinion that it is prohibited for a second suitor to propose in a case where the woman has not replied to the first proposal as this does not indicate non-consent (18).

The Shāfiʿīs and the Ḣanbalīs are of the opinion that it is permitted however and this view is also supported by the ḥadīth. The husband of Fāṭimah bint Qays divorced her three times, after which three of the companions of the Prophet, Muʿāwiyah ibn Abī Sufyān, Ibn Jahm ibn Khuzāmah, and Usāmah ibn Zayd all proposed to her at the same time. She went to the Prophet and mentioned this to him and he advised her: “Muʿāwiyah is a pauper with no money and Ibn Jahm does not leave his stick on his shoulder (implying he beat women); marry Usamah ibn Zayd.” Thus the Prophet engaged her to Usamah ibn Zayd (19).

The fact that the Prophet advised the woman which of three suitors she should choose would seem to indicate that there is no fault in more than one suitor proposing to a woman at one time.

If the first proposal has been accepted, there are two different juristic opinions with regard to whether or not it is permitted for a second suitor to propose. The first view is that of the Zāhirīs and Mālikīs and is that a second proposal is permissible if the second suitor is better in his religion and a better companion than the first. It is is permitted in this case as it is in the best interests of the woman. If however they are equal in their religion then it is not permitted. This view is based on the above ḥadīth about Fāṭimah bint Qays in that the Prophet advised her to marry Usāmah, a black mawlā who was a virtuous man, in preference to Muʿāwiyah who was of Banū ʿAbd Munaf, one of the most distinguished of the Arab tribes in terms of lineage, and who was also a good looking young man. The measure of comparison here is religion which is the ultimate virtue. The second view, which is adopted by
the majority of the jurists, is that a second proposal is not permitted, even if the suitor to whose proposal the woman has consented is an immoral person. This is based simply on the ḥadīth which have already been mentioned which indicate the prohibition of a proposal by a second suitor (20).
Legal views on the nature of *khiṭbah* vary (21). It may be considered to be:

a. a form of contract which binds the parties to effecting a certain result, this being the contract of marriage. In this case the simple breach of the mutual promise would be grounds for redress against the party concerned on the basis of contractual responsibility, unless it could be established that some fault had been committed by the other party which had prompted this withdrawal, or that there was some legal premise on which it was based.

b. a contract which nevertheless either of the two parties have a right to dissolve on legitimate grounds, providing that it is not considered that they are abusing this right and that they are responsible in case of any harm which may be caused as a consequence.

c. an agreement which does not bind the parties either from the contractual aspect or from the point of view of common liability, in other words, even if the breach is due to some fault by the person.

d. a promise which is not legally binding and which entails no contractual responsibility unless its breach is combined with some wrong on the part of the person breaking the promise which causes harm to the other party. He may be called to account for this on the basis that he has committed some act of harm towards the other person which calls for compensation. With regard to *hibāt* or gifts exchanged between parties engaged to be married, where, upon breach of *khiṭbah*, there is a demand for return of such *hibāt* there are two possible ways; the first is by agreement between the two parties, and the second by a qāḍī’s ruling for their return. It is quite reasonable that the jurists should make this condition with regard to return of *hibāt*, if they are intact,
as the giving of *hibah* is in effect a contract of transfer of ownership which is concluded when possession is taken of the *hibah* itself. This "contract" confirms the right of the recipient with regard to the *hibah* which remains his unless it is taken from him by consent or by a legal ruling. The removal of something from the possession of its owner in this way is a subject of disagreement amongst the jurists in that where no legal ruling is made and no agreement reached between the two parties then the right of the recipient remains and he is entitled to do with it as he pleases. He may for example dispose of it by sale. Such actions will be valid even after the matter is taken to a court, providing it is before judgement is made. It does not follow that that there is any guarantee for the donor if the recipient refuses to give up the *hibah* before a ruling is made, or if it is disposed of by the recipient or damaged or destroyed whilst in his possession. The donor has the right only to ask for the return of the *hibah* itself if it is intact, or of its value if it is not.

The position of the Egyptian *Aḥwāl Shakhṣīyyah*.

According to the Egyptian *Qānūn Aḥwāl Shakhṣīyyah* (22), *khīṭbah* is not considered to be a contract to which the parties are held by any binding obligation. It is at most a promise to make a contract and has no force in law. Both parties are entitled to withdraw from this promise. We may ask however about the situation where a *khīṭbah* continues for some time, after which one of the parties withdraws, whether on justifiable grounds or not; does the law provide any form of redress through the courts in such cases? The
following are rulings on some cases brought before the Egyptian courts.

a. Which of the parties has the right to withdraw from *khiṭbah*?

Judgement was made by the *Maḥkamat al-Naqḍ* that *khiṭbah* is merely a preface to the contract of marriage, being a promise of marriage which does not, however, bind either of the parties. Either party may withdraw at any time, particularly in view of the fact that both parties must have absolute freedom in making the contract and because of the importance of marriage in social terms. The prospect of being obliged to pay compensation for breach of *khiṭbah* conflicts with the notion of freedom to marry. If however promise and withdrawal of promise, bearing in mind that they are merely that, are accompanied by actions which are not directly connected, and if these actions then entail some moral or material harm to one of the parties, this would call for some right of redress for the affected party. This is on the grounds that the actions are in themselves, regardless of the breach of *khiṭbah*, actions harmful to one of the parties. (23)

b. Ruling was made by the *Maḥkamat al-Naqḍ* that the conditions of common liability must be fulfilled for damages to be awarded on the grounds of breach of *khiṭbah*. The breach must be accompanied by some unconnected wrongful action on the part of one of the parties which causes some moral or material harm to the other party. It appears from the ruling in this case that the present Appellee had brought a suit for compensation on the grounds that the present Appellant had terminated their *khiṭbah* for no other reason than his designs on the property of the father of his fiancée, who refused to give his daughter her allotted share during his lifetime. The
court considered this to be a reckless breach of *khṭbah* for which there was no justification and ordered compensation for the Appellee. In the appeal it was found that the reason for the withdrawal was connected to the withdrawal itself with no unrelated harmful factor and the initial ruling was therefore wrong in ruling for compensation. (24).

The position of the Moroccan *Mudawwanah*.
The Moroccan Mudawwanah regulates this subject in the second and third sections of *al-Kitāb al-Awwal*. These state that *khṭbah* is merely a promise of marriage, and give both parties the right to withdraw from it. The man may reclaim any *hibāt* which he has given to his fiancée providing that it is not he who has terminated the *khṭbah*. (26)
Notes to Part One, Chapter One

khīṭbah

1. Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; Nayl al-Awtār. part 6, p.109, ḥadīth no.1. Chapter on looking at the makhtūbah (the engaged woman).

2. Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; op cit. part 6, p.110, ḥadīth no.3.


4. Sūrah 4, verses 23,24 (al-Nisā').

5. Sūrah 2, verse 235 (al-Baqarah).
Qūṭb, Sayyid; Fi Ẓilāl al-Qur'ān . vol.1, p. 237.

Al-Ṣābūnī, Muḥammad ʿAlī; Ṣafwat al-Tafsīr; al-Tafsīr al-Manqūl ʿan al-Tabarī. vol.1, pp. 151,152.


7. Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; op cit. part 6, p. 108.


Al-Qurṭubī, Abū ʻAbd Allah Muḥammad al-Anṣārī; op cit. vol.18, pp.157-162.

11. Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; op cit. part 6, pp.286-287, ḥadīth no.1. *Kitāb al-ʿIddād*; chapter concerning the completion of the ʿiddah of a pregnant woman being when she gives birth.

12. Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; op cit. part 6, p.287. ḥadīth no.3.

13. Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; loc cit. ḥadīth no.4.


15. Al-Azādī, Abū Dāwūd Sulaymān ibn al-Ashʿath al-Sajsūtī; *Sunan Abī Dāwūd*. Part 2, p.228. Chapter concerning it being *makrūh* for a man to propose marriage to a woman to whom another man has proposed; ḥadīth No.2080.

16. Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; op cit. part 6, p.107. ḥadīth no. 1. Chapter on it being *ḥarām* for a man to propose marriage to a woman to whom another man has proposed.

18. Abū Zahrah, Muḥammad; *Al-𝐀ھwāl al-Shakhshīyyah*. p. 34 on the Ḥanafī view on proposal to a woman to whom another man has proposed; p. 35 on the Mālikī view; p. 36 on the Shāfī‘ī view.

19. Al-Shawkānī, Muḥammad ‘Alī ibn Muḥammad; *op cit.* part 6, p.108. Ḥadīth No. 1.


25. Al-Jundī, Aḥmad Nāṣir; op cit. p.505. Section on khitbah. Third principle: Principle established by the Maḥkamah Kullīyyah that anything given by the makhtūb to the makhtūbah, where it cannot be considered to be a subject of the contract, should be considered hibah.

653/23 KAF SIN. Tanta. (12/7/1933) MIM SHIN 5/148.

Chapter Two

Conditions for the Establishment of the Contract of Marriage

The form of the contract and the wording by which it may be concluded

The main feature of the form is the mutually understood expressions of intention by the two parties. In view of this, the form comprises two main parts which are ḫāb (proposal) and qubūl (acceptance). ḫāb is the initial expression of intention by one of the parties indicating desire to establish a contract. Qubūl is the expression of the other party indicating his or her agreement to the ḫāb. The person making the ḫāb is called mujib (the one who proposes), whilst the one making the qubūl is called qabil (the one who accepts). ḫāb may originate from either the man or the woman (or her representative), and the word itself indicates the undertaking of obligation. In response to this qubūl then indicates consent to this obligation upon both parties.

It is important that the expressions used should be definite in the meaning which they indicate, that is, they must indicate clearly the desire to marry. The expressions may be strictly literal, thus meaning marriage, or they may be in the form of a metaphor supported by the context such that the wording becomes clearly an expression of this desire. By an expression in strictly literal terms we mean one which contains one of two words, nikāh or zawāj, both of which mean marriage, or their derivatives.
Al-Shāfi‘ī is of the opinion that it is not permitted to conclude the contract without one of these literal expressions on the basis that they show clearly the meaning of this important contract. They are the recognised terms which indicate marriage as a legal contract. The Ḥanafīs have a broader range of expressions by which marriage may be contracted. According to them, it may be contracted by any words indicating the granting of possession with immediate effect without payment, such as the words *hibah* or *mahr*, both of which indicate a gift, providing the context shows that the real intention is marriage. They support this opinion with *Sūrah* 33, verse 5 (*al-Ahzāb*). The same applies to those indicating the granting of possession with immediate effect in return for payment, such as words meaning selling. To summarise the words may take four main forms: 1. Literal expressions meaning marriage; the jurists agree that it is permitted to conclude a marriage by use of these. 2. Expressions indicating the granting of possession without payment such as the expression *hibah*; Abū Ḥanīfah and Mālik permit the expression *mahr*. 3. Expressions indicating the granting of possession immediately, by payment, providing the meaning of marriage is indicated. The Ḥanafī and Mālikī jurists disagree on this point. Those who do see it as permissible hold that what is required is something in the wording which indicates taking possession, this being essential for the physical union to be permissible, combined with something which indicates the real meaning of marriage. 4. Expressions indicating the granting of "usufructory" rights with immediate effect. (1)

The marriage contract is essentially a verbal contract and as such is concluded in the immediately understood spoken language of the parties. Al-Shāfi‘ī is of the opinion that the
marriage contract may not be concluded in a language other than Arabic if the parties understand Arabic and are capable of using it as marriage is encompassed by Islam and Arabic is the language of the Qur'ān. He compares this with the prayer of someone who is not proficient in Arabic which is not valid unless it is pronounced in correct Arabic (2). The majority of the jurists are of the opinion that it is permissible for the contract to be concluded without the Arabic language because speaking in other languages is not forbidden (3). The parties may prefer to speak in such important matters in a language other than Arabic if it is their mother tongue, for example Urdu which is the first language of many Indian Muslims. The jurists stipulate that the language in which the contract is concluded should be understood by the parties and by the witnesses and that the wording should be a clear and definite indication of the establishment of a contract of marriage. The reason for permitting this is that the terms in the contract are only an outward expression of real mutual consent between the parties. What is required legally is the expression of this intention in any language providing that it is a genuine expression of mutual consent. Ibn Taymīyyah is of the opinion that if a contract is concluded in a language which is understood by both parties and by the witnesses then this contract is valid as it is based on genuine consent between the parties and complete understanding between all concerned (4).

The contracting of a marriage in a language other than Arabic is however considered makrūh (reprehensible) for persons brought up to speak Arabic and educated in the language.

If one of the parties is mute then opinion varies depending on whether or not the person is literate. If he is not then the jurists agree that the contract is permissible by means of signs or gestures which convey the meaning of marriage as signs are the simplest method of communication available. If,
however, the person is capable of writing the Ḥanafīs indicate two possible opinions; one is that the contract is not valid by means of signs as writing is a clearer form of communication than gesture and one who is capable of writing should not make do with an inferior medium. There is an opinion however that in view of the fact that the principle of the contract is that it should be verbal, then where a person is not capable of speech there are no grounds for preference between the other forms of communication (5).

Conditions with regard to the form of the contract.

A condition of the form of the contract is that the ṭāb and qubūl should be in agreement, that is, they should correspond in all aspects. If there is some discrepancy in the essence of the contract between these two expressions then no contract can be concluded in this form. This is an improbable occurrence in reality, except that there may be differences in matters of detail in some of the contractual conditions such as the mahr specified (however important this may be it is not part of the essence of the contract).

Moreover, ṭāb and qubūl should coincide, that is, they should take place at a single session or meeting with no significant interruption. If for example the father meets with the prospective husband and says to him: "I marry my daughter [name] to you with a mahr of [amount]", then for the contract to be concluded it is necessary for the reply to be forthcoming at the same session in a form such as: "I have accepted you daughter [name] in marriage at the mahr
specified". A short interruption for some unforeseen reason is not seen as terminating the meeting for the contract which may be concluded in these circumstances providing there is not forthcoming from either of the parties anything which might indicate rejection of the contract. Where such interruption occurs and it is necessary to make a distinction between that which constitutes an objection to the ṭāb and therefore cancels it, and that which does not then guidance must be sought from ṭurğ (custom). Furthermore, the ṭāb must remain valid at the time of acceptance. If for example the father withdraws his ṭāb before the qubûl is forthcoming then no contract can be concluded by these expressions. (6)

The contract may occasionally be concluded by a single expression. The marriage contract is distinguished from other contracts in that one person may have the authority to conclude it where this person has the authority to act on behalf of both parties. Al-Shāfi‘ī is of the opinion that the contract may not be concluded by a single person as different but complementary consequences affect the two parties and it is incongruous that one person should be answerable for both parties. On this subject we find a ḥadîth of the Prophet: "Any marriage not attended by four persons is fornication; the groom, the wâlî and two upright witnesses." Exception is made for the one case where the contract could be concluded by a single expression, that is, where a grandfather marries one of his grandchildren to another, for example if he marries the daughter of a deceased son to the son of another deceased son. The Ḥanafîs and particularly Abū Ḥanîfah and his adherents are of the opinion that the contract of marriage should be excluded from the principle stated in the above ḥadîth and that a single individual may take over the whole process with a single expression. The Ḥanbalîs agree with this on the basis of a ḥadîth that ‘Abd Allah ibn ‘Awf said to
Umā Hàkim bint Qārid: "Do you give me the authority to act on your behalf." She replied: "Yes" and he then said: "I marry you". Moreover, it is related on the authority of 'Uqbah ibn ‘Āmir that the Prophet said to a man: "Do you consent that I marry you to so and so?", he replied: "Yes". The Prophet then said to the woman concerned: "Do you agree that I marry you to so and so?" She replied: "Yes", and so they were married. In the first of these cases the marriage was concluded by a person taking two functions, action on his own behalf and proxy to act on behalf of the woman. In the second instance, the marriage was concluded by a single expression of the Prophet acting as proxy for both parties.

The validity of such cases is dependent on the legal status of the person making the contract which gives him the authority to take over the contract in this way. Abū Ḥanīfah specifies for the validity of the contract that the person making the contract should have the legal authority to do so, whether this be a unified authority consisting of wilāyah over both of them or proxy to act on behalf of both, or whether it is a different form of authority with regard to the two parties, such as personal authority to act on his own behalf on one side and wilāyah on the other, or wilāyah of one party and proxy for the other. A man may marry his minor son to the daughter of his deceased brother if she is under his wilāyah. He may marry a man and woman who have both given him their proxy to marry them. He may marry himself to his cousin who is under his wilāyah, or to a woman who has given him her proxy for marriage, or he may marry his daughter to a man who has given him his proxy. Beyond these instances there is some difference of opinion amongst the Hanafīs in the instance where the one acting does not have the authority with regard to the two parties, or where he has authority but the marriage is unsolicited. Abū Yūsuf considers the latter case is valid but mawqūf (suspended) with regard to the party who has not requested the marriage. Abū Ḥanīfah and Muḥammad
are however of the opinion that it is not valid, the
distinction being that where he has a legal capacity, the
agent actually takes the place of the party concerned and
speaks on his behalf, thus where he does not his actions are
invalid.(7)

The first of the specific conditions is that it should be
indicated in the form of the contract that it is to be
immediately effective, that is, the consequences should
come into effect immediately rather than being deferred or
suspended upon some condition. In certain circumstances a
marriage suspended upon a condition may be valid, for
example the man may say to the woman: "Marry yourself to
me", and she may reply: "I marry myself to you providing my
father agrees". The validity of this contract will depend on
the fulfilment of the factor upon which the suspension is
based at the time of the suspension. If the factor is
unfulfillable then the contract is not concluded. If, however,
it is fulfilled immediately, for example where the man says
to the woman: "If your father agrees to your marriage then I
marry you", if she then accepts, and if her father is present
and agrees, then the contract is valid. The suspension is
merely formal and in reality the contract is immediately
effective as the condition is fulfilled at the time. In the case
of deferred marriage, however, where the müjib defers the
contract to some time in the future, for example if the man
says: "Marry yourself to me at the beginning of next year",
and the woman accepts, then the contract is not concluded at
this time or at the future date as it is intended that it should
give an immediate right to physical union. Deferred marriage
is not valid, therefore, as its consequences do not come into
immediate effect. It is in effect only a promise of marriage,
not an actual marriage, and as we have already noted with
regard to kḥiṭbah this is not considered binding.
The second of the specific conditions of the form of the contract is that it should indicate that the marriage is intended to be permanent. This is required in view of the fact that the objects of the contract are to make cohabitation lawful on a stable basis, to establish a family and to produce and raise children. The jurists have, therefore, ruled certain kinds of contract invalid due to their contradiction with the principle of permanence. These include *mut*‘ah and *mu‘aqqat* marriage (8). The jurists have given considerable attention to these two forms of temporary marriage. The Shi‘ah take as evidence for the permitting of *mut*‘ah marriage the expression *istimtā`, which appears in *Sūrah 4*, verse 24 (*al-Nisā‘*) (9). They define it to mean in law only a temporary contract, although its basic literal meaning is enjoyment or benefit. It is not unusual for a word to have a literal meaning and a customary legal meaning which is taken to be the "real" meaning. They adduce from the same verse that it is permitted to take possession of women by means of money, whether it be by permanent or temporary contracts. This is in addition to their saying that there is a discrepancy in the Prophet forbidding *mut*‘ah after originally permitting it, there being nothing in the Qur‘ān to support the forbidding of *mut*‘ah.

The majority of the jurists are agreed that at the time of the foundation of Islam *mut*‘ah was permitted and that it was permitted and forbidden alternately, until eventually it was forbidden permanently as the majority of the Companions and of the succeeding generation were of the opinion that it was not valid. There is considerable evidence to support this view. The dependence of the Shi‘ah on *Sūrah 4*, verse 24 (*al-Nisā‘*) , for example, relies on the literal surface meaning and ignores what appears in the same surah where it is indicated that marriage is permitted to women, other than those forbidden,
as pure and decent wives, in charity not in lust, and inasmuch as a man benefits from them so he should pay them the mahr which is rightfully theirs. The sense of chastity and purity is confirmed in the same Sūrah, verse 25, which states that for those who are not able to marry free women due to straitened means, there is no fault in marrying a slave in a genuine legal marriage(10). Further support for chaste marriage is found in Sūrah 23, verses 4, 5 (al-Mu'minūn) (11).

The evidence for the legitimacy of mutʿah which is taken from the Sunnah is inappropriate in that it relies on a permission given as a matter of legal expediency in extreme circumstances on certain expeditions; Ibn Masʿūd relates: "We used to go on campaign with the Prophet without our wives and we asked him: 'Shall we not castrate ourselves?' The Prophet forbade this and permitted us to seek gratification; a man would marry a woman by [providing her with ] clothes for a certain period"(12). This was before the revelation of the above verses from Sūrah 23. Further confirmation may be found in Sūrah 24, verse 33, (al-Nūr) (13). There is moreover an ijmāʿ that mutʿah is forbidden the earlier permission having been abrogated. This is agreed to also by Abū Jaʿfar Muḥammad al-Baqī and Abū ʿAbd Allah al-Ṣādiq, two of the imāms of the Shīʿah(14). Some of the jurists, including the Hanafīs, have attempted to distinguish between mutʿah and muʿaqqat marriage on the basis that the latter is established in the usual form of the marriage contract with the simple addition of something to indicate that it is temporary. The majority of the jurists, however, are agreed that temporary marriage is invalid as it is a kind of mutʿah, or at least it is the same in effect. Moreover the addition to the form of the contract of anything which indicates that it is to be temporary makes the contract immediately invalid as this contradicts the fundamental principle of the permanence of the contract.
There is some dispute amongst the jurists in the case where the expressions which comprise the form of the contract do not represent the true wishes of the contracting parties. The jurists are divided between two main opinions on this subject. The Shāfi`īs are of the opinion that it is the apparent intention as expressed by the parties which should be accepted in general, whilst the majority of the jurists are of the view that on the whole it should be the true intention. This subject may however be divided in turn into four main branches on which the rulings differ.

The first of these is the situation where the expression cannot be taken to represent any true intention. Examples of this are the case of a minor who has not reached the age of rationality, an insane person, and an unconscious person. The words of these individuals cannot be taken to establish any obligation on the grounds of the lack of rationality in real terms in the case of the insane person, and in legal terms in the case of the minor as in the case of the unconscious person. On this issue evidence is taken from a report that the Prophet said: "Ruling should be held over with regard to three categories of person, the sleeper until he awakes, the insane person until he regains lucidity, and the minor until he reaches maturity" (15). On the basis of this the jurists derive rulings with regard to a contract made by an intoxicated person, by a person who makes an error, and by one who forgets(16). There are two main views with regard to this. The first is that the intoxicated person is not aware of what he is saying and his intention whilst he is intoxicated is non-existent. According to Aḥmad ibn Ḥanbal his words do not establish commitment. His intoxication provides the contextual evidence for this. The same applies to all contracts, including sale, and the validity of divorce. He does, however, remain obliged to fulfil the takālīf or
religious observations and is considered blameworthy if he neglects the performance of these (17). The second view, held by the majority of the jurists, is that the intoxicated person should be excepted from this ruling and that his words should be taken to establish obligation in all contracts and undertakings, as a form of rebuke to him.

Some of the jurists make a distinction with regard to unlawful intoxication in that the individual inflicts it upon himself by choice knowing of its results and they therefore bind him by his word in all his actions. He remains then obliged to fulfil all takālīf, in that he is essentially rational and has affected his own reason by an unlawful action. In the case of someone whose rationality is affected by some intoxicating substance which is not unlawful, such as an anaesthetic, he cannot be bound by the consequences of words uttered whilst he is unconscious as he has no true intention and the circumstances provide him with a valid excuse.

A further case is where the individual makes an some error or forgets and utters an expression undertaking obligation. Ibn Ḥazm, al-Shāfi‘ī, Aḥmad and the Mālikīs are of the opinion that it is not binding with regard to divorce as there was no true wish or intention (18). Providing that the circumstances support, this then the intention and consent are considered non-existent on the basis of Sūrah 33, verse 21 (al-Ahzāb) (19). Further evidence is derived from the words of the Prophet: "May my nation have error, forgetfulness and all that is against its will removed from it." The implication of this is that they look to the true intention. The Ḥanafīs however look to the apparent intention except where there is strong contextual evidence indicating the real intention.
The second type of situation is where the expression is uttered in circumstances where there is no intention to establish a contract. Examples of this are the case where a person is prompted by another to utter an expression which he does not understand, the implication of which may be a proposal of marriage, which the other person accepts. This can have no consequences and no contract is concluded by it. There is however a group of Ḥanafī jurists who say that this is valid in the case of divorce, manumission of a slave and marriage. They take as evidence for this a ḥadīth of the Prophet: "There are three cases which must be taken seriously whether they are made seriously or in jest: marriage, divorce and manumission." (20)

The third type of situation is where the intention to establish a contract is expressed but there is no genuine desire for this in reality. Examples of this are the expression of someone who is making fun or pretending (21). If the expression is uttered but the person is merely jesting and there is circumstantial evidence for this, then the Ḥanafīs, the majority of the jurists, and the Mālikīs and Ḥanbalīs are of the opinion that such expressions cannot be a basis for legal consequences with the exception of the three cases cited in the ḥadīth above. They hold that the expression is void in the cases which are not excepted, because there was some indication between the parties that there was no real intention. (22) In such a situation intention is non-existent.

Al-Shāfiʿī supports acceptance of the apparent intention in all contracts and bases the legal rulings upon them simply on their form and the fulfilling of the arkān and shurūṭ without looking at the true intention provided there are no expressions giving a clear indication that there is no desire to effect the contract. It is assumed that the two really mean the expressions which they utter and they are capable of free
choice. The only exception to this is where one person utters the expression in error.

The case may occur where a mahr higher than the true mahr is announced for reasons of prestige. If for example the parties marry for a mahr of ten pounds and make it known at their wedding that the mahr is one hundred pounds, then according to al-Shāfi‘ī the ruling as to payment should be the stated amount with no reference to the amount secretly agreed upon. The majority of the jurists, however, bind the parties to the amount which was actually intended with no reference to the boasted amount. This is similar to the instance where a sale takes place but the price made publicly known is not that agreed on by the contracting parties. A house may be sold, for example, for one thousand pounds and the contracting parties may conspire to say that the price was different to this. They may for example wish to say that it was higher than it was in reality, for example one thousand five hundred pounds, in order to avoid the ḥaqal-shufah, the neighbour’s right of first refusal to buy a neighbouring property providing he can pay the asking price. If the parties dispute thereafter about the sale price, al-Shāfi‘ī is of the opinion that they should be bound by the price stated publicly, whilst the rest of the jurists are of the view that if there is supporting evidence they should be bound by the real price. (23)

A second category under this heading is the contract produced by coercion, that is, the case where a person uttering an expression of intention is pressurised to do so in order to avoid some harm threatened by another. A condition for this is that the person making the threat should be capable of fulfilling it. The jurists are in agreement that a contract made by coercion cannot have any consequences, the only exception being that the Ḥanafīs are of the opinion that the contract may be concluded in this way, but it is then
suspended upon the freely given consent of the contracting parties in circumstances where the coercion has ceased.

The fourth type of situation is the case where the intention of the contract is to achieve some aim which cannot be achieved by any other means. In this case, the parties express the intention to establish the contract seriously and without coercion, using the types of phrase which essentially convey this meaning, and desiring it to be effected in order that some other ruling may be effected where this is the only means to this end. They desire the reality of the contract, but not for its own sake. An example of this kind of situation is zawāj al-tahlīl (24).

From the above we may conclude that the jurists are divided on the subject of the apparent and the true intention and the expressions which convey these into two main groups. The Shāfi`is are of the view that it is the apparent or ostensible intention which should be taken into consideration. In the case of a person making an error, this person does not intend what he says in his expressions and they are, therefore, of no effect whatsoever. Some of the Ḥanafis tend to support this and take as evidence for this the principle in fiqh that the rulings on all worldly actions depend on apparent intention because in matters which are concealed only God knows the truth. Thus where contracts are concerned rulings must be made according to the people who make them and their expressed intentions. If the conditions of the contract are met then it is valid and there is no necessity to investigate this further.
The Position of the Egyptian and Moroccan ﺃ hWndāl Ṣhakhṣīyyah with regard to the form of the contract

If we compare the conditions stipulated by the jurists with the ﺃ hWndāl Ṣhakhṣīyyah in Egypt and Morocco, we find firstly that the Egyptian law takes its general principles from the Ḥanafīs. The spoken expression is the basis for the formation of the contract and where this is impossible writing may take its place. Where a contracting party is capable of neither of these then he may use signs or gestures which are clearly understood. This may be deduced from Article 280 of Draft Ordinance 78 of 1931 (25) which states that rulings are made on the basis of what is contained in this Ordinance and in areas not specified by the law applicable in the shari‘ah courts, the most appropriate opinions of the Ḥanafīs, according to specific principles. Suspended, deferred and mut‘ah marriage take the same ruling, that is that the most appropriate opinion of the Ḥanafī madhhab should be applied.

The Moroccan Mudawwanah says that the marriage contract is concluded by ījāb from one of the parties and qubūl by the other by means of expressions indicating marriage either literally or according to custom. Paragraph 2 indicates that the ījāb and qubūl are valid in the case of those incapable of pronouncing them, either by writing, or if this is not possible, by means of gestures understood to mean marriage (26).
Whilst the Egyptian and Moroccan \textit{Ahwāl Shakhşiyyah} are essentially in agreement with regard to the subject, it may be noted that they differ from the point of view of form, in that the \textit{Mudawwananah} gives clear rulings on this whilst the Egyptian law provides for reference to the most appropriate view of Abū Ḥanīfah.

**Conditions with regard to the subject of the contract**

It must be established first of all that the parties to the contract are a man and a woman, free of impediments. There are then certain conditions with regard to each of these. With regard to the woman it is required that she should not be prohibited to the man, that is, she should not be amongst the \textit{muharramāt min al-nisā' } (women who are forbidden in marriage).

A woman may be forbidden in marriage either permanently, for instance in the case of a mother, daughter, or sister, or temporarily, for example the wife of another man or a pagan woman whilst their circumstances continue. In both cases the prohibition is absolute and a contract made with one of these women is void as the woman is basically ineligible for marriage.

\textit{Muharramāt min al-nisā' ‘alā šifat al-ta'bīd}. Women permanently forbidden whom a man is never permitted to marry are those to whom some factor applies which cannot be changed, such as the relationship between parent and child or brother and sister. There are various factors which preclude marriage. The first of these is \textit{nasab} or blood relationship.
The basic evidence for prohibition of marriage *muḩarramāt bi sabab al-nasab* is found in *Sūrah 4*, verse 23 (*al-Nisā*). (27) The reasoning for the prohibition of marriage to these women is that marriage between such relatives would corrupt the honourable relationships already existing between them. These relatives enjoy paternal or maternal love, filial reverence or brotherly companionship which stem from the sharing of blood. Marriage between these would then corrupt these relationships as they would contradict each other. A second factor is that marriage between close relatives may result in defective offspring. The Companions of the Prophet noted this. `Umar ibn al-Khattāb said to the clan of Ṣā'īb whom he saw marrying amongst themselves: "You have weakened yourselves; go and marry foreigners!"

The verse above specifies the relationships which preclude marriage which may be summarised as follows: (28)

a. Women from whom the man is descended, to whatever degree removed. Thus it is forbidden for a man to marry his mother or either his paternal or maternal grandmothers.

b. Women descended from the man, to whatever degree removed. Thus it is forbidden for a man to marry his daughters or the daughters of either his sons or his daughters.

c. Women descended from the parents of the man, to whatever degree removed, that is his sisters or the daughters of either his brothers or his sisters all of whom are mentioned specifically in the verse.

d. Women descended from the maternal or paternal grandparents of the man in the first generation, that is his *‘ammāt* (paternal aunts) and his *khālāt* (maternal aunts). Women in the succeeding generation, that is, the cousins of the man, are not forbidden however and this permission is indicated clearly in *Sūrah 33*, verse 50 (*al-Ahzāb*) (29).
There is some disagreement about whether or not an illegitimate daughter is forbidden to the father. The Shafi`is are of the opinion that if a man commits adultery with a woman and this results in the birth of a daughter she is not forbidden to him as she is not related to him legally (30). She is not entitled to inherit from him, nor is he obliged to pay maintenance for her, thus her status with regard to him is the same as any other woman who is not related to him. The majority of the jurists, including the Hanafiys, Hanbalis and Malikis are however of the opinion that she is forbidden to him on the grounds that whatever her legal status is, this does not change the fact that she is a female created from his seed and is in reality as much his daughter as is one born within lawful marriage (31). This is the more acceptable opinion; in circumstances such as this the principle is applied that where there is uncertainty as to whether something is permitted or prohibited it should be prohibited as a precaution (32).

The second factor which precludes marriage is musaharah, that is, relationship by marriage. There are two categories musaharah which preclude marriage. The first of these is temporary and an example is that it is not permitted for a man to marry the sister of a woman to whom he is already married so long as he remains married to her. The second is a permanent prohibition which applies to certain relatives of both the husband and the wife and this does not alter even if the first marriage is dissolved.

Evidence for the prohibition of marriage on the grounds of musaharah may be found in Sūrah 4, verse 22(33), and verse 23(34). These verses define women with whom marriage is forbidden and again these fall into four main categories as follows (35).
a. Women from whom the wife is descended to whatever degree removed. This means the mother of the wife and her grandmothers both maternal and paternal and all preceding generations. It may be noted that this prohibition applies even if only the contract has been concluded and consummation has not taken place.

b. The offspring of the wife, to whatever degree removed. This comprises the daughters of the wife and the daughters of her daughters and of her sons and so on however far descended. A condition of this prohibition is that the marriage to the mother has been consummated; this is based on Surah 4, verse 23, which specifies this. The jurists are agreed that the stepdaughter is forbidden to her mother's husband if he has consummated the marriage to the mother, even if she is not under his care, they differ, however, on what strictly is meant by consummation. They also disagree as to whether adulterous intercourse also causes prohibition.

With regard to the ruling on "consummation" which is the cause of prohibition, it is reported that Ibn 'Abbas said: "Consummation means intercourse". Malik, al-Thawri, Abū Ḥanīfah, al-Wazâ'î and al-Layth are agreed however that if he even touches his wife with lust, her mother and her daughter are forbidden to him and she is forbidden to his father and his son(36).

As to whether or not adulterous intercourse causes prohibition in the same way as relationship by marriage, there is no clear ruling to be found on this subject in the verses mentioned above. The mother of a woman with whom a man has committed adultery is not the "mother of his wife", and her daughters are not his "stepdaughters". Al-Shâfi'î says there is no prohibition, the reason being that he distinguishes between lawful and unlawful intercourse. Musâharah is something lawful and it is not possible to apply
the ruling on something which is lawful to a situation which resembles it in some aspects but which is obviously unlawful. Abd al-Malik al-Majishûn is also of the opinion that there is no prohibition, and this would appear to be the most appropriate view, on the grounds of Sûrah 25, verse 54 (al-Furqân) which places great emphasis on lawful relationship. Further support for this opinion may be found in a hadîth related by A’ishah: The Prophet was asked about a man who committed adultery with a woman and then wanted to marry her daughter. The Prophet said: "That which is unlawful (that is the adultery) does not make a lawful thing (the desired marriage) unlawful, only marriage makes it unlawful". (37)

A second view states however that prohibition may be caused, and those who hold this opinion justify it by saying that the above hadîth was not actually spoken by the Prophet himself but is attributable to Ibn ‘Abbâs, who is known to have been against establishing prohibition on the grounds of adulterous relationships. (38) Aḥmâd Ibn Ḥanbal says that this is a view held by the qâdis of Iraq and on the basis of this disagreement about its attribution it cannot be taken as evidence. (39) There is a hadîth that the Prophet said: "God does not look at a man who 'lifts the veil' of a woman and her daughter".

The Hanafis hold that adulterous intercourse does cause prohibition and state as evidence for this that intercourse has no legal consequences simply on the basis of its being lawful or unlawful. A man may have intercourse with his wife at a time when it is forbidden for him to do so, such as if he is fasting or she is menstruating. This would establish prohibition of a woman who is prohibited by mušâharah where consummation is a condition. If a man who does this then separates from his wife it is agreed that he is still forbidden to marry any of her offspring and we may conclude from this that what causes the prohibition is intercourse itself regardless of whether it is lawful or unlawful. Referring back
to *Sūrah 4*, verse 21 the description of something as monstrous and abominable suggests that it is the intercourse which is meant, and not the contract. Lawful consummation prohibits marriage to the daughter on the grounds that there would be a kind of link between the mother and the daughter and the husband will associate relations with one of them with relations with the other. This would also arise in the case of unlawful intercourse(40).

c. The wives of the men from whom the man is descended. This comprises the wives of his father and of his grandfathers. His mother is specified as a woman with whom marriage is forbidden, and the wife of his father is in a comparable relationship to him. It appears that before Islam the Arabs did not consider the wife of the father to be forbidden and that in order to rectify this *Sūrah 4*, verse 22 was revealed. This verse precedes the detailed list of *muḥarramāt min al-nisā’* and applies to the wife of a man's father and the wives of his grandfathers to whatever degree removed as the expression "*aḥā’ukum*" comprises grandfathers. This is confirmed by *ijmā’* (41).

d. The wives of the offspring of the man to whatever degree descended. This comprises the wives of his sons, of his sons' sons and of his daughters' sons and so on(42). The wife of a son is in a relationship to the man comparable to his daughter and is therefore forbidden to him. This is indicated clearly in *Sūrah 4*, verse 23 which specifies "The wives of your sons who are from your loins ", that is, the wives of natural sons (43). This applies equally to all the wives of the offspring of the man whether through the male or the female line. The expression "from your loins" excludes only adopted sons. The practice of adoption was prevalent amongst the Arabs before Islam and *Sūrah 33*, verses 4 and 5 (*al-Aḥzāb*) were revealed in connection with this (44). We may note here that the wife
of a son by *raḍā‘ah* is also forbidden although he is not from his loins.

The third factor which precludes marriage is *raḍā‘ah*. The evidence for the prohibition of marriage on the grounds of *raḍā‘ah* is found in *Sūrah 4*, verse 23[45]. In addition to this there is an *ijmā‘* on this subject which relies on a *ḥadīth* of the Prophet: "That which is prohibited by *nasab* is also prohibited by *raḍā‘ah*"[46]. There are eight categories of women forbidden on the grounds of *raḍā‘ah* and we shall examine these as follows[47].

a. Women from whom the man is descended by *raḍā‘ah*. Thus it is forbidden for a man to marry the foster mother who suckled him and his "foster grandmothers", to whatever degree removed and on whichever side, as is the case with the mother and grandmothers related by blood.

b. Women descended from the man by *raḍā‘ah*. This comprises his daughters by *raḍā‘ah*, and his sons' or daughters' daughters by *raḍā‘ah*, to whatever degree removed.

c. Women descended from the parents of the man by *raḍā‘ah*. This comprises his sisters by *raḍā‘ah* and the daughters of his sisters and brothers by *raḍā‘ah*, to whatever degree removed, and whether they be brothers and sisters by both parents or by either the mother or father alone.

d. Women of the generation immediately descended from the grandparents, that is maternal and paternal aunts by *raḍā‘ah*. It is however permitted to marry the daughters of maternal and paternal aunts and uncles by *raḍā‘ah* as it would be if they were related by blood.
e. The mother of a man's wife and her grandmothers by *radāʿ*ah, to whatever degree removed and whether or not the marriage to the wife has been consummated.

f. The daughter of a man's wife by *radāʿ*ah and the daughters of her children by *radāʿ*ah to whatever degree removed but on condition that the marriage to the mother has been consummated.

g. The wife of the father by *radāʿ*ah and of the grandfather, whether or not the marriage to the stepmother has been consummated.

h. The wife of a son by *radāʿ*ah and of a son's or daughter's son by *radāʿ*ah.

There are certain blood relationships where no corresponding relationship is established by *radāʿ*ah and there is, therefore, no prohibition of marriage. These comprise the following:

(48)

a. The sister of a son by *radāʿ*ah. In this case there is no relationship established by suckling as there is no connection with her in contrast with the relationship between a father and the sister of his natural son as she will either be the man's natural daughter or the daughter of his wife with whom he has consummated marriage and will therefore be forbidden to him.

b. The mother of a sister or brother by *radāʿ*ah. Here there is no relationship established by suckling and she is therefore not forbidden to the man, unlike the mother of a natural brother or sister who is either his own mother or a wife of his father with whom the father has consummated marriage.
c. The grandmother of a son or daughter by *radā`ah*. There is no prohibition here in contrast with the grandmother of a son or daughter related by blood as she will be either the man's own mother or grandmother, or the mother or grandmother of his wife.

d. The sister of a brother by *radā`ah*. There is no prohibition in this case.

We may note that in certain cases the sister of a brother related by blood may not be forbidden to him where there is no *nasab* between them. An example of how this may occur is where there are two brothers who are the sons of the same father but with different mothers, and one of them has a sister from his mother by a different father; in this case the sister will not be forbidden to the other brother. Alternatively there may be two brothers who are sons of the same mother but by different fathers. If one has a sister by his father from a different mother she will not be forbidden to the other brother. There is no relationship between the man and the sister of his brother in these two examples and therefore no grounds for prohibition of marriage.

There are two points with regard to *radā`ah* which have caused some disagreement amongst the jurists.

1. *Mas'alat labn al-fahl*. The question of the "milk of the stallion". (49)

   This is essentially the issue of the relationship between the milk and the man being a cause of prohibition. The jurists have established that this does cause prohibition. If a woman suckles a girl child with milk which she produces due to a pregnancy, then the girl is forbidden to the man who was
the cause of the pregnancy and to certain of his relatives, thus for example she is forbidden to his brother as she is considered to be his neice. The evidence confirming this prohibition is as follows; Ibn `Abbäs was asked about the case where a man had two wives, one of whom suckled a girl and the other suckled a boy, whether it was permissible for the boy to marry the girl. He said "The sperm is the same, therefore there is a filial relationship between them because of this sperm". There is moreover the ḥadīth cited above "That which is prohibited by nasab - is also prohibited by raḍā‘ah ". This includes the father and those connected to him such as his father and sons and confirms that those forbidden on grounds of raḍā‘ah are in corresponding relationships to those forbidden by nasab.

Some of the tābi‘in disagree with this, amongst them Sa‘īd ibn al-Musayyib, ‘Atā‘ ibn Yāsir, al-Nukhä‘ī, and following them al-Shāfi‘ī in one of two opinions(51). They are of the opinion that the reason for prohibition with regard to the man does not stand. If a foster mother suckles a child his flesh and bones are formed from her milk and he may be considered like her child. As for the husband of the foster mother, although it is he who causes the pregnancy which produces the milk, there is no direct connection between him and the child and its flesh is not formed from him. A girl child will therefore not be forbidden to him. They stress also that the prohibition on the basis of raḍā‘ah is intended to be from the side of the mother only and the man is not mentioned in the Qur‘ān, Sūrah 4, verse 23.(52)

2. The second point is whether or not the muṣāharah relationships which cause prohibition may be established by raḍā‘ah as they are by nasab. Some of the Ḥanafi jurists disagree on this and what we shall give here is the opinion of
the majority of the jurists. The predominant opinion is that *muṣāharah* is not established by *radā`ah*. Ibn al-Qayyim quotes in *Zād al-Mā`ād* (53), from Ibn Taymiyyah, that this may be so. He mentions however that the evidence appearing for prohibition on the grounds of *radā`ah*, and the ḥadīth which indicate this do not mention the *muṣāharah* relationship at all. The concepts which are involved in *nasab* and which are the grounds for prohibition do not occur in the case of relationships by *radā`ah*, thus it is not possible to draw an analogy between prohibition between the two. While it is forbidden for a man to marry his mother, his daughters, his sister and his maternal and paternal aunts by *radā`ah*, it is not necessary that the mother of his wife by *radā`ah* should also be forbidden to him, as there is no *nasab* between the two, no *muṣāharah*, and no direct relationship by *radā`ah*.

For *radā`ah* to result in prohibition it should take place during the first two years of infancy (54). This is the view of al-Ṣāḥibān Abū Yūsuf and Muḥammad and Mālik, al-Shāfi`ī and Aḥmad as the Qur`ān sets a time limit when *radā`ah* ends and when the rulings connected to it should also therefore cease to apply. This is specified in *Sūrah 2*, verse 233 (*al-Baqarah*) (55), and in *Sūrah 36*, verse 14 (*Luqmān*) (56).

There is nothing in the texts which are taken as evidence for prohibition on grounds of *radā`ah* to indicate that in order for prohibition to be established it should be a certain amount. The Mālikīs, Ḥanafīs, and Aḥmad ibn Ḥanbal are of the opinion that whether the amount be large or small, it is only required that the milk reach the "jawf" (oesophagus) of the infant. Whilst there are a few ḥadīth where an amount is specified, there is some confusion with regard to them which undermines their reliability (57). Al-Shāfi`ī and Aḥmad are however of the opinion that the amount of suckling which
causes prohibition is five separate feeds, on the basis of a ḥadīth of 'Ā'ishah: "It used to be ten but it was changed to five". This is because the grounds for prohibition are that the foster mother's milk is part of the nourishment of the child which goes to form his flesh and bones and in order to do so it must be a significant amount, that is, it should continue over a period of at least one day, the approximate number of feeds in a day being five. (58)

Dr. Muḥammad Sirḥān is of the opinion that even if the reports on this issue are a subject of controversy, we see that the verse which establishes prohibition was revealed at a time when the Arabs used to have their children suckled in certain quarters and the child would mingle with the people as if with relatives. If the child spent some time with the wet-nurse she would feel that he or she had become part of her family and her husband would have paternal feelings towards the child. A single suckling or a small number of feeds would not establish this.

Certain conditions apply to raḍāʿah concerning the mixing of the milk with other substances and there are detailed rulings on this. The main elements are however that if it is mixed with food and cooked on a fire there is no prohibition as its nature is changed by the cooking. If it is mixed with another liquid, or water or medicine, then if the milk constitutes the larger quantity the prohibition applies but if it is the lesser part it does not apply as if the milk is denatured there is no prohibition. If it is mixed with the milk of another woman then according to al-Shaykhan the ruling applies to the one which constitutes the larger quantity. According to Muḥammad however the prohibition applies to both. Zafraysays that he basis this opinion on the fact that the two milks are from a single species and it is not that there is a majority from one species. The mixing of the milk of one species with
For prohibition to be established it must be confirmed that 
\textit{raḍā`ah} has taken place. Abū Ḥanīfah recognises it to have 
occurred by acknowledgement or by witnessing, but it is not 
established by the witnessing of women alone. This is 
because it is not one of the matters which only women see as 
the husband of the foster mother and men who are within the 
degree of relationship to her which precludes marriage to her 
may see it and witness to it. The Shāfi`is are of the opinion 
that it is sufficient for \textit{raḍā`ah} to be established that it 
should be witnessed by two women. The Mālikīs go so far as 
to say that the witnessing of one woman is sufficient as \textit{raḍā`ah} is a matter which men do not see as it is forbidden for 
them to look at the breast of a woman who is not closely 
related to them(60).

There is a further category of women with whom marriage is 
forbidden permanently. These are women divorced by the 
procedure of \textit{li`ān} who are then forbidden forever to the man 
who divorced them in this way.
The basis for \textit{li`ān} is found in \textit{Sūrah 24}, verses 6-9 
(\textit{al-NUr}). The procedure is intended to provide a solution to 
the situation where a husband accuses his wife of adultery 
but is unable to produce the required number of witnesses as 
stipulated in the same \textit{sūrah}, verse 4 (61). In this way a 
marriage may be dissolved whilst at the same time the 
punishment for adultery is averted as the case is not proved 
and there is no punishment for slander of a virtuous woman 
as would otherwise be the case.
Muḥarramāt min al-nisā' ʿalā ʿifat al-ta'qīt.

This is the case where the prohibition depends on some factor which is not necessarily permanent. Examples of such factors are the right of another man over the woman, the prohibition of marriage to two women who are close relatives at the same time, the case where the husband has previously divorced the woman three times, or the fact that she does not belong to a dīn samāwī.

In the case where another man has a right over the woman, that is, where she is the wife of another man, it is unacceptable both legally and logically even to consider proposing to her. Here the grounds are those outlined with regard to khitbah. A woman observing the ʿiddah, particularly following a revocable divorce is likewise forbidden on the grounds given above concerning the propriety of the khitbah and in order that there be no confusion with regard to paternity if the woman should happen to be pregnant by the former husband. This is indicated in Sūrah 2, verses 228 and 234 (al-Baqarah) (62).

In the case of ʿalāq bāʾin bi-baynūnah kubrā, that is irrevocable divorce where the husband has divorced the wife three times, then she is prohibited to him unless she has meanwhile married another man, consummated the marriage, and been divorced or widowed and completed the ʿiddah. Following this the former husband may make a new contract with her. The evidence for this prohibition is to be found in Sūrah 2, verse 229 (al-Baqarah) and the Sunnah then confirms that this means a proper consummated marriage, not merely a formal contract. (63)
‘Ā’ishah says that a woman came to the Prophet and said: "I was married to Rifā‘at al-Qarzī and I denied my divorce and married ‘Abd al-Raḥmān ibn al-Zūbayr, but it was just like the gift of a garment". The Prophet smiled and said "If you want to return to Rifā‘at, then you must taste his sweetness and he must taste yours". The implication of this is that her marriage to ‘Abd al-Raḥmān ibn al-Zubayr was unconsummated. The Prophet told her that in order for her to be able to return to her former husband after being divorced by Ibn al-Zubayr she must first consummate the second marriage. (64)

The majority of the jurists agree that the second marriage should be consummated.

There is some disagreement about the case where the parties to the second marriage have no intention to make a genuine marriage, but only to make the woman lawful to her former husband. This is known as zawāf al-taqālī (65).

It is forbidden for a man to be married to two women who are within the degree of relationship to each other which, if they were a man and a woman, would make it unlawful for them to marry each other. It is for example forbidden for a man to be married to two sisters at the same time, or a woman and her paternal or maternal aunt. Grounds for this prohibition are again found in Sūrah 4, verse 23, (al-Nisā' ) (66) which specifies the prohibition of marrying two sisters at the same time, and further evidence is found in the ḥadīth. It is related that the Prophet said: "It is not permitted to take [in marriage] a woman and her paternal aunt or a woman and her maternal aunt together," and a further ḥadīth gives the reasoning for this prohibition: "If you do this then you violate your family bonds". (67)

The indication of this is that it is forbidden to marry both at the same time, and likewise it is forbidden to have sexual relations with both as milk yamīn whether it be in one contract or two, and whether or not one is before the other.
It is forbidden for a Muslim man to marry a woman who does not belong to a *dīn samāwī*, one of the accepted religions, Islam, Judaism and Christianity (68). Evidence for this is found in *Sūrah 2*, verse 221 (*al-Baqarah*) (69). The word *mushrik* literally means one who ascribes partners to God or who worships something other than God, but in the terminology of the jurists it comprises everyone who does not belong to one of the divine religions. The prohibition is confirmed by *Sūrah 60*, verse 11 (*al-Mumtaḥinah*), and *Sūrah 31*, verse 3 (*al-Nūr*). (70)

It is permitted for a Muslim man to marry a *kitābiyyah*, a Jewish or Christian woman, as is indicated by *Sūrah 5*, verse 5 (*al-Mā'idah*) (71), *Sūrah 3*, verses 113, and 199 (*al-'Umrān*). These imply that it is permitted to marry a chaste woman from those peoples who have been given a holy book. This view is confirmed by the Companions of the Prophet and the succeeding generation. There does exist however a juristic opinion which supports prohibition of marriage to a *kitābiyyah* and which puts them in the same category as a *mushrikah*. Those who specify this give as evidence *Sūrah 2*, verse 221 (*al-Baqarah*), and in addition *Sūrah 31*, verse 4 (*Lugmān*), interpreting this to mean all non-Muslims (73).

Al-Qurṭūbī argues that there is evidence from the Qur’ān to support the distinction between the *ahl al-kitāb* and the *mushrikīn* as we see in *Sūrah 2*, verse 105, (*al-Baqarah* ) (74).

There is some difference of opinion as to whether or not the permission to marry a *kitābiyyah* is an absolute permission. The Ḥanafīs are of the opinion that this depends on whether the woman is in her own country or in a Muslim country. If she is in her own country, although the contract is valid, it is *makrūh* - *karaḥah tahrīmiyyah* as she will not be subject to the rulings of the *shariʿa*ah. Her husband may be under
pressure to adapt to her way of life which is rejected by Islam and he would expose his children to a religion other than his own. If however the woman is a Christian or Jew in an Islamic country who may be obliged to comply with the *sha"ra*-ah, then it is *makrūh* - *karāhah tanzīhīyah* to marry her. The Mālikīs have two opinions on this. The first is that marriage to a *kitābiyyah* is *makrūh* whether she be a *dhimmīyyah* or in her own country. The second is that it is not absolutely *makrūh* in practice as it is specified in the Qur'ān that it is permitted. They go on to explain that it is *makrūh* to marry a *kitābiyyah* in an Islamic country as she is not prohibited from drinking alcohol nor from attending church. It is she who nurtures the children and there is thus the possibility that they will grow up against their religion. In a non-Muslim country the danger is even greater. (75) According to the Shāfi`is, it is *makrūh* to marry a *kitābiyyah* in an Islamic country and more so in a non-Islamic country under the following conditions:

a. That there is no hope that the *kitābiyyah* will embrace Islam.

b. That the man finds a Muslim woman who is suitable for him.

c. That he does not fear that he will fall into adultery if he does not marry the *kitābiyyah*.

If the man does not find a Muslim woman who is suitable to him then he is permitted to marry a *kitābiyyah* with whom he may live a contented life; also if he fears that if he does not marry her he will fall into adultery then he may marry her to protect himself from this. In essence, if marriage to the woman will bring detriment it is *makrūh* but if it will bring benefit then it is *mandūb*. (76) The Hanbalī view is that it is permissible to marry a *kitābiyyah*.

The marriage of a Muslim man to a *kitābiyyah* must proceed according to certain principles. Amongst these are the requirement for the contract to be notarised before a
marriage official in a special certificate in which the rights of the husband are stipulated. These rulings are read to the wife to ensure that she is aware of her rights and duties in advance and that she agrees to this and is bound by it.

It must be noted that marriage may only take place between a Muslim man and a *kitābiyyah*. Marriage between a Muslim woman and any non-Muslim man is forbidden absolutely whether he be a *kitābī*, *mushrik* or *mulḥid*. The reasoning for this is that a *kitābī* man may lead his Muslim wife away from her religion and the children of the marriage would almost certainly follow their father. Islam tolerates the marriage of a Muslim man to a *kitābīyyah* as the man being the more dominant of the two and the head of the household will be capable of preserving his faith, but it is not possible to tolerate something which turns a Muslim away from faith, or which makes his children non-Muslims. Islam forbids a Muslim man to harrass his wife and force her to change her religion but this is not the case with other religions and in general the man, being the more dominant, will impose his own faith upon his household. (77)

Dr. Nāẓīmī Lūqā says "There is something else which must be said about the marriage of a Muslim man to a *kitābīyyah*, whether she be Jew or Christian, which is that the reverse is prohibited, that is the marriage of a *kitābī*, Jew or Christian, to a Muslim woman. If we recall that Islam recognises the Jewish or Christian woman and does not reject her we know that there is no shame on the *kitābīyyah* wife if she keeps her religion although she is the wife of a Muslim man. However the men of religion of the Jews and Christians reject Islam and the Muslim woman will not be safe in her religion in the protection of a *kitābī*. The matter is not to any extent a matter of discrimination." (78)
The position of the Egyptian and Moroccan Āḥwāl Shakhsīyyah with regard to muḥarramāt min al-nisā'.

If we look at the way this is treated by the Egyptian and Moroccan Āḥwāl Shakhsīyyah we find that in Egyptian Law the most appropriate opinions of Abū Ḥanīfah are applied on the basis of Article 280 of Draft Ordinance 78 of 1931 mentioned above (79). The regulation of these matters is derived implicitly from an Ordinance regulating ma’dhūns issued in a Resolution dated 7th February 1915 and confirmed by a Regulation of 19th July 1934, particularly Article 33 of Section 2 entitled "Duties of ma’dhūns in marriage contracts" (80), the effect of which is that it is the duty of the ma’dhūn before notarising the contract to verify the absence in the both parties of any impediments as established by the shaṭṭah and the law.

The Moroccan Mudawwanah regulates the subject conclusively in sections 25 - 30, al-Kitāb al-Awwal, al-Zawāj; chapter 5, Mawāni` al-Zawāj. The result of this is that there are two types of impediment to marriage, permanent and temporary impediments. Permanent impediments are factors such as nasab, muṣāharah and raḍā`ah These are then dealt with specifically in sections 26, 28 and 29 respectively. (81)

The Egyptian Law does not deal with li`ān explicitly but refers to it in the memorandum to Law 25 of 1929 which deals with certain rulings on divorce, nafaqah, ʿiddah and mahr. The memorandum indicates that the rulings on li`ān are governed by the opinion of the Ḥanafis. (82)

The Moroccan Mudawwanah considers li`ān to fall under the subject of women permanently prohibited in marriage and confines it to this without giving details of conditions and it
is therefore the Mālikī opinion which must be referred to on this subject. (83)

In Egyptian Law, marriage to a kitābiyyah is regulated under Article 280 of Draft Ordinance 78 of 1931 which provides for the adoption of the the most appropriate views of Abū Ḥaḍīfah. The following unpublished case is an example of the way in which this issue is treated by the Egyptian Courts. (84)

CASE STUDY NO. I. (85)

Case study concerning the marriage of a Muslim to a non-Muslim.

(unpublished case)

FACTS OF THE CASE
A summary of the facts of the appeal is that the appellant brought an initial case before the Maḥkamah Ḩaḍīṭiyyah in which she stated that by virtue of zawāj ʿurfī (customary marriage) she was married to the appellee and had borne three sons by him who were born in 1966, 1972, and 1977 respectively. The couple had continued their marital life and the husband had provided for her and her sons. The sons had started school when a long period of disruption to the unity of the family had begun. The father turned away from his sons, with which the family's only source of income ceased, and the appellant had to look for work. She then carefully examined her position and that of her sons in terms of the customary marriage which could, in future, give an erroneous impression. She therefore resorted to litigation by bringing this action with a view to protecting her sons from any such false impression, and requested a ruling to the effect that her husband was the legitimate
father of her sons. In the session held on 26/1/1988, the Mahkamah Ibtidāʿīyyah decided to dismiss the wife's case.

THE COURT RULING

The Court Ruling was base on the fact that the marriage of the plaintiff, who is a Muslim, to the defendant, who is non-Muslim, is void and as such does not establish the legitimacy of any offspring. Furthermore, if she renounced her religion her marriage would be void irrespective of whether or not she had embraced another religion. If she adopted another religion and was then married then the provisions of the shariʿah would not apply in accordance with Ḥanafi jurisprudence as per Article 280 of Draft Ordinance 78 of 1931 which stipulates that the contract which proves the legitimacy of children must be valid due to the damage which can otherwise result from consummation. The marriage of the plaintiff to the defendant was void both before and after apostasy and cannot therefore be used to establish the legitimacy of children. The appellant's case is irrelevant to the shariʿah and the law and the above ruling was therefore made.

The appellant did not, however, accept this judgement and brought a further appeal in which she requested that the earlier appeal ruling be quashed and that a ruling be issued which would establish her children as being the legitimate sons of the appellee for the following reasons:

i. The appeal ruling was wrong as it had deemed the appellant to be a Muslim who had married a Christian in zawāj `urfi. It was, however, proven otherwise as the appellee had declared his Islam before the marriage and had married the appellant, who is Muslim, in zawāj `urfi on 15/1/1965, and their children were Muslims as stated on their birth certificates.

ii. The appellant had not renounced Islam and the documents to this effect submitted by the appellant were not relevant to her.
iii. The *Maḥkamah Ibtidāʾīyyah* had disregarded the documents submitted by the appellant which had not been used in support of her case despite their significance in that they related to the religion of the husband and proof of the children's legitimacy.

She had submitted a file containing documents which included a certificate issued by the Cairo *Aḥwāl Shakhṣīyyah* Prosecution stating that the marriage contract dated 12/7/1971 presented by the appellee in Case No. 1124/1941 brought against the appellant concerning the annulment of the marriage contract had been discredited as a forgery. She had also made a submission in her defence which concluded by requesting that the appeal ruling be quashed. It also requested provisionally referral of the case for investigation to establish that the children were the legitimate offspring of their father, the appellee, and that he had become a Muslim. She also asked for the right to refute as a forgery the church marriage certificate dated 12/7/1970 which was submitted by the appellee before the *Maḥkamah Ibtidāʾīyyah* and discredited as a forgery before Department 16 *Aḥwāl Shakhṣīyyah* North, or for the present appeal to be suspended until a ruling had been made on the documents before the North Court.

The appellee submitted a file which contained the following documents:

i. A true copy of an original document issued by the Orthodox Patriarchy stating that the appellant had submitted a request to embrace Christianity.

ii. A certificate of the church marriage which had taken place between the appellant and the appellee.

iii. An official copy of the minutes of the session dated 21/12/1978 *Aḥwāl Shakhṣīyyah* North which recorded verbatim the appellant's statements. Although she was already a Muslim she had made two confessions of faith. She
had also presented Identity Card No. 27277 which established that she was a Muslim.

Finally a request was made to support the appeal and provisionally dismiss the claim of forgery.

The Niyabah 'Ammah gave its opinion that the appeal should be accepted in form and that the case should be referred for investigation to prove or refute the reasons contained within the submission.

In the Moroccan Mudawwanah this subject is regulated in Section 29, Women temporarily forbidden in marriage; 5. The marriage of a Muslim woman to a non-Muslim man (al-Kitab al-Awwal, al-zawaj; Chapter 5, mawani' al-zawaj). We may note that the Mudawwanah does not deal with marriage of a Muslim man to a non-Muslim woman, but confines itself to the prohibition of marriage of a Muslim woman to a non-Muslim man. (86)

It may be noted that with regard to the man there are likewise certain conditions. Just as the woman should not be prohibited to the man, so he should not be prohibited to her. The subject of prohibition is dealt with in the texts and by the jurists in terms of the women who are prohibited, but it is effectively the same in converse, that is, the prohibition is mutual. It is prohibited for a man to be married to more than four wives at the same time. A man who already has four wives is temporarily forbidden to marry another until his marriage to one of his wives is ended by either divorce or death. Wives in this sense includes women who are observing the 'iddah, thus if a man with four wives divorces them irrevocably, he
is forbidden to marry another until their 'iddah is completed, or until the 'iddah of one is completed if one was divorced before the others.

Evidence for this is found in Sūrah 4, verse 2 (al-Nisāʾ) (87). Further support is derived from the Sunnah. It is related that the Prophet said to Ghaylān ibn ʿUmayyah of Thaqīf who had ten wives when he embraced Islam: "Choose four of them and leave the rest". Qāsim ibn Ḥārith is reported to have said, "I had eight wives when I embraced Islam and I went to the Prophet and told him this. He said: 'Choose four of them.' " (88).

It is specified with regard to both parties that they be free of 'uyūb, that is, physical or mental impairments which constitute impediments to the contract. Such impairments are those which would make married life unfruitful or unsupportable.

The defects which are specified may be divided into those which affect the husband, those which affect the wife and those which may affect both parties. Those with regard to man and woman individually are essentially conditions which affect the sexual capacity or reproductive ability. In men these are jubb (mutilation or amputation of the penis), 'innah (impotence), khisā (castration) and i'tirād (aversion to sexual relations), whilst those with regard to women are defined by the jurists as ratq, qarn, 'afal, ifdā (deformities of the female genitalia) and bukhra (malodour of the genitalia). Those which affect both comprise junūn (insanity), judham and baraq (the two forms of leprosy) and incontinence during intercourse. Of these junūn is dealt with partially under the subject of wilāyah. There are moreover certain conditions which are not in themselves impediments but which one party may stipulate with regard to the other in the contract. These
comprise sawād, qara'ah blindness, having only one eye, and paralysis

In reality it is most often the case that such defects do not become apparent until after the conclusion and consummation of the marriage. In view of this the jurists treat this subject essentially from the point of view of the consequences, that is, in terms of separation of the couple on the grounds of such defects. It may be noted that many of the diseases and conditions specified are nowadays curable and so do not present such a problem. The rulings with regard to them may, however, be taken and applied to modern diseases such as Acquired Immune Deficiency Syndrome.

Wilāyah.

Wilāyah applies essentially to persons who have no ahlīyyah or only limited ahlīyyah. Ahlīyyah is the executive capacity the basis of which is the fitness of a person to bind and be bound (ilzām and iltizām). iltizām indicates that the person is fit to be bound by the rights of another, that is, duty to another and ilzām that rights be due to him with respect to another. There are two divisions of ahlīyyah. The first is eligibility for duty which applies to person merely by virtue of his humanity. The basis of its application is his being a human being, whether he be of age or a minor, and whether he be male or female and this applies to a person until he dies, or, according to the Ḥanafī jurists, after his death until his debts are settled. It progresses with the person along with the stages of development of his life from conception and comprises the stage of being a minor with no legal capacity, then legally capable, then a rational man. In the case of the
unborn child *ahlīyyah* is incomplete as although certain rights may be due to it there is the threat of them being removed as it may not be born alive. The mere fact of birth makes *ahlīyyah* applicable and a person is then fit to be committed to dispositions undertaken by the *wall‘alā al-māl*. The second aspect is the executive capacity or capacity to act on one's own behalf, that is that the person is fit to have rights with regard to his own behaviour and to establish rights for others. This is the capacity of a person to take actions which will be considered lawful. The basis of this capacity is reason. If he is fully rational he has the executive capacity in full, but if he is a minor or not of sound mind this does not apply. A person's life with regard to *ahlīyyah* is divided into three parts. In the first stage, from birth to the age of discernment a person has no executive power as he is not fully rational. In the second stage, that is from the age of reason (that is no less than seven years) to the age of maturity, the person has limited executive capacity which allows him to perform certain actions which are beneficial to him exclusively such as the receiving of gifts and legacies but forbids those which are to his detriment such as the giving of gifts. Other actions which are not defined in either of these two ways depend on the permission of the *wallā*. In the third stage, that is the age of maturity and discernment, a person essentially has full executive capacity. Certain conditions may affect this capacity. These include *junūn* and *‘atāh*, corresponding approximately to madness and dementia respectively, in which those affected have no *ahlīyyah* and are therefore subject to *wilāyah ijbārīyyah* with regard to all of their actions. Other conditions are *saṭāh* and *ghulūlah* which are forms of incompetence in which a person is not capable of handling his financial affairs and either squanders his money or is vulnerable to being cheated. In these cases the person is subject only to *wilāyah alā al-māl* .(89)
Wilāyah is then a vast subject in itself. The important aspect with regard to this discussion is wilāyah 'alā al-nafs with specific reference to marriage. Evidence for the requirement of the wālī is found in Surah 4, verse 35 and in the Sunnah. It is reported that the Prophet said: "There can be no marriage without a wālī"; and "If any woman marries without the permission of her wālī the marriage is void. If the man consummates the marriage then she is entitled to the mahr which made the consummation possible. If they dispute then the authorities will act as the wālī for a person who has no wālī" and "A woman cannot give another woman in marriage, nor can she give herself in marriage. A woman who marries by herself is an adulteress." It is also related by al-Shu`bi. "None of the Companions of the Prophet was more severe on marriage without a wālī than ʿAlī who used to order beating for this." (90)

Wilāyah ijbāriyyah fi al-zawāj.

Wilāyah is the legal authority invested in a person who is fully qualified and competent to safeguard the interests and rights of another who is incapable of doing so independently. It is the authority of the father or nearest male relative over minors, or insane or inexperienced persons who need protection and guardianship. There seems to be disagreement among the jurists on the extent of the wālī's authority and the restrictions on this. (91)

To make this more clear, a distinction must be made between wālī fi al-zawāj and the wakīl (ordinary legal representative).
The former is normally the nearest male relative in whose absence a community official may assume the responsibility. Whether *wilāyah* is considered as a right conferred on, or as a duty assigned to the *wali*, the fact remains that it is ascribed by law and neither party can terminate it unilaterally so long as the conditions calling for it exist. Moreover, a *wali* is qualified only if he satisfies certain requisites. He must be a free Muslim male, of sound mind and of good character. A *wakīl* on the other hand is a person who has agreed through a private agreement to represent another party within the limits of authority delegated to him by the principle party (92). Such delegated authority may include arrangement of marriage, subject to the *wali*. As to who must have a *wali* in marriage, different positions have been taken by the jurists. The general view however is that minors, the insane, and inexperienced irresponsible persons of either sex must have a *wali*, yet the jurists focus on the woman’s need for *wilāyah* and little is said about the need of a man for the same. According to `Abd al-`Ati Hammūdah, this may be due to the fact that men are generally believed to be relatively more experienced. The basic reason for the *wali* acting on behalf of the woman is to protect her interests and her honour and that of her family in that it is improper for a woman to mix in male society outside her immediate family and because the father’s love and care for his daughter are usually taken for granted he is the first man to qualify as her *wali* provided that he meets the other requisites of the *wilāyah*. There is some difference of opinion as to what constitutes the lack of experience calling for *wilāyah ijbāriyyah* to be applied in marriage.

The Ḥanafī view is that it applies to girls who are minors on the basis that as such they do not have full *ahlīyyah* to act for themselves (93). Women have complete freedom in contracts of buying and selling providing they are of age and rational, and
it would thus seem even more appropriate that they should have freedom in the contract of marriage. They produce evidence from the hadith to confirm this. The Prophet is reported to have said: "The wali has no authority over the girl" (94). There is a report that a girl was married to Anas ibn Qatadah but he was killed at Uhud. Her father married her to a man from the clan of Umar ibn Awf but she detested him and complained to the Prophet. He annulled the marriage and she married Abu Lubabah ibn 'Abd al-Mundhir. There is a further report on the authority of 'Aisha that a girl came to her complaining about her father saying, "My father has given me in marriage in order to rid himself of me and this is against my will". 'Aisha said, "Sit down until the Prophet comes". The Prophet came and she told him about what her father had done. He summoned him and then gave the authority to her. She said:

"O, Prophet, I permit what my father has done, but I wanted women to know that their fathers have no authority". (95)

The majority of the jurists reply to the Hanafis on the subject of the comparison between the contracts of marriage and selling that there is a distinction as there is no sphere in which a woman may associate with men and she might perhaps be courted by a man who was not her equal and marry him unwittingly, which would be harmful to her and a disgrace to her family. It is therefore valid to restrain her in the contract of marriage, although not in any other contract. Al-Shafi'i, Malik and Ahmad say that the basis is the virginity of the girl. If she remains a virgin after reaching the age of maturity then the wilayah continues. If however the state of virginity ceases before the age of maturity then the wilayah also ceases, thus if she is married and the marriage is consummated, and if it is dissolved before she reaches maturity, then it is not permitted for her to marry again until she reaches maturity and she may then participate with the wali in choosing a husband.
An intermediate opinion put forward by Ahmed is that wilāyah  
ijbāriyyah with regard to a girl is on the basis both of her 
being a minor and of her being a virgin.

We may note in addition that al-Shāfi‘ī is of the opinion that 
it is permissible for the wali to give an insane woman in 
marrriage whatever her status, minor or mature, virgin or 
previously married, on condition that the marriage be in her 
interest, for example if it is believed that it will cure her 
illness. This power is effectively a duty if it appears that 
there is a need for her to marry, that is to protect her from 
zinā' and preserve her honour. This applies to the insane 
woman who is mature. In the case of the minor it is assumed 
that it will not be necessary, but if it is nonetheless in her 
interests the father and grandfather alone have the right to 
give her in marriage. (96)

The jurists who insist on wilāyah in marriage seem to 
consider that it is a duty rather than a right of the wali, or at 
least a synthesis of both. While the wali has the right to 
conclude a marriage on his ward's behalf and to give his 
consent or object to her unwise choice, it is his duty to 
exercise this right in her best interests and he is enjoined to 
take her wishes into consideration. To fulfil this duty, he 
must have the right to participate in the decision-making 
processes and avail of his experience in helping her. To merit 
this right his ability to exercise it in the best interest of the 
ward must be demonstrated. As a precautionary measure he 
must meet certain moral and personal requisites. These are 
stipulated to ensure that in all probability he will neither 
eglect his duty nor abuse his right(97). In spite of these 
precautions however negligence and abuse do occur but there 
are provisions to cope with such situations. The main 
restriction with regard to this is the prohibition of ‘adl.
Whilst the wali' has the right to give the woman in marriage, he does not have the right of 'adl, that is, to prevent her from marrying without proper justification. We find evidence for prohibition of 'adl in Surah 2, verse 232 (al-Baqarah). In the interpretation of this verse we find that it was revealed with regard to the case of Ma'qal ibn Yäsir who had a sister who was married to Abū al-Dahdah. The latter divorced her and left her to complete her 'iddah. He then regretted this and proposed to her and she agreed but her brother refused to marry her to him. The verse was revealed at this time; Muqāṭil says that the Prophet summoned Ma'qal to him and said to him: "If you are a believer, do not forbid your sister to Abū al-Dahdah." He said "I believe in God", and he gave his sister to him in marriage. Al-Qurtubi is however of the opinion that this is merely evidence that there should be no marriage without a wali'.

Al-Shāfi‘ī does not agree with the attaching of the revelation of this verse to this specific incident, but says that it only orders that women should not be prevented from marrying by those from amongst the awliyā' who might wish to prevent them.

Conditions for the prohibition of 'adl are that the man who proposes to the woman should be her equal and that the mahr should be mahr al-mithl. If this is the case and the wali' then prevents her marriage then this is considered to be 'adl. 'Adl may be considered to be either an abuse of a right, or a failing in duty. The latter view is supported by al-Shāfi‘ī who says that if there is a dispute in a case of 'adl it should be investigated by the authorities and if the wali' is preventing the woman from marrying he should be ordered to allow the marriage. If he does not then it is the duty of the qādi' to give her in marriage or to appoint a different wali' to give her in marriage. He also says that it is a sin for the wali' to prevent marriage. (99)
Some of the contemporary jurists such as Sa‘īd Muṣṭafā say that ‘adl is a failing in duty rather than an abuse of right saying that wilāyah is intended to be in the interests of the person to whom it applies. The estimation of this benefit is left to the wali, according to what he sees to be the fitness or otherwise of the suitor. It is his right not to give in marriage the person under his wilāyah to someone who is not her equal or to object to a marriage and demand separation(100).

The right of the wali, like any other right, is restricted by the requirement that it be used for the purpose for which it exists. If he uses it for other reasons, such as with the intention of harming the interests of the person under the wilāyah or for some profit to himself then this is considered to be ‘adl.

In the case of ‘adl there is some disagreement as to whether the wilāyah should pass to the nearest in line to the wilāyah amongst the ‘ubšah, or to a qādī. The predominant Ḥanafi view is that it passes to a qādī. This is because a dispute amongst the awliyā’ causes the dispute to be placed in the hands of the ruling authority on the basis of the hadith: “If they dispute the authorities will act as walī for the person who has no wali.” Prevention of marriage may be considered a dispute if the wali causing the prevention cannot make the other awliyā’ agree and on the grounds that prevention without legitimate grounds is injustice and the wilāyah for the relief of injustice is in the hands of the qādī. He takes over the wilāyah in place of the wali who prevents the marriage and any contract which he makes has the same validity as if it had been made by the wali.

According to the Ḥanbalīs, if the most closely related wali prevents marriage unjustly then the wilāyah passes to the one following him in the order of precedence and so on and if the most distantly related wali prevents marriage then the
wilāyah passes to the qādī on the grounds of the ḥadīth above.

The basis of wilāyah ijbāriyyah is then concern for the interests of minors and those of limited ahliyyah who come under the same rulings, and the promotion of their welfare. It is ordained for no other purpose than this, and for this reason the walī has no right to use it for any other purpose(101).

The right of wilāyah ijbāriyyah, where it applies, may be exercised only by the ‘uṣbah, that is, males related to the person through the male line, such as the father, son, paternal grandfather, paternal uncle or brother. There is moreover an order of precedence amongst these which defines which of them has the right to take the wilāyah before the other. In the case where there is no ‘ašab there is some disagreement amongst the jurists. The Ḥanafīs are of the opinion that wilāyah may pass to the heirs who are entitled to a statutory portion, or to other relatives and after these to a qādī because the purpose of wilāyah is care for the interests of the person to whom it applies and this may be achieved equally by the other relatives such as the mother or grandmother. Muḥammad ibn al-Ḥassan says however that if there is no ‘ašab the wilāyah passes directly to the qādī. In this case the power is effectively delegated to him by the ruling authority on the basis of the ḥadīth above:

“... the authorities will act on behalf of the person who has no walī”(102)

Wilāyah ikhtiyāriyyah.

The sharī‘ah makes it obligatory that a woman who has full ahliyyah should be asked for her consent before she is given in marriage and forbids that she be married against her will. The jurists differ however on the precise role of the walī in the case of wilāyah ikhtiyāriyyah (103).
The majority of the jurists rely on the Qur'ān and Sunnah for their view that a wali is required to propose marriage and that the woman has no right to make a contract by herself. Evidence is taken from Sūrah 24, verse 32 (al-Nūr) which is interpreted as being addressed to the awliyāʾ, not to husbands as the grammatical form indicates that the intended meaning is "give in marriage". This is in addition to the evidence given above. 

The evidence of the majority of the jurists does not support their view completely as it does not indicate the invalidity of the action of the woman if she gives herself in marriage with the permission of her wali. The extent of what is indicated is that it is not permitted for a woman to take sole charge of the matter of her marriage. The evidence of the Hanafīs likewise only indicates that the wali should give his permission for her marriage, not that he should take sole charge of it. The crux of the disagreement between the Hanafīs and the majority of the jurists is that the majority restrict the freedom of choice of the woman and make her wali share with her in her marriage. This is on the grounds of protection of the right of the wali, and they make it a condition that his opinion be taken before the contract is made so that he may have his wishes fulfilled. (105)

As for Abū Ḥanīfah, he gives the woman freedom in making the contract and protects the right of the wali by allowing him to dissolve it if the marriage is to someone not her equal or if the mahr is less than the mahr al-mithl. (106)

The Ḥāhirīs hold an intermediate view which joins together the opinions above, which is that it is essential in the contract of marriage to have the consent of the woman and her wali. Ibn Ḥazm al-Ẓāhirī supports this saying that the taking of sole charge of the marriage contract by the wali is not permitted, nor is the taking of sole charge by the woman permitted, as the contract does not only join the married couple but their two families. In a contract of this kind the
opinion of the wall should not be ignored; in this way the family relationships are ordered. The Zāhirīs reject the opinion of the Ḥanafīs that she is acting in what concerns her rights alone so long as she fulfills the conditions of kafā'ah and mahr al-mithl. They say that her actions in what concerns herself are connected to the honour of the family and its customs, and this is not the same as her actions in what concerns her money. (107)

The position of the Egyptian and Moroccan Aḥwāl Shakhṣīyyah with regard to wilāyah

In the Egyptian Aḥwāl Shakhṣīyyah, Chapter 1, Article 1 of Decree 119 of 1952 indicates that a wall is either the ward's father, grandfather, or other person who is made responsible for a minor by a decision or ruling of the relevant authority, meaning that it can also apply to the ward's mother. The role of wall is assumed by relatives on the father's side according to the line of inheritance whereby a grandfather, for example, precedes brothers. If there are no relatives on the father's side, the role of wall is assumed by a judge. (108)

There are no specific provisions relating to the authority of a wall in respect of marriage. The attitude of the law however can be seen from judgements issued by the courts. The court of Beni Suef, for example, ruled that the wall in marriage is a mediator and interpreter to whom none of the rights of the marriage contract accrue as it is a contract between the couple concerned only. Hence, as the mahr is a provision of the contract, the wall cannot take possession of his daughter's mahr once she has reached the age of puberty. (348/37 SIN QAF Beni Suef [27/11/38] MIM SHIN 10/167/) (109).
Similarly the *Maḥkamat al-Naqḍ* referred to the fact that a father is both *wali* ḍ al-′an-fs and *wali* ḍ al-′an-fs ḍ al-māl whose role is determined by responsibility for the welfare of a minor (5/35 QAF/22/6/1966/MIM SHIN 17/1427)(110).

The Moroccan *Mudawwanah* defines *wilāyah* and its conditions in *al-Kitāb al-Awwal*, chapter 3: *al-Wilāyah fī al-Zawāj*. Section 11 of this defines the order of priority by which *wališ* are appointed, and in doing so follows the opinions of Mālik. If this order is not followed however, the marriage nonetheless remains valid, as the validity of a marriage is not dependent upon the prescribed order being followed even if it is a duty to do so. It is also stipulated in section 11 that the three conditions to be fulfilled in *wilāyah* are that the *wali* ḍ be male, adult and of sound mind. Section 12 states that, a *wali* ḍ cannot contract a female ward in marriage unless she authorises him to do so, except in the case of *ijbār* stipulated as follows.

1. A woman shall not conclude a contract but shall authorise her *wali* ḍ to do so.
2. A female *wali* ḍ shall appoint as her representative a male *wali* ḍ upon whom she shall depend to exercise contracts in respect of whomsoever is under her *wilāyah*.
3. It is impermissible for a *wali* ḍ, even if he is the father, to oblige an adult woman, even if she is a virgin, to marry without her permission and approval unless it is feared that her morals will be corrupted if she does not marry. A judge shall have the right to oblige her to marry so that she is under the matrimonial authority of a husband who must be of equal status.

The *Mudawwanah* is based essentially then on *wilāyah* being the same in respect of both men and women, the only
difference being that a woman does not exercise her right directly but authorises her wali to contract a marriage on her behalf. The Mudawwanah also regulates the subject of the female guardian and the requirement that she appoint a male representative upon whom she can rely to arrange a contract of marriage(111).

Egyptian Law does not regard the wali in marriage as having the power of ijbār, even if he is the father, other than in the case of those who are minors, or mentally unstable based on the view of Abū Ḥanīfah and the majority of the jurists. The Mudawwanah on the other hand, is based on the independent judgement of Mālik and restricts ijbār to instances where it is feared that the woman concerned will commit the sin of fornication if she does not marry. In order to avoid the father using his right of ijbār arbitrarily, the Mudawwanah gives the right to a judge who may exercise his right in order to oblige a woman to marry so that she is under the matrimonial authority of a husband who is her equal. If a judge does exercise his right in this way, the person who actually contracts the marriage is not the judge but the wali.

The position of the Egyptian and Moroccan Aḥwāl Shakhṣīyyah with regard to ʿaḍl

Rulings in the Egyptian courts have prohibited the wali from forbidding the marriage of his wards. The father's wilāyah ʿalā al-nafs is thus restricted to responsibility for the welfare of his ward. If a ward's welfare is not provided for the wilāyah is withdrawn from the father and the task of
giving the ward in marriage is assumed by a judge if her father has forbidden her to marry for reasons pertaining to lack of kafā'ah or mahr al-mithl.

The authority of a judge to deny a person wilāyah derives from the fact that he has a form of public wilāyah and as such must exercise control over those who have individual wilāyah. A person who exceeds the bounds of his authority may have the wilāyah taken away from him by a judge, who will then legitimately appoint others as wali (187/34 Abdin [19/10/35] TA SIN MIN SHIN 7/230) (112).

According to Section 13 of the Moroccan Mudawwanah, if a wali prevents the marriage of a woman then a judge will order him to give her in marriage, and if he then refuses to do so the judge will then give her in marriage with the mahr al-mithl, to a man of equal status. (113)

The position of the Egyptian and Moroccan Aḥwāl Shakhṣīyyah with regard to minors and the insane

Marriage is usually between persons of sound mind and legal age and accordingly marriages involving minors, the insane and the mentally deranged are invalid unless contracted by the person who acts as their wali according to the order of priority. This remained the case until the introduction of Law No. 57 of 1923, which stipulated that marriage claims would not receive a court hearing if the wife and husband were aged under sixteen and eighteen respectively at the time of the marriage. It also stipulated that unless the couple were of the age specified a marriage contract could not be executed nor legalised in the case of a marriage which had taken place.
at some time in the past. When Law 78 of 1931 regarding the Regulations on the Organisation of the Courts was promulgated, Article 99, Paragraph 5 stipulated that a marriage suit could not be heard if the husband and wife were aged below eighteen and sixteen respectively except by order. The Explanatory Memorandum to the Law included this Article under the title of "Limitation of the Age of Marriage", meaning that marriage cases are heard in accordance with Law 56. However, in order to be accommodating and ensure that rights were preserved, the prohibition was restricted only to cases where one or both of the parties at the time of the lawsuit was under the age specified.

In the Regulations for ma'dhūns, Chapter 2, Article 33a, it is stipulated that a marriage contract concluded before this law came into force cannot be effected or legalised unless the wife and husband were aged sixteen and eighteen respectively at the time of the marriage. Article 34 stipulates that unless a marriage candidate is obviously of legal age, the ma'dhūn or civil marriage official must verify whether the candidate has attained the legal age by means of a birth certificate or other official document which shows the exact date of birth, and failing that, by means of a doctor's certificate which states the date of birth as estimated by the doctor. Such medical certificates must be issued by the district health board, health collective or social centre, and must have a signed photograph of the marriage candidate attached. The certificate must display the seal of the official issuing authority and bear the signature of the doctor who estimated the age of the candidate, whose right hand fingerprints must also appear on the certificate(114).

In the Moroccan Mudawwanah, al-Kitāb al-Awwal; Chapter 2, on the foundations and conditions of marriage, the following sections regulate such matters. Paragraph 6 stipulates that
both spouses must be rational, free of legal impediments and have attained the legal age.
Regarding the marriage of those with mental disorders, Section 7 stipulates that a person who is insane or incapable may marry if a psychiatric report establishes that marriage would benefit treatment, provided that the other party sees the report and is satisfied with it. Judging by the manner in which it is regulated the Moroccan legislator plainly agrees that medical opinion should be sought in the case of mental illness.

On the subject of ahliyyah to enter into marriage, Section 8 stipulates that a young man acquires such ahliyyah once he reaches the age of eighteen. If it is feared however that he is in danger of zinah if he does not marry before this then the matter may be brought before a judge. A girl must be fifteen years old in order to enter into marriage.
This Article is a new piece of legislation previously unknown to Moroccan jurisprudence. In creating such legislation, the main principles which concerned the relevant committee were mašāliḥ mursalah and sadd al-dharāʾi. Accordingly it is stipulated that the spouses should both be of sound mind and of legal age, and that the competence of the marriage should be determined at the time of the contract not at the time of consummation.
A ruling of the Supreme Council stated that a woman is not competent to marry unless she is already fifteen years of age at the time of consummation (Social Chamber Decision No. 5. issued on 15/11/1968 Majallat al-Qadāʾ no. 97, 10th year. March 1969, p. 618)
If it is feared that a young man will have illicit sexual relations or be exposed to the harm of repression and the ailments involved if he does not marry before the age of eighteen then the matter is to be referred to a judge who can give permission for the said individual to marry before he
reaches the age of eighteen. This requires him to be examined by a doctor to ensure that he has reached puberty and will be subject to harm if he does not marry.\(^{(115)}\)

Egyptian law also stipulates the age of marriage as being eighteen and sixteen years for males and females respectively and these ages are also conditional for lawsuits to be heard, but in contrast to the Mudawwanah they are not specified in the conditions for the conclusion of the marriage.\(^{(116)}\)

In the Mudawwanah, al-Kitāb al-Awwal; Chapter 2, Section 9 stipulates that marriage below the age of majority is dependent upon the agreement of the wali. If he does not agree and the potential marriage partners still insist on marriage, the matter is brought before a judge. It may be understood from this Section that all those who have not reached the majority of twenty one must have the agreement of the wali as he has the right to endorse or refuse the marriage of his ward. Hence if the minor remains determined to marry, the matter is brought before a judge who will decide whether to endorse the marriage or refuse it. This is a provisional measure taken by the Moroccan legislator to protect individuals who contract their own marriages before attaining the majority. The wali may, thereafter, attempt to obtain an annulment or divorce by judicial authority. Here the wali is wali ʻalā al-māl rather than wali ʻalā al-nafs whose presence at the marriage contract is a stipulation in that it is a fundamental part of the contract, irrespective of whether or not the girl is a minor or incompetent; so this Section relates to the husband alone since he is the one whose wali must consent to his marriage if he is not of legal age due to the fact that the wali will have the financial obligation of providing the mahr and nafaqah if his ward marries. The wife, on the other hand, does not require her wali ʻalā al-māl to consent to her marriage as she incurs no financial obligations when she marries\(^{(117)}\).
Wikālah in marriage.

Any action which a person may do for himself he may delegate to another to do on his behalf providing that this action is lawful and providing that it is within the power of the wakil or proxy to fulfil it. It is permitted for one person to say to another "I appoint you as my wakil to conclude a contract of marriage." It is a condition however that the first party, the muwakkal, should have the basic capacity to undertake this action. If he has no ahlīyyah or limited ahlīyyah then he is not qualified to appoint someone else to act on his behalf. This is some disagreement as to whether one woman may act on behalf of another in the contract of marriage. The Ḥanafīs however permit a woman to act as wakil to another with regard to her marriage or the marriage of someone under her wilāyah.

It is not specified with regard to wikālah that it should be written, nor is its validity in marriage conditional upon it being witnessed as it is not a part of the marriage contract which is required to be witnessed. It is however preferable that it should be written in order that there be no possibility that it be denied.

Wikālah may take an absolute or limited form.

In a limited wikālah the wakil is charged with marrying the muwakkal to a specific person at a specific mahr and may be either on the part of the man or the woman. If it is on the part of the man and the wakil fulfils his instructions then the contract is effective and the muwakkal is bound by it. If the wakil goes against the instructions of the muwakkal the effectuation of the contract depends on the will of the
muwakkal. If he agrees, it becomes effective, but if he does not then it is void as the wakīl has exceeded the bounds of the wikālah. If he marries him at more than the stipulated mahr then the matter depends on whether or not the wakīl has pledged payment of the excess himself as the muwakkal may not agree to such a pledge as he may not wish to accept this money. If however he marries him with less than the mahr specified then this does not depend upon his consent as his deviation from that which he was charged to accomplish is nominal and there is in fact benefit to the muwakkal.

If the wikālah is on the part of the woman to marry her to a specific person at a stipulated mahr and the wakīl does what she asks then the contract is effective and binding whether or not she has any 'uṣabāt. If she has no wali from the 'uṣabāt then the marriage is effective and binding without being conditional upon kafā'ah or mahr al-mithl as in this case these are her right alone and she is entitled to waive them. If however she has a wali from amongst the 'uṣabāt then the contract is not valid if there is no kafā'ah as she does not have the power to marry herself to someone who is not her equal.

If the mahr is less than the mahr al-mithl then the wali is not bound by it and may demand that it be made up to the specified amount and failing this that the contract be dissolved. If the wakīl exceeds the wikālah by marrying her to someone other that the person specified or at a lesser mahr than that which she specified then the contract is dependent on her consent even if the man is her equal in status.

Absolute wikālah is not restricted to a particular partner or to a specific mahr. If the muwakkal is the man then Abū Ḥanīfah says that this wikālah is not restricted in any way. If the wakīl marries him to any woman whatever the mahr the contract is binding whether the woman is his equal or not and whether she is sound in body or has some defect as this is part of the absolute nature of the wikālah. Abū Yūsuf and
Muḥammad however are of the opinion that the contract is not binding unless the woman is free of defects, is his equal in status, and the mahr is the mahr al-mithl. If the case is other than this it depends on the consent of the muwakkal.

The position of the Egyptian and Moroccan Aḥwāl Shakhṣīyyah with regard to wikālah in marriage

Under the Egyptian Aḥwāl Shakhṣīyyah, wikālah in marriage is closest to the position of Abū Ḥanīfah according to Article 280 of Draft Ordinance 78 of 1931 (118). Indeed the rulings of the courts remain within the bounds of this, including those on wikālah which is a contract independent of the marriage contract and as such it is not required for it to be established as part of the contract. This does not come within the scope of the civil marriage official either, as legally it does not have to be in a session for conclusion of a contract. (30/1946/44 Suhag [20/2/1947] MIM SHIN 21/412/) (119).

In the Moroccan Mudawwanah, al-Kitāb al-Awwal; Chapter 2, Section 10 on wikālah in marriage, a wālī may appoint a representative to give his ward in marriage. The first point under this Section stipulates that the husband may also appoint a representative to make a contract for him. The second stipulates that a judge is not permitted to solemnise the marriage of his own wards or of persons who are of the same lineage as him or who belong to a branch of his family. The content of this section does not differ from the Egyptian law and the principle views of the jurists, since the Mudawwanah adopts the independent judgement of al-Shāfiʿī in prohibiting a judge who is a wālī from solemnising the marriage of his ward in order to prevent such judges from using their authority in their own interests. (120)
Mahr.

*Mahr* is a gift or sum of money given by a man to a woman in consideration of marriage. This is based on *Sūrah 4*, verse 24 (*al-Baqarah*).

*Mahr* is an economic right which the *sharī'ah* gives to a woman and which it imposes upon a man on the basis of a valid contract or in the case of consummation of an invalid contract or *khulwah*. The man is not freed from his liability in this case except by paying what is due(121).

The jurists are agreed that marriage is not permitted without the *mahr* but they are divided between two main opinions, that is, whether the *mahr* is one of the *arkān* of the contract, or one of its consequences.

The Ḥanafīs, Shāfi'īs and Ḥanbalīs are of the opinion that *mahr* is a result of the marriage contract, thus, for example, if a man marries a woman without specifying the *mahr* the contract is valid and the *mahr al-mithl* is then obligatory. The evidence for this is found in *Sūrah 2*, verse 236 (*al-Baqarah*). The reasoning for this is that no blame is attached to a husband who divorces his wife before consummation in the case where the *mahr* is not specified in the contract. In view of the fact that divorce can only take place where there is a valid contract, the implication is that the contract may be valid without the *mahr* being specified. (122).

The second view is that of the Mālikīs, that the *mahr* is an element in the making of the contract and not one of its results. It is a gift which the groom binds himself to give to the bride. The evidence in the Qur'ān which indicates the requirement of the *mahr* is found in *Sūrah 4*, verse 24 (*al-Nisā'*) and *Sūrah 2*, verse 237 (*al-Baqarah*), and further support is found in the words of the Prophet "There can be no marriage without a wali and two upright witnesses."
The Mālikīs regard the *mahr* practically as purchase, as an equivalent for the possession of the woman and the right over her, so that it is effectively the same as the price paid in a contract of sale. This is implied by Sūrah 4, verse 24 (*al-Nisā‘*) which refers to *mahr* as *ujr* in return for enjoyment of the woman. Other jurists such as Kisānī say that its purpose is to promote the lasting stability of the marriage (123).

The *shāfī‘ah* lays down no maximum or minimum amount for the *mahr*, but the jurists have at various times drawn conclusions about its amount (124).

The Shāfī‘īs and Ḥanbalīs are of the opinion that it need not be a fixed sum, rather that it is left to the agreement of the two parties. The *mahr* is valid in any legitimate commodity, so long as it has a monetary value. Evidence is again taken from Sūrah 4, verse 24 (*al-Nisā‘*). The verse specifies that the *mahr* be in money or property, but does not specify an amount. The word *amwāl* is used without being defined and may be applied to a large or a small amount (125).

The Ḥanafīs say that the minimum is ten dirhams or that which has the value of ten dirhams (126). They take as evidence to support their opinion the ḥadīth of the Prophet: "Nobody may give a woman in marriage except the *wali*, and marriage may not take place unless there is *kafā‘ah* or if the *mahr* is less than ten dirhams. There is also the ḥadīth related on the authority of al-Dār Qutnī that ‘Ali said, “A hand may not be cut off for less than ten dirhams, and the *mahr* may not be less than ten dirhams" (127).

The Mālikīs are of the opinion that if the *mahr* is in something material then it should not be less than three dirham (128).

These juristic rulings would have been based on the prevailing economic circumstances at the times and in the places in which they were made.

With regard to the upper limit, there was an attempt by ʿUmar to set a maximum based on the practice of the Prophet
who never gave any of his wives more than twelve *awqīyyah* of gold. A woman stood up and told ‘Umar that there is no upper limit and recited the Qur'anic verse which indicates this. ‘Umar replied: "A woman is right and ‘Umar is wrong". (129)

The *mahr* may take two forms. The first is *mahr musammā*; this is specified at the time of the contract or afterwards by agreement between the parties. If the contract is made without specifying the *mahr* and the parties agree afterwards upon a specific sum then this is the *mahr* required, providing what is specified is valid. The second form is *mahr al-mithl*, that is the *mahr* which is appropriate to the status of a woman and is reckoned to be the *mahr* of a woman who is her equal from her father's family or from another comparable one at the time of the contract. The comparison is made on the basis of the characteristics which make her desirable as a wife, such as religion, manners, intelligence, education, beauty, age and virginity.

There are certain circumstances in which the *mahr al-mithl* is required, as follows;

a. Where a valid marriage contract is made with no *mahr musammā*, whether this be simply that the parties omit to mention it, or whether the contract be made on the basis that there be no *mahr*, even if this is by agreement of the woman. This stems from the fact that the obligation of the *mahr* is based on the contract itself, such that if the wife dies before consummation her heir is entitled to the *mahr al-mithl*.

b. A valid contract in which the *mahr musammā* is invalid. According to the majority of the jurists this invalidity may be due to the substance of the *mahr*, for example it may be a prohibited commodity as already mentioned, or the husband
may specify as an alternative to a material mahr something such as divorce from his former wife, or not forcing his new wife to leave her domicile. Another form of invalid mahr occurs in shighar marriage.
c. The instance where the mahr is specified but the marriage contract is invalid. The invalid contract is one where one of the conditions of validity is not fulfilled, for example, if the contract is made without witnesses. If consummation then occurs on the basis of such a contract then the mahr al-mithl is required on condition that it does not exceed the mahr musammā.

If the woman does not claim and take possession of her mahr it becomes a debt for which the husband is liable, whether it be in terms of money or something such as a specific item which is pledged. The woman may make certain that it will be paid to her by taking a kafālah (pledge or surety) guaranteeing it to her. According to the Ḥanafis if a third party acts as kafil by agreement with the husband then this is valid and binding and the wife, if she is of age and of sound mind, or otherwise her wali may then ask either the husband or the kafil to pay the mahr as the kafālah links the liability of one with the other with regard to the right which is guaranteed. Where this situation occurs the person whose liability has been guaranteed will either be under the wilāyah of the kafil, for example in the case of a minor, or someone not under wilāyah and in this case if the kafil pays the mahr on his behalf then the one guaranteed must return to him what he has paid providing the kafālah was by agreement between the two. If it is not by agreement but a kafil comes forward unsolicited then he is not obliged to return anything, according to the Ḥanafis, as the kafil is making a voluntary payment by doing this. If the kafil dies before the mahr is paid then the wife has a right to claim the amount of her mahr against his estate and the heirs of the kafil may then seek
repayment by the husband whether or not he is an heir himself. If the husband is a minor and the kafill is his father and wali, then if he pays the mahr from his sons money which is under his control there is no complication. If however he pays from his own money then he cannot claim restitution from the husband thereafter unless he states when he makes the kafalālah or when he pays the mahr that he will do so as it is customary for fathers to pay the mahr for their sons freely. If the father who is the kafill dies before payment of the mahr for his son then the wife may claim her mahr from his estate and the rest of his heirs may then claim restitution from the husband and his share of the inheritance, whether or not the father stated that he would seek restitution from the son. If the kafill for a minor is someone other than the father then he can claim restitution from the money of the minor whether or not he said he would do so. (131)

The payment of the mahr in advance or deferred does not affect the mahr itself, it is merely a customary means of classifying the mahr which does not conflict with the principle of the shari'ah. The advance is paid when the contract is made and usually before consummation. The deferred mahr is payable upon divorce or death. If the woman is divorced irrevocably the man is obliged to pay the deferred mahr and if she dies her heirs may claim it as part of her estate. If the husband dies then it is the right of the wife to receive the deferred mahr from his estate on the grounds that this deferred payment is an established debt. If the mahr is specified in the contract but no mention is made of what is in advance and what is deferred, then the prevailing custom at the time of the contract in the place where the couple live is applied. (132)

There is some disagreement amongst the jurists as to which of the parties is responsible for providing the jihāz, that is, the things with which the marital home is prepared in the way
of furniture and household equipment. There are conflicting views on this subject. That of the Ḥanafīs is that the *mahr* is the absolute possession of the wife and that it is the sole duty of the husband to prepare for the wife a suitable home before bringing her for consummation of the marriage. The *mahr* is merely a gift which the husband must give in consideration of the contract and to demonstrate his wish to give the woman confidence in this new life. Accordingly if the wife brings any household goods which are her property then the husband has no claim over them. Where it is the custom for a father to prepare a trousseau for his daughter, if he does so from his own money and she takes possession of it then neither he nor his heirs have any right to its return. If he buys it while she is still a minor it becomes her property. If they dispute about this and neither has any evidence and the father says that he only gave the household goods on loan, whilst the daughter claims that she acquired them as a gift, or the husband says after her death that the goods were hers in order to inherit, then the Ḥanafī view is that the household goods belong to the wife and thus to the husband after her death, provided that it is the custom for the father to buy such things for his daughter.

The Mālikīs are of the opinion that the wife is obliged to prepare her house from the *mahr* which she has received to a standard appropriate for her husband and herself but with certain conditions. She must receive the *mahr* before consummation. If consummation takes place before she receives it then she is not bound to prepare the household unless a condition is made that it be after consummation or unless custom indicates this. If the wife wishes to be freed from the obligation of preparing the household after taking possession of the advance portion of the *mahr*, then the husband may apply for ruling against her in his favour allowing him to take back the money in order to use it to prepare the house. The husband must not specify any
requirement for the household which exceeds the amount of money which she takes to prepare the house. The *mahr* must be in assets or in cash. If it is in merchandise, consumables, commodities or livestock then she is not obliged to sell these in order to prepare the house. (133)

Once the contract is completed, who then has the authority to take possession of the *mahr*? Whether it is the *wali*, *wakil* or the wife herself will depend upon whether or not the wife has full *ahlîyyah*. No other person has the authority to take possession of the *mahr* without her permission and if this occurs the husband is not released from his obligation to pay it to her. If she claims it from him in these circumstances the husband then has the right to reclaim it from the person who took possession of it. If it is taken with her permission he is released from his obligation. Silence on the part of the woman may be taken to indicate consent if she is a virgin and if the person who takes possession of it is her father or grandfather in accordance with custom, providing that there is no clear evidence that she does not wish him to take it. In all other circumstances, her silence does not imply consent. A *wali* other than the father or grandfather has no right to take it except with her express permission. The same applies to the *wakil* who acts for her in the contract, as he is merely a mediator.

If the wife is of diminished *ahlîyyah* due to insanity or the conditions of *safah* or *ghuflah* then the person who possesses the right to take possession of the *mahr* is her *wali* *'alā al-māl*. According to the Ḥanafis this will be one of six people: the father or his appointed agent, the grandfather or his appointed agent, or in the absence of these the *qādi* or his appointed agent. *Wilāyah *'alā al-māl* and *wilāyah *'alā al-nafs* may be combined in one person such as the father or grandfather. (134)
The position of the Egyptian *Ahwal Shakhṣīyyah* with regard to *mahr*

The Egyptian *Ahwal Shakhṣīyyah* does not regulate the *mahr* in a comprehensive way, rather it deals with it from the point of view of disputes which may arise.

Article 19 of the Draft Ordinance No. 25 of 1929 concerning certain rulings of *Ahwal Shakhṣīyyah*, modified by Law 100 of 1985 states:

"If the parties dispute with regard to the amount of the *mahr*, then it is the wife who is liable to produce evidence to support her claim. If she is unable to do so then the word of the husband under oath is accepted, providing he does not claim it to be anything which is obviously not appropriate as *mahr* for a woman of her status in which case ruling will be made for the *mahr al-mithl* to be applied. The same applies in the case of a dispute between one spouse and the heirs of the other, or between the heirs of the two. (135)

Cases involving *mahr* which are brought before the *Ahwal Shakhṣīyyah* sessions are always within the jurisdiction of the *Mahkamah Juzīyyah*, whatever the amount involved, in accordance with Article 6, Paragraph 7 of the *shariʿah* regulations which covers *mahr* and *jihāz* where the amount owed to the claimant is more than two thousand piastre, or the amount of the *mahr* or *jihāz* is more than ten thousand Piastre. (136)

The court rulings which follow concern the *mahr* as an essential part of the marriage contract.

In a ruling of the Assiut Court of 23/8/26, the reason for making the payment of the *mahr* incumbent upon the husband was adjudged to be the marriage contract, whilst the reason for its being incumbent upon a *kaffāl* (guarantor) is the
The position of the Moroccan Mudawwanah with regard to mahr

In the Moroccan Mudawwanah the mahr is organised in a more comprehensive manner in view of the fact that it is considered to be a fundamental element or condition of the contract, rather than one of its consequences. It is regulated essentially in nine key Sections in al-Kitāb al-Awwal, Chapter 4, al-Ṣadāq.
Section 16. Definition of the *mahr* as that which is to be offered by the man as an indication of his desire to marry a woman, to establish a family and to form the basis of affection and intimacy.

Section 17. 1. Any lawful commodity which may be used is valid as *mahr*. (ie. any commodity not prohibited by the *shari'ah*)
   2. There is no minimum or maximum limit to the *mahr*.

Section 18. The *mahr* is the property of the woman who may dispose of it as she wishes. The husband has no right to ask that the woman provide furniture or clothe herself in return for the *mahr* which he gives her.

Section 19. The *wali*, whether he be the father or not, is forbidden to accept anything from a suitor in return for giving in marriage his daughter or person under his *wilayah*.

Section 20. 1. The *mahr* may be paid promptly or deferred to a specified time, either in full or in part, at the time of conclusion of the contract.
   2. All or part of the *mahr* must be paid upon consummation of the marriage.
   3. The *mahr* is payable in full upon death or divorce.

Section 21. The wife shall not be obliged to consummate the marriage until she has received the *mahr*. If she consents to
consummation then she is entitled only to claim the *mahr* as a debt and divorce shall not result if this is not fulfilled.

**Section 22**

The wife is entitled to half of the *mahr* if the husband chooses to divorce her prior to consummation. If the marriage is dissolved or repudiated by the husband due to 'ayb in the wife, she is entitled to nothing. If the wife rejects the husband after consummation on the grounds of 'ayb he must pay her the entire *mahr*.

**Section 23**

If a mature woman agrees to marry for less than the *mahr al-mithl* her *wali* may not oppose her.

**Section 24**

If the couple dispute as to whether or not the prompt *mahr* has been paid, then the word of the woman is accepted before consummation, and that of the husband afterwards.

It is evident from the way in which the *Mudawwanah* regulates the *mahr* that it does not consider it a right resulting from the contract, but as one of the conditions for its conclusion. This is moreover apparent in the provisions of *al-Kitāb al-Awwal*; Chapter 2, Paragraph 5, the second point of which states that the *mahr* must be stipulated and that the contract cannot be concluded if it is waived. (138)
Shahādah.

Shahādah may be defined as: information of what one has witnessed or seen or beheld with his eye or declaration of what one knows; testimony, attestation, evidence or witness. (139)

The act of witnessing a marriage means that the marriage concerned has been announced and made publicly known, in which case it cannot be mistaken for adultery and the relationship between man and wife cannot give rise to suspicion and mistrust. Furthermore there are rights and duties in respect of both parties which arise as a result of the marriage contract, and such rights cannot be established if the contract is not publicly acknowledged. The jurists disagree upon shahādah, however, for two main reasons. Firstly they differ on the principle of witnessing being an absolute condition. According to Ibn Rushd, Abū Ḥanīfah, al-Shāfiʿī and Mālik agree that shahādah is a condition of marriage, but they differ as to whether it is an absolute condition which must be fulfilled in order for consummation to take place, or whether it is a condition of validity which must be fulfilled when the contract is concluded. (140)

The Majority of the jurists, the Ḥanafīs, Shāfiʿīs and Ḥanbalīs believe that the validity of marriage is conditional upon its being witnessed. This is based on the Qurʾān and Sunnah. Sūrah 2, verse 282 (al-Bāqarah) regulates everything concerning witnessing and specifies the conditions required of witnesses in the case of money lending (141). The jurists conclude that if witnesses are required in financial matters, then by qiyās it may be deduced that this should also be a condition of marriage on the basis that there is a cause which is shared by the two situations. They also refer to Sūrah 65, verse 2 (al-Ṭalāq), concluding that if witnesses are required for divorce and reconciliation then
there is all the more reason why they should be required in marriage(142). On the authority of Ibn `Abbās, the Prophet said: "Women who marry without it being made known are the same as whores". On the authority of ‘Umarān ibn al-Haṣīn, the Prophet also said that marriage cannot take place without a walī and two upright witnesses(143).

The second view which is that held by the Mālikis is that if the marriage takes place without witnesses it is considered invalid, but they disagree on the time when the witnessing should take place (144). They consider it a condition of validity required for consummation to take place, rather than a condition required for its establishment. In their view, the evidence that witnesses are not obligatory at the time of the contract lies in a ḥadīth narrated by Anas.

The Prophet stayed for three days at a place between Khaybar and Madīnah and there he consummated [marriage] with Ṣafīyyah bint Ḥayy. He invited the Muslims to a banquet which included neither meat nor bread. The Prophet ordered for the leather dining sheets to be spread, and then dates, dried yoghurt and butter were provided over it, and that was the walīmah (wedding feast) of the Prophet. The Muslims asked whether Ṣafīyyah would be considered as his wife or milk yamin. Then they said: "if the Prophet screens her from the people then she is the Prophet's wife, but if he does not screen her, then she is milk yamin. So when the Prophet proceeded, he made a place for her (on the camel) behind him and screened her from the people (145). As noted above, the important factor is making it publicly known that a couple are actually married and that the consummation is of a lawful union and this ḥadīth emphasises this fact. In this case whilst there were no formal witnesses to the contract, the marriage was effectively witnessed and acknowledged and the status of Ṣafīyyah as the wife of the Prophet established by the presence of the guests at the walīmah and their observation of the screening of the bride(146).
We may mention here secret marriage. This is where the husband asks the witnesses not to announce a marriage and to keep it secret (147). Such marriages are therefore void since the announcement is a requirement urged by the Prophet when he said: "Announce the marriage and beat the drums for it" (148). The Ḥanafīs, Shāfīʿīs and Ḥāṭīrīs believe that failure to announce a marriage has no effect on the contract and does not make it secret. In their view, a marriage cannot be secret if attended by four people, namely the two contracting parties and the two witnesses (149).

The second point of disagreement amongst the jurists is the conditions required in the witnesses. A witness must be of age and of sound mind if his testimony is to be relied upon in case of any contention before the law. Furthermore, the concept of acting as a witness also includes the concept of wilāyah. Those who are not of age and sound mind are not even permitted to be their own wali, and thus cannot act as wali of others.

A witness must be Muslim if the two marriage partners are Muslim, as in general principle, a non-Muslim cannot have wilāyah of a Muslim. This is agreed upon by all the jurists who specify the condition of witnesses. They disagree however about the case where the husband is Muslim and the wife kitābiyyah. Muhammad ibn Ḥusn and some of the Ḥanafī jurists are of the view that it is a condition that witnesses be Muslim. Ibn Qudāmah says that a marriage cannot be contracted without Muslims witnesses irrespective of whether both partners are Muslim or the husband only, the reason being that if the witnessing of a contract between a Muslim man and a non-Muslim woman is to be acceptable, the non-Muslim must be witnessed by a Muslim.

Abū Ḥanīfah and Abū Yūṣuf say that it is permissible for a witness to be non-Muslim in the case where a Muslim man is
marrying a woman of the Christian or Jewish faith, as the witnessing in respect of the woman is to the effect that she belongs to this faith. The response of the jurists to this, however, is that the act of witnessing does not apply to the woman alone, but to a marriage between a man and a woman, and that if this is carried out by a non-Muslim, this may establish the right of the man over the woman, but it does not serve to announce the marriage publicly. (150)

A condition of the witnessing of a marriage contract is that both witnesses should be present at the same time to hear the words of the contract. They must also fully understand the words of the contract upon hearing them for if they hear and fail to comprehend then they have witnessed nothing and the marriage is invalid. Needless to say, the testimony of a person whose medical condition does not allow him to understand the meaning of what he has witnessed is invalid and the marriage contract is also invalid in this case. Likewise the testimony of a person who cannot hear the words of the contracting parties is invalid as is the testimony of a person whose competence is impeded, for example, by insanity. On the other hand, if a contract is concluded by sign language, it is conditional that both witnesses should be able to see such sign language and to know what it means. If the view of either or both of the witnesses is impeded and they fail to see the gestures, their testimony is invalid and the contract is likewise considered invalid. The same applies if a witness can see the gestures made but does not understand their meaning.

The principle which specifies that witnesses must be of upright character can be found in Sūrah 2, verse 282 (al-Baqarah). The Ḥanafīs do not specify as a condition that witnesses must be upright. Abū Ḥānīfah says that any Muslim who appears to practise Islam without any obvious depravity
is considered upright, and as such his testimony is acceptable. This opinion is formed on the basis that an immoral person is qualified to contract a marriage either for himself or for another person by being \textit{wali} or \textit{wakil}. It he is able to contract a marriage himself, then there is all the more reason why he should be allowed to act as a witness to a marriage.

The majority of the jurists, the Mālikis, Shāfiʿīs and Ḥanbalīs and the Zāhirīs stipulate uprightness as a condition based on the \textit{hadīth} of the Prophet on the authority of al-Hasan already mentioned above. In the opinion of Ibn Qudāmah, the indication is that supporters of this view are content with a superficial appearance of uprightness in general. In view of the fact that it is difficult to assess the uprightness or otherwise of others, they are content to accept an external appearance. If it is later revealed following the conclusion of a contract that a witness is immoral, the contract is not affected as the condition of uprightness is one of appearance and has been fulfilled\(^\text{151}\).

The position of the Egyptian \textit{Ahwāl Shakhṣīyyah} with regard to \textit{shahādah}

This is concerned with the verification of marriage by witnesses and the recording of this, in view of the fact that until quite recent times, whilst witnesses would be present at marriage contracts, there would often be no documentation
of the marriage, or the couple might request that the witnesses keep silent about the marriage, or the condition of making the marriage publicly known might be fulfilled simply by holding celebrations.

The witnessing of a marriage is regulated in Egyptian Law essentially according to Article 280 of Draft Ordinance 78 of 1931 and is thus most in line with the Ḥanafī view, particularly in respect of the conditions concerning the witnesses. (152)

Certain provisions are also found in Article 99 of the same law, the effect of which is that:

1. In cases of dispute, claims or admissions of marriage or divorce following the death of one of the spouses in marriages concluded prior to 1911 shall not be heard, irrespective of whether such are made by one of the spouses or by other parties, unless substantiated by documentation which is plainly unforged and which shows that the marriage is valid.

2. Claims or admissions of marriage brought by one of the spouses in respect of marriages which occurred prior to 1897 and to which witnesses testified may be heard on condition that the marriage is common knowledge.

3. Claims by either spouse, or by others, in respect of marriages which occurred after 1911 cannot be heard unless proven by official documents, or documents which have all been written and signed in the hand of a deceased party.

4. Similarly, in cases of dispute, claims or admissions of marriage shall not be heard in the case of marriages occurring after August 1931 unless proven by an official marriage certificate.

Cases have shown that husbands often make false allegations for material gain or merely in order to cause offence or publicly slander their wives. Hence, in order to create respect for marriage contracts, prevent their repudiation and
preserve the rights arising as a result of the marriage contract, Paragraph 4 hereabove was expanded, whereby claims and admissions of marriage in cases of dispute could not be heard in respect of marriages which took place after August 1st 1931 without there being an official certificate issued by a person qualified to do so, such as a judge or an official authorised to perform civil marriages in the case of marriages contracted in the home country, and a consul if the marriage was contracted abroad. This interdiction, however, has no legal effect in the case of paternity suits, which remain the same, despite the amendment, according to Article 101 of the Shari'ah Regulations issued by Royal Decree, 27/ 5/1897 pertaining to marriage claims.

The stipulations of the Law were confirmed by judicial ruling which did not regard conjugal relation and shared accommodation alone as being legal evidence of marriage. The Ḥanafī jurists stipulate that witnesses must have witnessed the actual marriage contract and not have learnt of it by any of the means by which news of a marriage is spread. The Companions of the Prophet believed that if two men of upright character witnessed a man and a woman living together and bore witness to the fact that the woman was the wife of the man concerned, they could serve as witnesses to the marriage without actually having been present at the time of the marriage contract. According to Abū Ḥanīfah, however, a person may not bear witness by hearing of a marriage contract unless it is truly made known at the time. Rulings issued by the courts on the validity of conditions pertaining to witnesses seem to be in line with the position of the Ḥanafīs, although some differ and coincide instead with the view of the Majority of the Jurists.

With regard to the condition of uprightness, as we have already seen, Abū Ḥanīfah permits those who do not meet this
legal requirement to act as witnesses. The rulings of the judiciary have deemed this to be unacceptable. Accordingly the Assiut Court, for example, ruled that a person who is known to have sinned, lied and acquired money by deception is categorically unacceptable as a witness no matter how much repentance he has shown (Assiut 389 / 40 / MIM SHIN 15 / 131).

Rulings have indicated that witnesses must be Muslim if it is a Muslim in respect of whom they are to bear witness. This is due to the fact that witnessing also involves wilāyah and a non-Muslim may not hold wilāyah over a Muslim (al-Jamālīyyah 4204 / 32 / 21 / 133 TA SIN MIM SHIN 9 / 252).

The position of the Moroccan Mudawwanah with regard to shahādah

In the Moroccan Mudawwanah, this subject is regulated according to al-Kitāb al-Awwal, Chapter 2, Section 5, the first point of which states that for the contract of marriage to be valid, it must be attended by two upright witnesses who hear in a single session the proposal and acceptance from the husband or his representative, and the wali following the agreement of the woman and her authorisation to him. This view is in agreement with Ibn Rushd and the Shāfīʿis, Ḥanafīs and Ḥanbalīs, who hold that witnesses are required at the actual conclusion of the contract, that is in a meeting where the parties or their representatives and the witnesses attend together for the completion of the procedure. It may be noted that in this case the law is in contrast with the Mālikī
view which does not make the same stipulation but requires only that the fact of the consummated marriage be witnessed and acknowledged in order for it to be valid. Witnesses to a marriage must fulfil certain conditions. The first condition is that there should be two witnesses to the marriage as financial contracts are not proven unless there are two witnesses according to Sūrah, verse 2 (al-Ṭalāq).

The third Paragraph of Section 5, states that a judge may exceptionally hear a claim of marriage using circumstantial evidence as proof of such.

Marriage must be concluded by means of a valid contract witnessed by two upright persons whose testimony is deposited with the judge and entered in the records of the shari`ah Court. In Morocco, however, particularly in remote areas, and before the Mudawwanah was introduced, witnessing was not an essential part of the contract, and the marriage would be made known by celebrations attended by large numbers of people which took the place of witnessing in acknowledging the legitimacy of the union. The view expounded by many jurists in Morocco was that if this were not considered as proof of marriage many of the country's marriages would be deemed irregular. A group of Imāms is known to have stated that marriage is proven if news of it is widespread.

On this basis paragraph 3 of section 5 indicates that a marriage could exceptionally be proven if it was widely known about, although it is now the custom that marriages should be witnessed at the time of the contract. Cohabitation, plus testimony by the spouses that they were legally married in accordance with the customs followed in their country, is considered to be a valid marriage if substantiated by fair evidence, or by a group of twelve men (other than jurors) who could confirm the marriage. In an independent judgement, the Supreme Council decided that paragraph 3 of section 5
provides no evidence that the Moroccan legislation limited this provision to proving marriages which had been concluded by virtue of a group being present before the Aḥwāl Shakhṣīyyah came into effect. Therefore, when a judge is faced with a fact which obliges him to uphold a marriage which for overwhelming reasons was concluded by virtue of a group of Muslims being present, after 1/1/1958 he may exceptionally apply the requirements of paragraph 3 (Legal Decision no. 84. 9/3/1962, Social file 7258). In another decision, it was established that if a judge is exceptionally permitted to hear marriage cases and rely on the circumstantial evidence which proves them, he must be able to justify such exception in an acceptable manner (Legal Decision no. 28. 16/3/1977, Social file 57356. (154) Further provisions on the formalities of witnessing are found in al-Kitāb al-Awwal, Chapter 8: The administrative procedures which precede the marriage contract; Section 41 which states that the two witnesses must be of honest and upright character. This condition is one set by the Mālikīs, Shāfiʿīs and Ḥanbalīs. Section 41 essentially concerns administrative procedures which must be carried out before the contract can be concluded. The Moroccan legislation has complied with the requirements of uprightness and several ministerial decisions have been issued in this respect, including Decision 181332 of 6/5/1982 implementing Law no. 1181 regulating uprightness of character and the obtaining and recording of testimony. The Mudawwanah stipulates that both witnesses should be male and that the testimony of one male and two females is unacceptable. The Mudawwanah makes no mention, however, regarding a non-Muslim acting as witness in respect of a Muslim, but the general position of fiqh stipulated by the majority of the jurists is applicable. In other words the witness should be Muslim if both parties are Muslim, although the jurists do not dispute the testimony of a non-Muslim if the husband is
Muslim and the wife a non-Muslim as noted above. It is moreover stipulated that both witnesses should hear in one session the consent of the husband or his wakīl, and of the wali of the wife following her agreement. If the witnesses hear the contract separately, that is, if each hears it whilst the other is absent, their respective testimonies are invalid as this would indicate that there were two contracts, neither of which was attended by two witnesses. Finally the Mudawwanah stipulates that the witnesses should understand that they are bearing witness for the purpose of a marriage contract. (155)

\textit{kafā'ah.}

Once the above foundations and conditions are fulfilled the contract has been created. There is then a right which may be claimed by the woman or by her wali which is the right to kafā'ah. According to the Ḥanafīs, kafā'ah, or equality of social status, is a condition of validity of the marriage. The rest of the jurists, however, describe it as a condition of luzūm, that is, a condition which if not fulfilled renders the contract non-binding. Thus if an impression is obtained of the social status of the man and this later turns out to be false, and his true status is less than that of the woman, the contract is not held to be binding.

In view of the fact that it is the man who is the head of the family, custom dictates that disgrace attaches to the wife and to the wali if she marries someone who is not her social equal. A man however may guide his wife and improve her situation and there is no disgrace if he marries someone not of the same status. For this reason the shari'ah gives the
woman and her family, and particularly the wali from amongst the paternal relatives, the right to protect her from being disgraced.

The word kafā'ah is derived from kaf' which is that which is alike or equal. The Prophet is reported to have said: "The blood of Muslims is equal". Abū 'Ubayd al-Mughni says: "They are equal in blood money and punishment and the nobleman does not take preference over the common man in that."

In technical terms it is the likeness of equivalence required in marriage in certain matters where if there were a difference it would lead to instability in the marriage due to disgrace or shame attaching to the wife. (157)

The factors which are taken into consideration in kafā'ah.

It is customary for people to look for certain characteristics in a marriage partner. Naturally people differ according to their natures and inclinations and some will look for purity of lineage and noble descent and some for good character, whilst others will look for wealth. The jurists mention seven factors altogether which are: lineage; freedom; Islam; piety; money; affluence; profession. The Ḥanafis specify a lineage. Considered lowest are those who are not of the same race or tribe as the woman. People may be classified as Arab and non-Arab, and Arabs may then be divided into Quraysh and non-Quraysh. If both parties are of Quraysh then the marriage is valid, even if they are of different clans, and without taking into consideration whether for example the man embraced Islam of his own accord without his father, and the woman was a Muslim following her father. With regard to non-Arabs, the factors of Islam and freedom are taken into consideration in their lineage but this is restricted to the couple and their fathers. A man who is a Muslim but
whose father is not cannot be considered the equal of a Muslim woman whose father is a Muslim. However a poor non-Arab scholar may be considered equal to a wealthy but ignorant Arab and to a noble upperclass Alawī woman as the nobility of scholarship is considered above nobility of descent and wealth.

b. Freedom. This was a relevant issue in the time of slavery but there is no longer any basis for discussion on this subject.

c. Occupation. The occupation of the husband should be compatible with the occupations of the relatives of the wife.

d. Money. What is meant by money in this instance is the ability of the husband to support the financial burdens of marriage, that is, being able to pay the mahr and provide nafaqah for the wife.

e. Affluence. Implied by this is the wealth of a person and the extent of his ability to provide a life of ease and comfort. If before marriage the wife was accustomed to living in ease and comfort due to the affluence of her father or to her own wealth then naturally it may be said that the man who is her equal is one who has sufficient wealth to spend on her in the same manner as her father so that she does not feel contrast which is to her disadvantage in her life before and after marriage.

f. Taqwā. This is taken into consideration in both Arabs and non-Arabs, thus an immoral person is not considered the equal of the daughter of a righteous, religious man. The Hanafis say that if father of the woman is immoral and she marries herself to an immoral man then the father cannot object as he himself is immoral. What is meant by taqwā is the devotion of a person to religious learning. The extent of
The Ḥanafīs specify *kafā'ah* as *sharṭ luzūm* or condition which if not fulfilled means that the contract is not binding. There is however an opinion of ʿAbū ʿḤanīfah that it is a *sharṭ šiḥḥah* or condition of validity of the contract without which the contract would be void from the outset in the instance where a woman married a man who was not her equal and her *wali* did not agree to the marriage before the contract. *kafā'ah* in the matters specified is considered by the Ḥanafīs to be the right of the *wali* providing that he is from the *ʿusbah*, even if he is not Muhārram with respect to her. Other relatives, the mother, and the *qādi* for example do not have any right to demand *kafā'ah*. (158)

The Ṣafiʿis specify the same conditions as above with the exception of money considering that if a poor man marries a wealthy woman he may be her equal. They consider *kafā'ah* one of the conditions of validity of the contract and the right of the woman (159). The Ḥanbalīs agree with this with the distinction that they combine money and affluence in a single condition (160).

The Mālikīs confine the matters which are taken into consideration in *kafā'ah* to two points. The first is freedom from defects which give the woman the option to reject the marriage, for example leprosy or insanity. They consider *kafā'ah* as the right of the woman and not her *wali*. If a *qādi* sees fit to give in marriage a woman who is not of sound mind who has lost her *wali* he must first establish that the husband is her equal in religion, freedom and *mahr al-mithl*. If the woman is of sound mind she may marry without establishing this as she holds the right and may choose to waive it when she consents to marriage. Moreover she may forego *kafā'ah* in religion and marry an immoral person, on condition that he be trustworthy. If he is not then he may be
rejected by a *qādir*. If the *wali* gives his consent to a marriage but the husband later divorces the wife and then wishes to remarry her, the *wali* may not object on the grounds of *kafâ'ah*. (161) The basis for the above views is derived from the Qur'ān and Sunnah, for example in *Sūrah* 16, verse 71 (*al-Naḥl*) (3), *Sūrah* 39, verse 9 (*al-Zumar*) (4) and *Sūrah* 43, verse 32 (*al-Zakhrafa*) (5) there is clear indication that people are distinguished from each other in terms of their worldly lot, moreover it is reported that the Prophet said: "People are like mines, like mines of gold and silver, and God has raised some of them above others in class" (162). It should be stressed however that this stipulation does not conflict with the general principle established by the *shari'ah* of the equality between all Muslims regardless of their means, social status, or whether they are Arab or non-Arab; but this equality is in terms of rights and duties, reward and punishment, not in terms of money or class, as this would be unrealistic. (163)

It appears that the *Zāhirīs* hardly recognise *kafâ'ah*, on the basis of *Sūrah* 49, verse 13 (*al-Ḥajarāt*). Ibn Ḥazm says; "The *Ahl al-Īslām* are all brethren, and it is not forbidden for the son of a *Zanj* to marry the daughter of a Caliph, and an immoral person who has reached the depths of corruption, but who is a Muslim, so long as he is not an adulterer, is the equal of a virtuous Muslim woman, and a virtuous Muslim man is the equal of a corrupt woman, so long as she is not an adulteress; what is preferred is the marriage of certain relatives to others". (164)

It is clear then that juristic opinion varies firstly as to whether or not *kafâ'ah* is a condition of marriage, and secondly about the factors in which it consists. There is little clear evidence on this subject to be found in the Qur'ān apart from the verses mentioned above.
There are many ḥadīth which stress equality between Muslims. The Prophet is reported to have said in a khutbah in Makkah: "O people, God has driven from you the fault of [the time of] ignorance and scorn. The people comprises two kinds of person; one is reverent, pious and honours God, whilst the other is wicked and neglectful of God. The people are the sons of Adam and God created Adam from dust."

At Mūna during the Ayyām al-Tashriq (the three days following the ʿĪd al-ʿAdḥā during the ḥajj) he addressed the people saying; "O people, your God is one and your fathers are one. An Arab is not better than a non-Arab, nor a non-Arab better than an Arab, nor black better than 'red' (white), nor 'red' (white) batter than black, except in their faith. Have I made it clear?" They answered "Yes". He said: "Then let the one who has witnessed inform the one who is absent". Abū Mālik al-Ashhari says that the Prophet said: "God does not look at your noble birth nor at your lineage, nor at your bodies, nor at your money; He looks at your hearts, and he who has a virtuous heart, God will treat him with compassion. You are the sons of Adam, and the dearest of you to Him is the one who is most devoted". He is also reported to have said: "O Banī Hāshim, people come to me with their deeds and you come to me with your lineage". Abū Ḥākim al-Māzinī reports that the Prophet said: "If someone comes to you whose religion and nature please you then marry. If you do not there will be discord on the Earth and great corruption." On this basis the Prophet commanded Banū Bayādhah to take in marriage Abū Hind who was a camel keeper. Likewise he commanded a tribe of the Ansār to take Bilāl the Abyssinian (the first muʿadhdhin in Islam who was known as the muʿadhdhin of the Prophet) after they had refused to accept him. Abū Ḥadhifah married the daughter of his brother al-Walīd ibn ʿUtbah to Sālim whom he had adopted and who was a Mawlä of the Ansār. From these examples and from the Hadith we see that the basis of kafāʾah in marriage at the
time of the Prophet was religion and good character and some of the jurists from amongst the Companions and the tabi‘īn confine themselves to this measure.

Moreover, the reason for the revelation of Sūrah 43, verse 32 (al-Zakhrafi), was the objections of the mushrikīn in Makkah who said: “If the Qur‘ān were revealed to a great man (implying the head of a tribe or a clan from Makkah) then the matter would be different”(10). We know that the Prophet was from Banū Hāshim, one of the highest ranking clans amongst the Arabs. He was not however the head of a clan, the important factor was rather his character. The value in his not being the leader of a tribe or clan or person of high rank or good fortune was that these factors should not affect his calling. This verse was a reply to the claim of the mushrikīn and their objections to God’s granting his wisdom to whom he chooses due to their confusion between earthly and spiritual values. Rizq or livelihood is in accordance with the talents and abilities of an individual, the circumstances of his life and his position in society. This is confirmed by Sūrah 6, verse 65 (al-An‘ām). The distinction between people is not intended to make some higher than others, nor to indicate that one class is in any way better than another, rather, it is for cooperation between people for the common good, each individual having his own vital role.

There remains then the condition of taqwā or religious devotion. The Prophet made it clear in the ḥadīth above that this should be the basis for consideration of kafā’ah. The required religious devotion should be fear of God and the undertaking of religious study. The Prophet said “You are all the sons of Adam, and Adam was created from dust. Let the people cease to glorify themselves by their ancestors as this is of less consequence to God than dung beetles”.

Having said this, marriage is in effect a contract which joins families and there have been in different ages and places
different customs in the specification of kafā‘ah as a means of providing stability in this. This is the reason for the varying opinions of the jurists on the specification of kafā‘ah. There is therefore nothing legally to prevent the consideration of other matters in kafā‘ah, so long as these do not go outside the range of the ṣharī‘ah. The requirement of kafā‘ah in marriage has become essentially a matter of custom relating to social acceptability, rather than a matter regulated strictly by the ṣharī‘ah.\(^{165}\)

The position of the Egyptian and Moroccan Ḥwāl Shakhsīyyah with regard to kafā‘ah

Kafā‘ah in the Egyptian Ḥwāl Shakhsīyyah is regulated in accordance with Article 280 of Draft Ordinance 78 of 1931 on the Regulations on the organisation of the Courts.\(^{166}\)

The matter of kafā‘ah is noticeably affected by social changes and prevailing customs as is shown by rulings issued by the courts. An example is the famous case of Shaykh `Alī Yūsuf and Shaykh al-Sadāt which took place in the early 1920s. This case caused legal difficulties and prompted public debate.

The husband in this case was the proprietor of al-Mu‘ayyad, the largest-selling daily newspaper in Egypt at the time. The wife was from an old and wealthy family named al-Sadāt which was descended from al-Hussayn. The family’s objection to the husband was that he was a self-made man who had begun life with nothing and had achieved his position through his own efforts. This, however, failed to impress the wife’s family, who brought repeated court cases demanding that the couple be separated. Eventually they succeeded on
the basis that the couple were of unequal descent. This ruling was corroborated by a ruling issued by the Egyptian Court to the effect that *kafā'ah* was intended to ensure that social disgrace was avoided. A person whose line of descent was known is unequal in status to a person whose line of descent is known, for example. In other words, equality of status in marriage is not restricted to any particular factor, but includes anything which would bring social disgrace. Custom dictates that having a father and a grandfather of noble descent is something of which to be proud. (2660 / 24 / KAF / SIN Egypt [2/4/27] MIM SIN 3 / 81).

The courts later began to be more flexible in their rulings. A ruling issued by the Court of Tanta, for instance, stated that *kafā'ah* was not a basic condition for the validity of marriage and was not in the same category of conditions as the presence of witnesses, for example. *Kafā’ah* was not to be taken into account if there was no *wali*, and accordingly, the marriage of a woman who has no *wali* to a man of unequal status is valid. (1812 / 42 / Tanta [2/2/41] MIM SHIN 16 / 6 / 248)(167).

In the Moroccan *Mudawwanah, al-Kitāb al-Awwal*, Chapter 3; Section 14, *kafā’ah* is stipulated as a right in respect of the woman and guardian, and it is stated that *kafā’ah* must be observed when the marriage is contracted and that the interpretation thereof relates to social custom. Furthermore Section 15 states uniformity of age as a right in respect of the wife. This is regarded as her right alone. (168)
Notes to Part One, Chapter 2.

Conditions for the establishment of the contract of marriage.

Sūrah 33, verse 5 (al-Ahzāb).

2. Ibn Ḥazm, ʿAlī Muḥammad ibn ʿAḥmad ibn Saʿīd; Al-Maḥallā, part 11, p.47.

3. Abū Zahrah, Muḥammad; Al-Aḥwāl al-Shakhṣīyyah. p.47.


"There is agreement that the mut‘ah temporary marriage was practised before Islam and for some time after the rise of Islam. It was a personal contract between a man and a woman to cohabit for a limited period of time in return for a certain remuneration payable by the man. It required no witnesses and did not entail the mutual right of inheritance. That much seems fairly certain. Beyond this ambiguity comes into the picture. Some scholars, notably Smith, maintain that it was a kind of marriage which no one need know anything about. Since there was no contract with the woman’s kin and the kin might know nothing about the arrangement, it must be concluded, according to Smith, that ‘the woman did not leave her home, her people gave up no rights which they had over her, and the children of the marriage did not belong to the husband.’ Aside from the validity or invalidity of this conclusion the old Arabian custom was apparently regarded as expedient in times of war and on travels."

Al-Shafi‘i defines mut‘ah as any marriage which is for a limited period of time, whether this be long or short. Al-San‘āni mentions in Subul al-Salām that in the books of the Imāmī Shi‘ah mut‘ah is a temporary marriage for a time which is specified or unspecified, the limit of which is forty-five days or alternatively the marriage may be terminated after one menstrual period in the case of a woman menstruating irregularly or two in the case of a woman menstruating regularly, or after four months and ten days in the case of a widow. The ruling on mut‘ah according to the Shi‘ah is that there is no mahr, no maintenance specified, no inheritance and no ‘iddah. If a child is born or the union then it is not recognised by the father unless this is stipulated.

muʿaqqat marriage
This is a marriage established by the kind of expression by which marriage contracts are usually concluded but with the addition to the form of something to indicate that the marriage is temporary for a specified period, whether this be long or short.


10. Al-Qurtubi, Abū ‘Abd Allah Muḥammad al-Anṣārī; op cit. vol. 5, pp.120-135. Sūrah 4, verse 25 (al-Nisā’).


15. Ibn al-Ḥammām al-Ḥanafi, Kamāl al-Dīn Muḥammad ibn
16. Madkür, Muḥammad Salām; *Naẓarīyyat al-ʾAgd.* p. 41. (Marginalia 3).


Al-Shāfiʿī, Abū ʿAbd Allah Muḥammad ibn Idrīs; *Niḥayat al-Muḥtāj.* vol. 6, pp. 81-82.

Al-Dardīr; *ʿAlī Khāfiʿ wa Ḥāshiyat al-Dusūqī.* (Al-Mālikī) vol. 2, p. 366.


20. Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; op cit. vol. 6, p. 349.


28. Al-Qurṭubi, Abū ‘Abd Allah Muḥammad al-Anṣāri; op cit. Vol.5. pp. 105-107. Sūrah 4, verse 23 (al-Nisā’). Questions 1-4. The Qurʾān establishes the prohibition of marriage to seven categories of women on the basis of nasab and a further six on the bases of raḍā`ah and muṣāharah. One more category was then established by the ḥadīth, that is the prohibition of marriage to a woman and her aunt at the same time. These were later confirmed by ijmāʿ.


31. Ibid.
32. Shalabi, Muḥammad Muṣṭafā; *Aḥkām al-Usrah fī al-İslām*, p.174-178


36. Al-Qurtubi, Abū ʿAbd Allah Muḥammad al-Anṣārī; op cit. vol.5 p.113. Question. 10.


40. Shalabi, Muḥammad Muṣṭafā; op cit pp. 174-176.


42. Qāsim, Yūsuf; op cit pp. 136-137.


45. See 34, above.

46. Al-Shawkānī, Muḥammad ‘Alī ibn Muḥammad; op cit. vol. 6, p.123.
   Al-Azādī, Abū Dāwūd Sulaymān ibn al-Asfāḥ al-Sajsūtānī; Sunun Abī Dāwūd, p.221, para 2055, section on prohibition by suckling. Ḥadīth related by Aḥmad ibn Ḥanbal and al-Tirmidhī.


48. Abū Zahrah, Muḥammad; op cit. pp. 77, 78, 79. On the relationships by Rada‘ah which are excluded from prohibition.

49. Al-Nawawī, Zakariyā Yaḥyā; op cit. part. 3 , p176.


51. Ibn Ḥazm, ʿAlī Muḥammad ibn Aḥmad ibn Sa‘īd; op cit. vol.11, p.172.

52. see note 38.

   Abū Zahrah, Muḥammad; op cit. p.79. footnote 1.


59. Sirḥān, Dr. Muḥammad; *Al-Aḥwāl al-Shakhṣīyyah*. p. 155. ex 5.
   Qāsim, Yusuf; op cit. p. 124.


61. The process of *liʿān* or mutual imprecation is a form of testimony between husband and wife in the form of customary phrases comprising the accusation of adultery made by the husband, and angry denial by the wife, both repeated four times. The term is taken from the fifth and final expression in which the accuser states that his accusation is true and invokes God’s wrath upon himself if he is lying. The accused then denies the accusation and invokes God’s wrath on herself if she is lying. The marriage is then irrevocably dissolved. This is used in the case where adultery cannot be proved, as it is necessary
to produce four witnesses to do so. Where the *li`ān* is used there is no punishment incurred for adultery as it is not proved and none for slander of a virtuous woman as would otherwise be the case.

Al-Suyūṭī, Jalāl al-Dīn ʿAbd al-Ḥāmīn ibn Abī Bakr; and  
Al-Māḥallā, Jalāl al-Dīn Muḥammad ibn Aḥmad; op cit.  
pp.31-33. *Sūrah* 2, verses. 228 and 234.

63. Al-Suyūṭī, Jalāl al-Dīn ʿAbd al-Ḥāmīn ibn Abī Bakr; and  
Al-Māḥallā, Jalāl al-Dīn Muḥammad ibn Aḥmad; op cit,  
p34. On the subject of *taḥlīl*.

64. Al-Shanqīṭī, Al-Imām Sīdī Muḥammad Ḥabīb Allah ibn  
Sīdī Aḥmad. *Zād Muslim*, fī mā ḫutafqa alayhī al-Bukhārī  
wa Muslim, vol.1, p.391-419. ḥadīth no.579.

65. See *taḥlīl* under subject of true and apparent intention.

66. Al-Qurtubī, Abū ʿAbd Allah Muḥammad al-Anṣārī; op cit.  

67. Al-Shanqīṭī, Al-Imām Sīdī Muḥammad Ḥabīb Allah ibn  
Sīdī Aḥmad. op cit. vol.7, p.33. ḥadīth no. 44.  
Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; op cit. vol.6,  
pp.147-148.

According to Muḥammad Shalabī, non-Muslims may be  
divided into three categories. The first is those who have
no holy book nor anything resembling one. Amongst these are, those who worship something other than God such as the sun or moon, the stars, fire, animals or other such things, the *malāḥidah* or atheists who have no religion at all, the *rāfiḍah* or heretics who deny part of the doctrine of Islam, for example those who believe that Jibrīl should have brought the revelation to ‘Alī rather than to Muḥammad, or who claim the divinity of ‘Alī, the *murtaddūn* or apostates who have renounced Islam, even if they have converted to Judaism or Christianity. In addition to these there are those whose belief is outside the range of accepted religion towards atheism or idolatry, such as the *Bābiyyah*, the *Bahā'īyyah*, the *Qādiyāniyyah* and the *Aḥmadiyyah*. A further group is those who have something resembling a divine text, such as the *Majūs*, the fire worshippers. It is held that God revealed a book to their prophet Zaradasht, but they burnt it and killed their prophet and the book was therefore taken away from them. A separate category is those who have a holy book, the *Ahl al-Kitāb*, that is Jews and Christians.


Qāsim, Yūsuf. op cit. p.146.
Dr. Yūsuf says on the subject of the reasoning for the prohibition of marriage to *mushrikāt* that the *mushrikīn*, both male and female, are drawn to Hell by their beliefs and deeds without realising it. A person who lives with them will follow in their path. A wife who is a *mushrikah*, even if she does not turn her Muslim husband from his religion, will weaken him. The quickest path to Hell is the neglect of duty to God and little by little he will
find himself far removed from his Islam and this is why God prohibited Muslims from marrying *mushrikät*. Moreover the conflict between Islam and the idolatrous religions is intense and it is not possible in circumstances in general that there be harmonious married life between the two. It is difficult to imagine a consortium of man and wife where one of them is drawing closer to God by slaughtering a cow and distributing it as charity, whilst the other worships the cow or at least considers it holy.

71. Al-Qurtubī, Abū `Abd Allah Muḥammad al-Anṣārī; op cit. vol 6, pp.75-79, *Sūrah*, verses 5,6 (al-*Mā'idah*).


73. see 81, 82.

74. Al-Qurtubī, Abū `Abd Allah Muḥammad al-Anṣārī. op cit. vol 2. p.61.*Sūrah* 2, verse 105 (al-*Baqarah*).

75. Al-Jazīrī, `Abd al-Rahmān; op cit. vol. 4 , p. 76. section on *Aḥwāl Shakhṣīyyah*. On the view of the Ḥanafīs and Mālikīs on marriage to a kitābiyyah.


77. Abū Zahrah, Muḥammad; op cit. On the procedures for the marriage of a Muslim to a kitābiyyah. pp. 120,121.
paragraph. 85. a,b,c.

78. Lūqa, Naẓmī; Muḥammad al-Risālah wa al-Rasūl. p.122.


85. CASE STUDY NO.1.

Case concerning riddah.
Ruling of the Maḥkamat al-Istīnāf, Cairo. Aḥwāl Shakhṣiyyah in Appeal No.144 in the General List, Judicial year 105, against the ruling in Case No. 1030/1987 Maḥkamah Ibtidāʾiyyah, North Cairo, Aḥwāl Shakhṣiyyah.
In the open hearing held in the courtrooms of the Supreme Court of Justice;
Presided over by Maḥmūd Ḥasan ʿIlm al-Dīn, President of the Court;
With the participation of Justices; Khālid Khalf al-Ḥusaynī and Muḥammad al-Sayyid al-Shāfiʿī;
Attended by Aḥmad Ibrāhīm Sulaymān, Chief Prosecutor, and Ḥasan Ibrāhīm Ḥamīdah, Clerk of the court;


87. Shalābī, Muḥammad Muṣṭafā; op cit. p. 333. Mabhath 6. on the marriage of a man to more than four women at the same time.
Shaltūt, Maḥmūd; Al-Islām. `Aqīdah wa Sharīʿah. Chapter 2. on polygamy

88. Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; op cit. pp. 159-160. Section on men married to two sisters when they embraced Islam or more than four women.
p.149. Chapter on the number of wives permissible for a free man and for a slave, and that which was permitted to the Prophet.

89. Ahliyyah is essentially the executive capacity the basis of which is the fitness of a person to bind and be bound (ilzām and iltizām). Iltizām indicates that the person is fit to be bound by the rights of another, that is, duty to another and ilzām that rights be due to him with respect
There are two divisions of ahliyyah. The first is eligibility for duty which applies to person merely by virtue of his humanity. The basis of its application is his being a human being, whether he be of age or a minor, and whether he be male or female and this applies to a person until he dies, or, according to the Hanafi jurists, after his death until his debts are settled. It progresses with the person along with the stages of development of his life from conception and comprises the stage of being a minor with no legal capacity, then legally capable, then a rational man. In the case of the unborn child ahliyyah is incomplete as although certain rights may be due to it there is the threat of them being removed as it may not be born alive. The mere fact of birth makes ahliyyah applicable and a person is then fit to be committed to dispositions undertaken by the wali al-mal. The second aspect is the executive capacity or capacity to act on one's own behalf, that is that the person is fit to have rights with regard to his own behaviour and to establish rights for others. This is the capacity of a person that his actions be considered lawful. The basis of this capacity is reason. If he is fully rational he has the executive capacity in full, but if he is a minor or not of sound mind this does not apply. A person's life with regard to ahliyyah is divided into three parts. In the first stage, from birth to the age of discernment a person has no executive power as he is not fully rational. In the second stage, that is from the age of reason (that is no less than seven years) to the age of maturity, the person has limited executive capacity which allows him to perform certain actions which are beneficial to him exclusively such as the receiving of gifts and legacies but forbids those which are to his detriment such as the giving of gifts. Other actions which are not defined in either of these two ways
depend on the permission of the wali. In the third stage, that is the age of maturity and discernment, a person essentially has full executive capacity. Certain conditions may affect this capacity. These include *junūn* and *‘atḥah*, corresponding approximately to insanity and dementia respectively, in which those affected have no *aḥliyyah* and are therefore subject to *wilāyah ijbāriyyah* with regard to all of his actions. Other conditions are *safah* and *ghuflah* which are forms of incompetence in which a person is not capable of handling his financial affairs and either squanders his money or is vulnerable to being cheated. In these cases the person is subject only to *wilāyah ‘alā al-māl*.


Al-Shawkānī, Muḥammad ‘Alī ibn Muḥammad; op cit. vol. 6, p. 118. ḥadīth 1, 2, 3.


94. Al-Shawkānī, Muḥammad ‘Alī ibn Muḥammad; op cit. pp 120, 121, ḥadīth no. 3 Chapter on ijbār and isti’mār.

95. Al-Shawkānī, Muḥammad ‘Alī ibn Muḥammad; op cit. pp 121, 122. ḥadīth no. 9. Chapter on ijbār and isti’mār, and

96. Al-Jazīrī, Abd al-Rahmān; op cit. vol.4, pp. 29,30.


99. Al-Jazīrī, ʿAbd al-Rahmān; op cit. vol.4, p.49.

100. Al-Sāfīd, Al-Sāfīd Muṣṭafā; op cit. pp.172-175. on ʿadl al-walī.


102. See note 99.


104. Al-Jazīrī, ʿAbd al-Rahmān; op cit. vol.4, pp.52,53.

105. Al-Sibāfī, Muṣṭafā; Al-Marʿah bayna al-Fiqh wa al-Qānūn. p.64, The Ḥanafi opinion on wilāyah ikhtiyariyyah.

106. ibid. The Ḥanafi view on the freedom of the woman in making the marriage contract.

107. Ḥazm, ʿĀlī Muḥammad Aḥmad Sāfīd; op cit. vol.11. p.23. Question 1825,


110. Al-Jundī, Aḥmad Naṣr; Mabādī al-Qada‘ fi al-Ahwāl al-Shakhṣīyyah. p. 1353, 1354. Chapter on wilāyah. principle 3. "The wilāyah of the father includes wilāyah ala al-nafs and wilāyah ala al-māl and is restricted only by interests."


112. Al-Jundī, Aḥmad Naṣr; Mabādī al-Qada‘ fi al-Ahwāl al-Shakhṣīyyah. p. 1359. principle 20. "The wilāyah of the father is restricted by the interests of the son. If there is no benefit to be achieved then wilāyah ceases."


114. Al-Bannah, Kamāl Ṣāliḥ; op cit. p. 40-46. explanation of article 99 of Draft Ordinance 78 of 1931,


Chapter 5, *Mawāni‘*al-Zawāj.


119. Al-Jundī, Aḥmad Naṣr; Mabādī al-Qaḍā‘ fī al-Aḥwāl al-Shakhsīyyah, p. 1352. principle 5, that wikālah is a contract separate to that of marriage.


124. Encyclopaedia of Islam; Vol.4, p.173


128. Al-Jazîrî, 'Abd al-Raḥmān; op cit. vol. 4, p. 96.


133. Abū Zahrah, Muḥammad; op cit. pp. 263-269.


137. Al-Jundi, Aḥmad Naṣr; op cit. p. 1003. A. Principle 2. The reason for making the mahr on the part of the husband; p. 1005. B. Principle 7. The mahr becomes obligatory on conclusion of the contract, thus if it is not concluded [if it has been given] the person who gave it has the right to reclaim it. C. Principle 8. It is customary that the woman should prepare the household furnishings and equipment from her mahr; D. p. 1009. Principle 18. If the wakīl takes possession of the Prompt mahr consummation and obedience then become obligatory upon the wife.

139. Lane, E.W; Arabic English Lexicon. Volume 2. p.1610. Shahādāh.


Ibn al-Ḥammām al-Ḥanafî, Kamāl al-Dīn Muḥammad ibn ‘Abd al-Wāḥid al-Suyūsî al-Si. kandari; op cit. part 2, p.355. On the Ḥanafî evidence for the view that shahādāh is a condition of validity for the contract of marriage; and part. 3. pp. 144,145. On the Shāfi‘î view on the opinion that shahādāh is a condition of validity of the contract of the marriage.


142. Al-Qurtubî, Abû ‘Abd Allah Muḥammad al-Anṣārî; op cit. vol.18, p.156.
143. Al-Shawkānî, Muḥammad Ālî ibn Muḥammad; op cit. vol.6, pp.125,126.

144. Al-Dardir Abû al-Barakât, Aḥmad ibn Muḥammad ibn Aḥmad; part.3. pp.82-86. on the Mālikî view on the requirement of witnessing in marriage.

146. Shalabi, Muḥammad Muṣṭafā; op cit. p. 107.

147. Al-Dardīr; Ālī Khalīl wa Ḥashīyat al-Dusūqī (al-Mālikī) part 2, pp. 236-239.
Shaltūt, Maḥmūd. op cit. p. 270.

148. Khān, Muḥammad Muḥsin; op cit. vol. 7, pp. 57, 58. Chapter 49 "Beating the tambourine during the nikāḥ and the walīmāh."

149. Ibn Ḥazm, Ālī Muḥammad ibn Aḥmad ibn Saʿīd; op cit. part 11, pp. 48, 49. Question 1832.

On the difference of opinion amongst the Ḥanafīs between Abū Ḥanīfah and Abū Yūṣuf on the one hand, and Zafar and Muḥammad on the other with regard to the witnessing of dhimmīs in the marriage of a Muslim, and that of a dhimmī.


153. On the application of the Egyptian Law with regard to witnesses.
Al-Jundî, Aḥmad Naṣr; op cit. pp. 68,69.
Principle 123, that the testimony of one who has committed some unlawful or immoral act is not acceptable, whatever repentance he may have shown. Assiut. 389/40/MIM SHIN 15/131.
Principle 121, that it is a condition that witnesses be Muslim providing that the person in respect of whom testimony is given is Muslim. Al-Jamāliyyah. 4204/32/2/133 TA SIN MIM SHIN G. 252.


155. See note 118. above.


158. Ibn al-Ḥammām al-Ḥanafī, Kamāl al-Dīn Muḥammad ibn ʿAbd al-Wāḥid al-Suyūsī al-Sīkandārī; op cit. part 2,
It may be noted that there is a difference of opinion amongst the Ḥanafis as to whether kafā'ah is a condition of validity of the contract or one without which the valid contract is not binding.

Abū Zahrah, Muḥammad; op cit. p.156.

159. Qalyūbī and ʿUmayrah; op cit. part 3, pp.334-337.
Al-Nawawī, Zakariyā Yaḥyā; op cit. part 3, pp.167-168.
It may be noted that the Shāfiʿis do not consider kafā'ah a condition of validity of the marriage but rather a right of the woman or her Wali who also have the right to waive this.
Al-Nawawī, Zakariyā Yaḥyā, op cit. part 3, p164.
Al-Shāfiʿī, Al-Umm vol.5, p13.

160. On the Ḥanbali view on the factors considered in kafā’ah.

161. On the Mālikī view on the factors considered in kafā’ah.
Al-Dardīr, Alī Khalīf wa Ḥāshiyat al-Dusūqī (al-Mālikī), part 2, pp. 249-265.
Al-Jazīrī, ʿAbd al-Raḥmān; op cit. vol.4, p.58.

vol. 15, pp. 237-240. Sūrah 39, verse 9 (al-Zumar)
vol. 16, pp. 82,83. Sūrah 43, verse 32 (al-Zakhraf )

The Case of the Dissolution of the Marriage of Shaykh ‘Alī Yūsuf to Ṣafīyyah Al-Sādāt and their Separation on the Grounds of Lack of kafā‘ah

As indicated in the text, this case aroused public opinion when it was brought to court.

The facts of the case may be summarised as follows.

The husband was Shaykh ‘Alī Yūsuf, a pioneer of the Egyptian press at the time whose origins lay in a remote village in Upper Egypt called Balsafūrah. His family was poor and in order to receive an education he moved to Cairo, where he entered Al-Azhar University. After a brief period however, he discontinued his studies and began to take an interest in current affairs. He tried his pen on some reports which he sent to the newspapers and the press enticed him. After only a few years he established the largest daily newspaper in Egypt, Al-Mu‘ayyid, in which some of the foremost writers of the time, such as Qāsim Amīn, Sa‘ād Zaghlūl, Muṣṭafā Al-Manfalūtī and others were writing. His work in the press enabled him to strengthen his ties with the most notable Egyptian personalities of the time, and later he formed a relationship with the Khedive ‘Abbās the Second, and subsequently with the Ottoman Sultan in Constantinople. He became and important man in addition to being an influential writer.
Earlier in his life he had made a modest marriage befitting his status at the time. When he achieved his great office and extensive wealth he thought to make a more illustrious marriage befitting his new status. His search led him to the house of Al-Sädät, which was a wealthy house belonging to a very ancient family. On one occasion he happened to see Şafiyyah, the youngest of the daughters of Al-Sädät, and learnt that she had acquired a degree of education significantly higher than the majority of the women of her era. He sought to become engaged to her but her father would not give his consent until after he had acted as a mediator to find a husband from amongst the nobility. The engagement was concluded and the Shaykh presented the mahr and shabakah, and several years passed in procrastination on the part of Al-Sädät. After wearying of the delay, Shaykh ‘Ali Yūsuf decided to go ahead with the marriage. When her father heard of this however, he sent a communication to office of the district attorney claiming that the Shaykh had seized her whilst she was under age and married her. The office of the district attorney found however that she had attained full legal age and that it was her right to give herself in marriage. Some of the relatives of the bride consulted the Qur'ān but found no appropriate verse from which it could be concluded that Shaykh ‘Ali Yūsuf had seduced his wife. The father of the bride was not satisfied with this decision and brought a lawsuit before the Sharī‘ah court requesting the annulment of the marriage of Shaykh ‘Ali Yūsuf to his wife in consideration of the fact that the Sharī‘ah stipulates that the marriage partners should be matched in Islam, lineage, wealth and occupation. In his suit he challenged the suitability of ‘Ali Yūsuf from the point of view of his lineage as he could not trace his ancestry to such a high ranking lineage as did Al-Sädät. He objected similarly concerning his occupation, for he
practised the profession of journalism and this was, as Al-Sādāt stated in his lawsuit, one of the baser professions. The case was referred to the court, before the Judge, Shaykh Abū Khaṭwah, which was scheduled to hear the case at the session of 25th July 1904. Meanwhile, public opinion was divided into two groups; the first defended ʿAlī Yūsuf and considered that there was nothing objectionable in what he had done and that he was indeed suitable for the daughter of Al-Sādāt. The supporters of this group were drawn from the educated. As for the second group, they formed the majority of the majority of the public opinion who believed in the old morality that noble descent and lineage are sacred things which self-made men cannot advance to, and that the rich heir, even if he is unemployed, is more noble and exalted than the poor man who rises through his own efforts.

On the day of the hearing of the case Shaykh Al-Sādāt was represented by Shaykh Al-Fanādī, Shaykh ʿAlī Yūsuf was represented by Ḥasan Bey Sabrī and his wife was represented by Shaykh ʿIzz Al-ʿArab. The judge who heard the case was well-known for his extreme narrow-mindedness and his first decision was to hand over the bride to her father in order to prevent sexual intercourse taking place until he had rendered final judgement on the case. Shaykh ʿAlī Yūsuf agreed to this but his wife refused to implement the decision fearing the vengeance of her father against her.

Eventually an agreement was reached that the bride should go and stay with a neutral person, and the choice fell upon Shaykh Al-Rāfī. A message was sent informing the court of this but the judge rejected it, considering that the action of the woman was an infringement of the decision of the court. He decided to defer the case and to abandon hearing of this or any other suit until his decision to send Ṣafīyyah to her father's house was implemented, if
necessary by force. This was the first time in the history of the judiciary that a judge had declared the abandonment of a case.

The assemblies in the Ministry of Justice tried successively to find a solution, and put pressure on Shaykh Abū Khaṭwah, the judge, in order that he might proceed in the hearing of the case. The case was indeed reconvened and depended upon the argument of the witnesses concerning the situation of the lineage of Shaykh 'Alī Yūsuf. At the conclusion of the proceedings the lawyer representing --

Al-Sādāt delivered the concluding speech in which he mentioned that the lineage of his client went back more than one thousand years, whereas Shaykh `Alī Yūsuf, a non-Arab, had no known lineage and originated from a small village all of whose inhabitants were non-Arabs. He then asserted that basically all the inhabitants of Egypt were non-Arabs with the exception of a few families whose lineage was known, such as Al-Wafā'iyyah, Al-Sādāt and Al-Bakrī. The lawyer then proceeded to attack the occupation of 'Alī Yūsuf making a comparison between his client who lived on extensive estates left to him by his father and Shaykh `Alī Yūsuf who was obliged to work in order to maintain himself and who was engaged in the lowly profession of journalism. He wound up his closing argument remarking that the journalistic profession in itself was disreputable and that the religion of Islam declared it to be impermissible because it was based upon spying and intrusion upon peoples privacy.

'Alī Yūsuf's lawyer replied to this that if the journalistic profession was forbidden by Islam then the virtue of the Chief Justice who was hearing the case was in question, as was that of all the judges who were contributing to the
newspapers and were paid for their contributions. The judge retired for fifteen days and despite representations by the Khedive ’Abbās and the Government in favour of Shaykh ‘Alī Yūsuf, he decreed the invalidation of the marriage and the separation of the married couple. The judge prided himself on his independence, holding tenaciously to his own opinion. In the conclusion of his judgement the judge confirmed Shaykh Al-Sādāt’s objections, saying that despite ‘Alī Yūsuf’s acquired wealth, the stigma of his early poverty would never be removed.

‘Alī Yūsuf appealed against the decision of the court and in the Maḥkamat al-Isti’nāf his lawyer read from the judges speech that acquired wealth did not erase from its possessor the blemish of former poverty. He then asked where the stipulations were that established that former poverty continued to be a stigma whatever wealth, property and honour were later acquired. He said that whoever holds such a view wants to register the inferiority of the whole human race, because man’s origins lie in poverty and after that wealth and poverty are unforeseen, wealth being based on effort and industry. The Maḥkamat al-Isti’nāf, however, issued its judgement confirming the original decision. Thus far the case had been confined to the courtrooms. Communications were now, however, reopened between Shaykh Al-Sādāt and Shaykh ‘Alī Yūsuf. Shaykh Al-Sādāt agreed that his daughter Şafiyyah should marry Shaykh ‘Alī Yūsuf by a new contract, his dignity having been restored to him by the ruling for dissolution. The marriage was concluded and Safiyyah returned to the marital home.

It may be noted that the case had a deep psychological effect on ‘Alī Yūsuf; in addition to the fact that his new marriage to Şafiyyah had no standing because of all that had been said regarding their inequality of lineage and
occupation, the injury inflicted upon him by the lawsuit did not heal. He went on to assume the rank of Pasha, his newspaper became the greatest Arabic newspaper, and he became the leader of one of the three political parties in Egypt, but still he continued to strive to record his name in the register of the nobility and to trace his origin to that lineage which in his bitterness he deemed so important. He achieved his desire eight years after the court case and was content to retire from the profession of journalism and politics which had crowned him with disgrace in order to be appointed as Shaykh of the Wafā‘īyyah order, because this appointment made him equal to his wife and her family which had once refused to become related to him (539 - 59).

167Al-Jundi, Aḥmad Naṣr; Mabādī al-Qaḍā‘ fi al-Aḥwāl al-Shakhsīyyah. pp.917,918. first principle - that kafā‘ah is not essentially a condition of validity of the marriage.

fourth principle - that kafā‘ah is that which averts disgrace according to custom.

Part 2
The Consequences of the Contract of Marriage
This section deals with the consequences or rulings of the contract of marriage. Here there are two main aspects. Firstly, if the contract is concluded in accordance with the conditions outlined in the preceding section then it is valid and certain consequences occur as a result. These comprise mutual rights enjoyed by both parties, rights of the man with regard to the woman, and rights of the woman with regard to the man. Secondly, if there is some flaw in the elements which constitute the contract or in the conditions attached then the contract is invalid; the rulings in the case of the invalid contract are however a matter of some complexity and have been discussed in detail by the jurists. We shall examine the essential features of this discussion below.
Chapter 1

The Consequences of the Valid Contract

Before discussing the rulings on the valid contract we should examine the nature of the rights which occur as a result of the contract. A disagreement arises with regard to the nature of these rights as to whether they are a product of the agreement of the two parties, or whether they are laid down by the shari‘ah. If they are regulated by the shari‘ah then the contracting parties may not stipulate any conditions which do not agree with the requirements of the contract as established by the shari‘ah. If however they are the result of the agreement of the two parties then any conditions which they specify will be binding providing this does not conflict with the principles of the shari‘ah.

Whilst mutual consent has a large role in the formation of any contract, it is clear that the shari‘ah is most important in regulating its consequences. The general principle in fiqh as agreed by the jurists is that the consequences of any contract and particularly of marriage are produced by the shari‘ah. The main purposes of this are the maintenance of justice, the preservation of business relations in financial contracts, and in marriage the protection of married life from exposure to corrupting factors if the two parties stipulate conditions which conflict with the objects of the shari‘ah.(1) Having established this however, the jurists do permit the parties to stipulate conditions to the contract but this is not unrestricted, as the conditions must comply with the principles of the shari‘ah. The jurists vary somewhat between restrictive and more moderate attitudes on this matter. The Zāhirīs forbid any condition except those for which there is textual evidence (2), whilst the Ḥanbalīs
widen the scope of this permission to include any condition for the prohibition of which there is no evidence (3). The Ḥanafīs, Shāfīʿis and the majority of the Mālikīs are of the opinion that the conditions which are permissible are those which are conducive to a properly regulated married life(4).

The rights which are established on the basis of the valid contract of marriage are divided into three main categories. (5)

**Mutual rights.**

The first category of rights is mutual rights, the most important of which is the legitimising of muʿāsharah jinsiyyah (the physical union), such that mutual gratification, which is a primary human instinct, occurs on a lawful basis. This is in accordance with the basic purposes for which marriage is ordained, that is procreation and preservation of lineage.

The jurists have differing opinions as to whether muʿāsharah jinsiyyah is a right or a duty with regard to each of the parties. It seems unacceptable that it should be considered a duty as such, as the sex drive is an instinct which the individual seeks to gratify for his own benefit and this takes the place of legal obligation. If we consider it as a right, however, this raises the question as to whether it is a mutual right, or whether it is a right with regard to one of the parties and a duty for the other. The Mālikīs, Ḥanbalīs and Zāhirīs are of the opinion that muʿāsharah jinsiyyah is a right of both partners with regard to the other, such that either may demand this right and oblige the other by law. Those who hold this opinion are agreed that the husband may have intercourse with his wife at any time providing that she has no justification to refuse such as menstruation, recent
childbirth or illness. They disagree however as to what is demanded of the man in fulfilment of the rights of the wife. There is an opinion that the husband is required to have intercourse with the wife every four months. This is derived by analogy with the period of *Ila*a which is established as four months. An alternative view is that the minimum required of the husband is that he have intercourse with his wife every four nights as he is permitted four wives and by division each is entitled to one night in four. This remains the same even if there is only one wife. Other views are that it should be one night in two on the basis of the *haddith* "The male is entitled to the lot of two females", and once a month according to a ruling by *Umar* ibn al-Khaṭṭāb on the grounds that this is all that is required to make the woman pregnant. (6)

The opinion of the Ḥanafīs, however, is that intercourse is an absolute right for the husband and a duty for the wife and that the husband is only ever obliged to fulfil this once in consummation of the marriage. This opinion is criticised however as it conflicts with the needs of human nature and with other juristic rulings which grant the woman the opportunity to dissolve the marriage if the man is impotent thus causing her to remain celibate. Some of the contemporary jurists such as Saʿīd Muṣṭafā Saʿīd are of the opinion that the issue of intercourse being the right of both parties with regard to each other is an unresolved question as the physical act which it comprises requires the cooperation of the two. If it were a right for both this would lead to conflict which would harm the rights of both in view of the fact that the right has two aspects these being the positive aspect of fulfilment and the negative aspect of abstinence. If one partner wishes to fulfil this right and the other refuses what then is the solution when both are acting within their rights. To avoid this it may be confirmed that it is a right for one and a duty for the other(6). The jurists are in agreement
that it is the husband who has the right, with the condition that it be used in accordance with the requirements of the shari'ah (7). This is supported by Sūrah 2, verses 222, 223. The use of this right is restricted by the factors by which the exercise of rights is restricted in general terms, that is that no qarar should occur as a result of its use. If it is recognised that sexual desire occurs in women as it does in men, then abstinence by the man may cause qarar to the wife. Such abstinence is a manifestation of the manner in which intercourse is considered to be the right of the husband and in accordance with this he may either fulfil it or abstain from it. In either case however he is considered to be acting within his right(8).

The shari'ah restricts the right of the husband in that he may not have intercourse with his wife in any way which may cause qarar to her. This is in accordance with the hadīth of the Prophet: "la qarar wa la dirar" ("No harm or detriment"). Such qarar may take various forms of which the most obvious is the case where the wife is too weak to bear the act. In these circumstances the wife is not required to consent to intercourse with her husband. If it becomes apparent that intercourse causes qarar to the wife due to some cause innate in her or for some temporary reason then in this case it is forbidden for the husband to have intercourse with her. Likewise if the husband exceeds the proper bounds in such a way that qarar is caused then the right is restricted by the extent of such qarar. The jurists also deal with qarar arising not from the act of intercourse in itself but caused by it such as the case where the husband is affected by some sexually transmitted disease. If intercourse causes the death of the wife then the husband is responsible and may be liable to pay the diyā' or bloodwit, depending on the circumstances. The basis for this is that the husband is authorised to have intercourse with the wife but not to cause her qarar. (9)

From the opposite point of view, the jurists have examined
the case where the man abstains from intercourse with his wife, thus preventing her from gratifying her natural desires. This is prohibited and the shari‘ah imposes various rulings in this case, amongst which is the right of divorce on grounds of ḍarar. According to Mālik the wife may seek divorce if she claims that the husband is harming her and that it is not possible for her to continue married life with him. She may ask a qāḍī to separate them, and if the harm is confirmed and reconciliation cannot be achieved, then he will grant her an irrevocable divorce. The jurists also give rulings on īlā’. This is the case where the husband refrains from intercourse with his wife intentionally and with no justification. This may be merely an apparent intention, or he may confirm this and swear an oath upon it. The majority of the jurists are agreed that if the man swears by God that he will not have intercourse with his wife for more than four months then he is muwallin. In these circumstances, if the husband has intercourse with his wife within four months the īlā’ is null and he is obliged to do a penance for the oath. If however he completes the four months without having intercourse with her then she is divorced from him irrevocably according to the Ḥanafīs. The opinion of the rest of the jurists however is that the ruling depends on the length of time and that it is then for the wife to demand either intercourse or divorce. If the husband refuses in this case then a qāḍī may divorce them. (10)

If we weigh the two above opinions together, that is that mu‘āsharah jinsīyyah is the right of the man alone or that it is a mutual right, we may note that the view that it is the right of the man alone is unworkable in practice in that this subject is in fact outside the power of the law and its limited estimation. We thus return to the view of the majority of the jurists which is that it is a right for both of the partners on the basis of evidence from the Qur‘ān and sunnah. This is emphasised particularly in Sūrah 2, verse 223 (11). There
are moreover many hadîth which confirm this, for example a hadîth on the authority of `Abd Allah ibn `Amr ibn al-`Aṣ that the Prophet said to him: "O `Abd Allah, have I not heard that you fast by day and spend the night awake?" He replied: "Yes indeed, O Prophet". The Prophet then told him: "Do not fast, break your fast and sleep, for your body has a right, your eye has a right, your wife has a right, and your flesh has a right over you."(12)

A consequence which follows this closely is the establishment of muṣāharah, which is the bond of relationship formed between the two families. On the basis of this, marriage becomes prohibited between the husband and the female line of descent and ascent of the wife, and between the wife and the male line of descent and ascent of the husband. (13)

One of the important results of marriage is nasab, and the shari`ah comprises rulings which protect offspring and provide for their care from conception to maturity. The jurists take these rulings as a basis for regulation of all matters concerning the child. In some of these they are in agreement whilst in others there is some dispute, and in view of the vastness of this subject which comprises amongst other matters maintenance for children, custody, and raḍā`ah, we shall confine ourselves here to the circumstances in which nasab is established as a consequence of the valid marriage contract. Nasab may be established in three ways. The first of these is the fact of the marriage, on the basis of the hadith of the Prophet: "The child belongs to the marriage bed and the adulterer is forbidden". The jurists specify certain conditions for this, some of which they agree and some they disagree upon. The first is that conception by the
wife should be feasible, in that the husband should be mature or adolescent nearing maturity. The jurists are divided on this condition, the Ḥanafīs saying that nasab is established by the contract itself even if the partners have not met, thus even if they are a great distance apart and the wife conceives they hold that the nasab is established on the basis of the purely logical possibility of their having met (14). The Ḥanbalīs, Shāfī`is and Mālikīs however state that nasab is established by the contract providing that it was actually possible for the couple to have met, whilst Ibn Taymiyyah and the majority of the jurists specify that the contract must have actually been consummated (15). The second condition is concerned with the minimum duration of pregnancy, which is generally agreed upon by the jurists to be six months on the basis of Sūrah 46, verse 15 (al-Aḥqāf), and Sūrah 3, verse 14 (Luqmān). The former states the combined period of pregnancy and raḍā`ah to be thirty months, whilst the latter states the period of raḍā`ah to be two years, thus by subtraction the minimum duration of pregnancy has been taken to be six months. This is supported by a report from the time of the Caliphate of `Umar ibn al-Khaṭṭāb, that a woman gave birth six months after her marriage. `Umar was going to impose the ḥadd for adultery on her. Ibn `Abbas said to him however, "If she argues with you on the basis of the Qur'ān she will defeat you", and he read to him the two verses above (16). The third condition concerns the maximum duration of pregnancy. The jurists have differing views on this. The Ḥanafīs say that the maximum is two years on the basis of the words of `Āishah : "The pregnancy of a woman does not exceed two years ". The Shāfī`is specify four years and the Mālikis five, on the basis of a narrative by al-Dār Qūṭnī that Mālik said : "There was a neighbour of ours, the wife of Muḥammad ibn Ajlān, who was a truthful woman and whose husband was truthful, who conceived from him three times in twelve
years, each pregnancy lasting four years”. The Zāhirīs say however that the maximum is nine months on the basis of the above narrative concerning `Umar ibn al-Khaṭṭāb(17).

The fourth condition is that the husband should not deny nasab. If he does so then it cannot be established until the couple go through the procedure of liʿān.

The second method of establishing nasab is by declaration. The jurists define this as declaration by one person of the existence of a relationship between himself and another. Such relationships may be divided into two categories. The first of these is immediate relationship, that is relationships in the first degree such as that between father and son. The second is indirect relationship, that is the relationship of those who have a common forbearer, such as brothers or uncle and nephew. This may also comprise descendants or forbears but in the second degree, such as grandfather and grandson. The conditions stipulated with regard to this are firstly that an individual who is declared to be the son of another should be of previously unknown nasab. Secondly it should be feasible that he could be the son of a person such as the one making the declaration in that their ages should be within reasonable limits for this to be possible. A third condition is that the one making the declaration should be telling the truth and known as a truthful person. A distinction is made by the Ḥanafīs in that his declaration is evidence applicable to himself alone and cannot refer to anyone else (ie. he cannot establish nasab between other individuals by declaration) unless there is evidence or confirmation by a third party. Fourthly he should not state that a person is his child by zinā’. The majority of the jurists are agreed that no nasab can be established by zinā’ with the exception of Ibn Taymīyyah who supports the establishment of nasab on the grounds of physical paternity. The Mālikīs require also some causal evidence in the case where the circumstances contradict the declaration such as if the child is a foundling and the man
known to be sterile. This in order to preserve the integrity of *nasab*. In contrast the Ḥanafīs agree upon the establishment of *nasab* by declaration without any requirement of evidence, even in circumstances which contradict it. We may note here some of the rulings on adoption of a child of known or unknown *nasab*. Adoption was known before Islam and remained prevalent in its very early stages until the revelation of *Sūrah 31*, verses 4, 5 (*al-Ahzāb*). In accordance with the custom of his tribe ‘Alī adopted his *mawlā* Zayd who thus became Qurayshī and was known as Zayd ibn Muḥammad. This adoption was abrogated, however, by the above *sūrah* (19).

The third means of establishing *nasab* is by evidence. This may comprise the testimony of two men or one man and two women. If a man claims that another individual is his son or his father and the other denies this claim, and if the claimant then produces evidence which is accepted, then *nasab* is established and all rights and rulings in respect of this are confirmed. It is an established principle that in claims of *nasab* evidence will be heard despite the denial of the marriage upon which this is based as this is essentially a claim of *nasab* and not a claim concerning marriage (20).

The contract of marriage also establishes the mutual right of *wirāthah* (inheritance) on the basis that the physical union constitutes a bond between husband and wife which is comparable to blood relationship, thus if the latter establishes the right of inheritance, then so should the former. (21)
The rights of the husband with regard to the wife.

The first of the rights of the husband which result from the valid contract is the right to ṭā‘ah or obedience from his wife. This is based on Sūrah 4, verse 34 (al-Nisā’). This comprises ṭā‘ah in all matters related to the marriage with the exception or anything involving disobedience to God (22). If for example he orders her to do something which is forbidden by the shari‘ah, such as drinking alcohol or gambling, associating with strange men or going out unsuitably dressed then it is her duty to oppose him according to the hadīth of the Prophet: "No ṭā‘ah is due to any creature in defiance of the Creator"(23).

On the basis of this right the husband may confine the wife in the marital home such that she lives with him under one roof, while he undertakes all the affairs outside which she would be unable to do due to their contradiction with her nature and role as a wife (24). The wife therefore undertakes the work inside the house and her husband may help her or she may be assisted by a servant. There is a hadīth about Fāṭimah (the daughter of the Prophet) that she came to the Prophet complaining to him about the burden of housework which was upon her and asking him for a servant. The Prophet said to her: "Fear and obey God O Fāṭimah, and do the work for your family". It is also reported that Asmā’ said: "I used to do all the housework for Zubayr, and he had a horse and I used to lead it, and I made bread and carried it on my head from his land(25).

The jurists differ on the work of the woman as to whether it is farq or merely mandūb . The Ḥanafīs and Shāfi‘īs are of the opinion that a wife’s service to her husband or her house is not a duty for the neglect of which she will be blamed. They go so far as to say that she is not obliged even to cook his food nor to wash his clothes. The Mālikīs distinguish between whether or not she is of a social status whereby she
would not be expected to do housework. If she is then she is not obliged to do any housework at all, but if she is not then she is only obliged to do certain things such as breadmaking, cleaning the sleeping area and the like as this is the custom of most women. She is not obliged to grind corn or to weave or similar. The Zāhirīs are of the opinion that the woman is not obliged to serve her husband, not even in bread making or cooking, but that it is preferable if she does. (26)

The second of the rights of the husband over the wife is the right of discipline. This is in effect an aspect of the right of ṭāʿah in that it is a remedy in case of the transgression of this right. Evidence for this right is found in Sūrah 4, verse 34 (al-Nisā'). It is a condition for the exercise of the right of discipline that the woman be nāshizah or disobedient. Abū Ishāq says that nushūz may occur between a married couple and that it is hatred of each of the partners for the other. A woman who is nāshizah has "gone away" from her husband; she defies him and hates him and withdraws ṭāʿah to him. The jurists say that the husband has the right to discipline his wife for any refusal of ṭāʿah with no fixed bounds. The broad scope of the right of discipline leads it to being considered by the sharī'ah as a form of the right of reprimand which the qāḍī may have over all people, yet this right is conditional upon its not being a matter which might be taken before a qāḍī. If it is such then it is the qāḍī who has the right to restrain her in her husband's custody. The right of the husband is distinguished from that of the qāḍī however in that certain rulings may be applied if he exceeds its limits.

The means of discipline which appear in the Qur'ān and sunnah are admonition, desertion of the marriage bed and light beating, and these varied means are arranged in an ascending order such that none may be used until the preceding one has been used and it appears that it has been of no avail. If one of the methods is used and it is effective then it should not be
given up in favour of a harder one. This is on the basis of Sūrah 4, verse 34 (al-Nisā’). There is an opinion that desertion in bed should only be used in the case where the woman commits an outrage and should not be included in general, that is for a simple dispute occurring between the two, in which case the husband should apply the means preceding desertion. This is based on the ḥadīth of ʿUmar ibn Al-Aḥwaṣ who witnessed the khitbāh of the farewell pilgrimage in which the Prophet said: "Have good intentions towards women for they are helpmates to you and you have nothing against them unless they commit and obvious outrage. If they do this then desert them in bed and beat them but not in a violent way. If they obey you then do not treat them unjustly. You have a right with regard to your wives, and they have a right with regard to you. Your right over them is that you should not allow into your bed someone whom you hate, nor allow into your house someone whom you hate, and their right over you is that you should be generous to them in their clothing and their food". The implication of this hadīth is that it is not permitted to abandon the marriage bed or to beat the woman unless she commits some serious outrage. The variety and order of methods of discipline is due to the variation in the nature of people.

It is stipulated that no ḍarar should be caused to the wife due to the husband's exercise of the right of discipline. Sayyid Qūṭb says that the rulings of the sharīʿah on this matter were established on the basis of certain principles which govern the forms it may take, the motives which may initiate it and the purposes for which it may be used. This issue is laid down and regulated securely by the sharīʿah in order that it might never be interpreted to imply that men have the whip hand over women or that women may be treated as slaves in the name of religion. These measures are permitted only in order to stem nushūz at its source before it can develop. The matter is surrounded by many cautions
against its abuse or its being carried to excess. It appears from the ḥadīth that remedies may be sought in the case where this occurs. Mu`āwiyyah ibn ʿīdahal-Qashīrī relates that he asked the Prophet: "What are the rights of the wife of one of us over him?" The Prophet replied: "That you feed her as you feed yourself, clothe her as you clothe yourself, that you do not strike her face, nor do anything offensive, and that you do not desert her except within the house." He also said: "None of you should beat his wife as a beast of burden. He should not flog her in the morning and then sleep with her at night", and: "The best of you is the one who treats his family well, and I am the best of you towards his family."

These measures have limits at which they should stop. Once the stage is reached whereby the aim is achieved, no further steps should be taken. This meaning is indicated clearly at the end of Sürah 4, verse 34 (al-Nisā'). The means thus ceases where the end is achieved. The indication is that the aim of this is ẓā'ah, and that this is ẓā'ah by consent, not by compulsion.

In the case where the husband abuses his right of discipline then according to the Mālikīs the wife may ask for divorce on the grounds of ḏarar. According to the Shāfi`yyah, if the husband is so bad tempered that restriction by a qāḍī will be of no avail, then he will separate them without divorce until such time as the husband regains his just nature. Nafaqah continues to be a duty for the husband during this period.

The third right of the man is the right to choose the wife's domicile. The husband has the right to make his wife live wherever he wishes on the basis of Sürah 65, verse 6 (al-Ṭalāq ). The jurists are agreed upon this but state that there are two restrictions. The first is that the true intention of the husband in moving his wife should not be to cause ḏarar to her. This restriction, in addition to being an application of the general principal of forbidding of ḏarar, is also derived from the above verse. The jurists have specified
this restriction clearly saying that the qādi must investigate the facts of the situation to confirm that in relocating his wife the intentions of the husband are not merely to cause ḍarar to the wife but is for a legitimate purpose. The right is also restricted by fear of ḍarar which may occur for example if they are to move to a country where a war is taking place, or if there is great hardship. In such cases the woman may refuse to move. (27)

The rights of the wife with regard to the husband.

The rights of the wife over the husband consist in two main rights. The first of these is nafaqah. This is not simply maintenance in the form of money paid to the wife but comprises providing for all her needs in the way of food and drink, clothing, housing and running a household. The basis for nafaqah is derived from the Qurʾān and sunnah, for example Sūrah 2, verse 233 (al-Baqarah), Sūrah 65, verse 6 (al-Ṭalāq).

What may be derived from these verses is that maintenance for the wife is incumbent upon the husband in that when the wife bears children nasab is established with regard to the husband and the second verse therefore contains a command to husbands to house divorced women until they give birth to the limit of their ability. The fact that this is obligatory for divorced women indicates by qiyyās that the same should apply to married women. The last verse which states the obligation of the husband to provide for his wife according to his ability is confirmed by the sunnah. It appears that the Prophet commanded that nafaqah be provided for the wife in various ḥadīth; for example, the Prophet was asked "What rights do wives have?" The Prophet replied: "That you feed them when
you eat, that you provide them with clothing as you clothe yourself, that you do not strike their faces, that you do nothing disgraceful, and that you do not desert them except within the house (ie desert the marital bed). It is related by Jābir that the Prophet said in his *khutbah* before the farewell pilgrimage: "They are entitled to their maintenance and clothing from you in accordance with what is equitable". This is further supported by the *hadīth* related on the authority of ʿĀishah that Hind bint ʿAtabah ibn Rabīʾah ibn ʿAbd Munāf came to the Prophet and said: "O Prophet, Abū Sufyān is a miserly man and does not provide sufficient maintenance for myself and my son except for that which I take from his money without his knowledge. Is it wrong for me to do that?" The Prophet replied: "Take from his money that which you require for yourself and for your son." What may be derived from this *hadīth*, is that *nafaqah* for the wife is obligatory. Were it not so the Prophet would not have given her this permission as he would never permit the wrongful taking of money.

The jurists are agreed that the obligation of *nafaqah* for the wife is one of the consequences of her entering into the contract of marriage. They differ only on when this becomes obligatory and the conditions required for it to be considered her right.

The view of the Ḥanafīs is that *nafaqah* is obligatory simply on the basis of the valid contract, even if the wife has not yet moved to the marital home, on condition that there is no impediment on her part to her doing so, but that the cause is the delay on the part of the husband in availing himself of this right. They specify certain conditions for the right to *nafaqah* which are:

1. That the marriage contract be valid.
2. That the wife be suitable to the intended purpose of
marriage, that is the mutual physical gratification of husband and wife. Thus she must be of age or in the case where she is a minor, she must be sufficiently mature that she may consummate the marriage. If she is under-age and unable to consummate the marriage then nafaqah is not obligatory as the condition which makes it so is the wife's consenting to consummation. Just as it is not possible to impose the condition of consent to consummation upon the wife, so it is not possible to impose the condition of nafaqah upon the husband. This is the view of Abū Ḥanīfah and Muḥammad. Abū Yūsuf says however that if the wife is a minor and consummation is not possible, but if it is possible for her to be useful as a companion or household help, and she moves to his house, then she is entitled to nafaqah. The impediment to consummation here is temporary and the situation is thus like that of a wife who is menstruating or in child-bed who is entitled to nafaqah despite the temporary circumstances. If she is of age however and the husband is a minor then again there are two views. That of Abū Ḥanīfah and Muḥammad is that the wife is entitled to nafaqah in this situation. There is another opinion however that no nafaqah is due as the husband has not been able to consummate the marriage just as if she was a minor or absent.

3. The wife should consent to being under his authority legally. If she declines to do so or is prevented from such by her wali then she is not entitled to nafaqah. Likewise she is not entitled if she submits to his authority only for this purpose, just as if she submitted to consummation merely in order to receive the prompt mahr.

The Shafiʿis hold two views on this subject. The earlier view is that nafaqah is obligatory on the basis of the contract as is the mahr on the same grounds as a woman who is ill. The later view however is that nafaqah becomes obligatory on the basis of the wife giving herself over to the husband absolutely. If a girl who is a minor gives herself to her
husband without the permission of her wali this is sufficient to establish the husband's taking of his right with regard to her, just as a woman who is of age and rational who gives herself to a husband who is a minor without the permission of his wali is entitled to nafaqah. The minor girl who is not able to consummate the marriage is not, however, entitled to nafaqah, in contrast with a woman who is ill as illness is something unforeseen and generally temporary.

In the case of the contract which is irregular, al-Shafi'i is of the opinion that nafaqah is not obligatory in this union even if the wife becomes pregnant. If, however, the husband does provide nafaqah, and they then separate, the husband has no right to reclaim what he has paid from the wife, rather it is considered to be in return for the gratification which he has obtained from her, whether or not she be pregnant. The Shafiis are also of the opinion that nafaqah is forfeit in the case of nushuz.

The Maliki view is that nafaqah is obligatory on fulfilment of certain conditions. The first is that the wife or her wali should call for consummation to take place after time has passed for the couple to prepare themselves for each other, and that the wife should not decline to have intercourse upon his request. The second condition is that she should be fit for consummation with no impediments to this, or grave illness prohibiting intercourse. In such cases she is not entitled to nafaqah, and this applies in the case of illness of either spouse. A third condition is that the husband should be of age. If he consummates whilst he is a minor and not legally capable of this, or if she is a minor and unable to consume the marriage then no nafaqah is due. (28)

Nafaqah ceases upon the death of either of the parties to the marriage on the grounds that there is no basis for it to
continue.

Nafaqah may be forfeited or suspended due to actions on the part of the woman. Examples of such actions are:

a. Nushūz or disobedience of the wife.

Nushūz may consist in the wife's leaving of the marital home without the permission of the husband. The Shāfiʿīs are of the opinion that it means withdrawing of tāʿah to the authority of the husband and they define his authority as comprising that which may be considered affairs of married life and which is in no way offensive to God. The jurists are agreed that there is no entitlement to nafaqah for the duration of any nushūz on the grounds of non-submission to the husband's authority due to a cause arising from the side of the woman. The Ḥanafīs do not consider the wife to be nāshizah if she declines to have intercourse, providing she remains in the marital home, as she remains confined and therefore subject to the husband forcing the issue if he so desires. The Shāfiʿīs make exception of certain cases where nafaqah is not forfeited if the wife goes out without the permission of the husband and she is not considered nāshizah. These are cases of absolutely necessity, or those instances where the custom of the society in which she lives permits this. The Mālikīs make a distinction on the basis of whether or not the wife is pregnant. If she is pregnant then nafaqah will be obligatory in the case where if she were not it would be forfeit. (29)

b. Riddah or apostasy of the wife.

This is the instance where a Muslim woman rejects Islam, in which case her nafaqah is forfeit, in contrast with a woman who is an adherent of one of the accepted religions and who is married to a Muslim man, for she is entitled to nafaqah. Nafaqah for a woman who apostasises is forfeit whether she is married or completing her 'iddah. If however she returns to Islam during the 'iddah then her nafaqah is not restored automatically, but only after a new contract is made. This is
in contrast with the case of *nushūz*, on the grounds that *riddah* is grounds for separation from the side of the woman and causes *nafaqah* to be cancelled, whilst *nushūz* is an incidental matter which suspends *nafaqah* but does not cancel it absolutely. (30)

*Nafaqah* comprises all that which a husband is required to provide and includes the expenses of food, clothing and housing. These matters are agreed upon amongst the jurists. There are, however, certain other matters such as the provision of medical treatment which cause some disagreement. According to the Ḥanafīs the cost of medicines is not incumbent upon the husband, even if the matter is raised before the law in case of dispute. It follows then that if medicines are not the responsibility of the husband then likewise the cost of stimulants such as coffee and cigarettes is not incumbent upon him, even if the wife will suffer by withdrawal from them. There is moreover disagreement on whether or not payment for a midwife is incumbent on the husband. There is a view that it should be his duty as the benefit is to the child and support for the child is incumbent upon the father.

Payment of a servant or provision of someone to assist the wife with housework varies according to local custom and the circumstances of the husband. If he is affluent and the wife is of a class who are not accustomed to doing their own household work, then it is the husband’s duty to provide a servant. He is then obliged to maintain the servant as this is then a part of the *nafaqah* of the wife. If he refuses this a *qādi* may impose upon him payment of a servant. This is agreed upon by the Ḥanafī jurists, but they disagree about payment for more than one servant. Abū Ḥanīfah only imposes the obligation of payment for one servant as any more would constitute excess. Abū Yūsuf says that the husband may be required to pay for two or more servants if he is affluent. If however he is of restricted means he is not required to
provide a servant, nor to keep one. He is required to provide only essential *nafaqah*, and the provision of a servant does not come under this category. Al-Shāfi‘ī disagrees with the above, holding that the husband is liable to provide a servant for his wife even if he is in straitened circumstances, on the condition that she is of a class who would normally have servants. If she is not then there is no requirement to provide a servant unless she is aged or infirm and unable to undertake housework.

The Mālikīs are in agreement with the above, with the exception that they specify in addition the cost of medical treatment, doctors fees and payment for a midwife as part of the *nafaqah* for the wife. Likewise, with regard to their domicile, if the husband requires her to live with his relations, he may be bound by two main conditions, firstly that there be a private place for the wife such that none of his relatives may be able to see her naked, and secondly that the wife should suffer no *darar* from living with his family. If either of these conditions is not fulfilled then the wife has the right to refuse to reside there.

The husband should undertake *nafaqah* in the form of housing, food and clothing without being requested to do so. This is then in respect of the wife giving herself to the husband. If he does this then the wife has no grounds to demand that this be imposed. The wife's consent to the amount of this concludes the matter. If she does not agree to the amount then she is entitled to pursue the matter in law for the *nafaqah* due to her to be assessed. The validity of her claim must then be established and the amount of *nafaqah* due to her will be estimated with respect to its three main elements.

The jurists differ on the basis for the estimation of the *nafaqah*. The first view which is supported by the Mālikīs and Ḥanbalīs, and which is the predominant view of the Ḥanafīs,
is that when *nafaqah* is assessed the circumstances of the couple together should be taken into account. If they are affluent then an amount appropriate to their affluence should be imposed, and likewise if they are of modest means. This is based on the ḥadīth about the Prophet's instruction to Hind, the wife of Abū Sufyān which is clear in specifying the circumstances of the woman in determining *nafaqah* as the Prophet instructed her to take from her husband's money that which she required. The second view, which is supported by the Shāfiʿīs, and which is held by al-Karakhī as well as Ibn Ḥazm and the Zaydīs and the ʿImāmī Shīʿah as well as constituting a second opinion amongst the Ḥanafīs, is that the only factor to be considered in determining *nafaqah* is the circumstances of the husband. This is based firstly on Sūrah 65, verse 7 (*al-Talāq*), the effect of which is that *nafaqah* should be provided in accordance with the means of the one providing it and his ability to pay. This is supported by the fact that the verse states that *nafaqah* is imposed upon the man in accordance with his means. Whilst *nafaqah* is obligatory for rich and poor, a poor husband will not be obliged to pay the *nafaqah* due from a rich husband as this would be impossible for him. Food and clothing are incumbent upon him in accordance with what he has, thus she should eat as he eats, and the same applies to all aspects of their life. The logical view is that a woman who marries a poor man accepts his circumstances and the level of *nafaqah* which he is able to provide, even if she herself is from and affluent background. This is consistent with the requirements of equitableness in that the determining factor is the circumstances of the man and that *nafaqah* should be within the limits of his financial capacity and the limits of that which is essential to fulfil the requirements of the woman. *Nafaqah* is thus estimated according to the resources of the husband and on the basis that the wife is attached to the husband and not to her family. (31)
Where the husband refuses to pay *nafaqah* a distinction must be made between in the case of a man who is affluent and that of a poor man.

In the case of an affluent man, he may or may not have visible assets. If he does, a *qādi* may sell these and pass on the proceeds to the wife to maintain herself. This is on the basis that the *nafaqah* required in this case is a debt and if a debtor refuses to pay what is due from him a *qādi* may sell any of his property which is surplus to his essential needs, even if this is by force, in order to pay his debts.

If he has no visible assets which a *qādi* may sell, or of he does have property but it is not surplus to his requirements, then if the wife asks for his imprisonment the *qādi* will comply with this request. If it is established that he is affluent then the duration of his imprisonment is at the discretion of the *qādi*. There is no specific period for his rather it varie according to the persons involved. According to Abū Ḥanīfah, the minimum length of imprisonment is one month and the maximum three. The *qādi* will only apply this if it is clear that the husband is willfully refusing to pay *nafaqah* after being called before the governing session two or three times and having been censured for leaving his wife without *nafaqah*.

If he is imprisoned and still refuses to pay, there are two views on whether or not the wife is entitled to seek separation on grounds of lack of *nafaqah*. The first of these which is supported by the Zāhirīs, Ḥanafīs, Shāfī‘īs and Ḥanbalīs is that the *qādi* may not comply with the wife’s request for separation as in the case of an affluent man it may be possible to take from his assets; moreover if at a certain time he refuses to pay this does not mean that he will do so in the future. The second view, which is that held by the Mālikīs, al-Karqī and Abū Taḥlib that the woman has the right to seek separation on the basis of *Ṣūrah* 2, verse 233 (*al-Baqarah*). This verse contains a clear prohibition of
causing detriment to the wife. The opinion that there should be no separation on grounds of lack of nafaqah is detrimental to her and unjust. The removal of such injustice is then a duty, and in this case it can only be achieved by separation. (32)

If the husband is poor then it is agreed that the wife cannot ask the qādi to imprison him for refusal to pay nafaqah. Imprisonment is a measure to be used only against the unjust action of an affluent husband who refuses to pay although he is able to do so.

In this case there are two points of view with regard to whether or not the woman may ask for separation on the grounds of lack of nafaqah. The first of these is that of the Shāfiʿīs, that if the wife asks for separation on grounds of the husband's inability to provide nafaqah then a qādi should not comply with this request, rather he should instruct her to incur debts, that is to buy food on credit, the cost to be met from the money of the husband. This is in accordance with Sūrah 2, verses 228 and 268 (al-Baqarah), and Sūrah 65, verse 7 (al-Ṭalāq). The first of these shows that a person who is in debt but who is poor should have his debts deferred until he becomes more prosperous. On this basis then it follows that the wife has no right to separation for lack of nafaqah and she is moreover required to incur debts to cope with the situation until he is able to do so. There is a view that this is unacceptable, however, on the grounds that the first of the verses appeared in a general form, whereas Sūrah 2, verse 228 (al-Baqarah) moreover rules on the subject of disputes and on the basis of this the qādi should order their separation in order to remove the ḍharar which is affecting her. With regard to the other two verses, it is inconceivable that there should be qiyyās between the fact that the poor man is not charged to pay nafaqah if it is beyond his means, and the impermissibility of separation. More appropriate is the
avoiding of *darar* to the wife by freeing her from this relationship so that she may earn her own living or marry another man.

The supporters of the view that there should be no separation on the grounds of inability to provide maintenance rely on the following *ḥadīth*: Abū Bakr and ʿUmar ibn al-Khaṭṭāb went to the house of the Prophet and found him sitting surrounded by his womenfolk. They joined him, sitting in silence, then Abū Bakr said: “If I saw a woman asking for *nafaqah* I would strike her on the neck.” The Prophet smiled and said: "Here they are around me as you see asking me for *nafaqah". Abū Bakr turned to his daughter ʿĀishah, wife of the Prophet, and struck her neck, and ʿUmar ibn al-Khattab turned to his daughter Ḥifṣah, wife of the Prophet, and struck her neck, both saying: "Do you ask the Prophet for that which he does not have?" They replied: "By God, we will never ask the Prophet for that which he does not have". What may be inferred from this *ḥadīth* is that the two men began to beat their daughters in the presence of the Prophet when they asked for *nafaqah* which he could not provide. It is not possible that they would strike them if they were claiming a right, and the Prophet would confirm this, thus the indication is that there is no right to claim maintenance in straitened circumstances. If such a claim is not valid then it follows that it is not possible for the wife to seek separation on grounds of inability to provide *nafaqah*.

There is a second view which is supported by Mālik and al-Shāfiʿī is that if the husband is in difficult financial circumstances and the wife chooses separation they will be separated but this will be by dissolution not divorce and the husband cannot then restore the marriage during the *ʿiddah* even if his circumstances improve. If a *qādi* does not rule for dissolution but obliges the husband to divorce her and he then divorces her then he may reinstate the marriage. If he does so
when he is more prosperous and refuses to pay nafaqah then she may seek dissolution of the marriage.
If she consents to stay with him in spite of hardship, or marries him knowing of his circumstances, and later seeks dissolution on grounds of hardship, then this will be granted. This is the view of al-Shāfi`ī on the basis that just as nafaqah is a right which is renewed every day, so is the right to dissolution. Mālik, however, is of the opinion that the wife has no claim for dissolution in either case as she committed herself to the contract knowing of the situation. Mālik holds moreover that separation between them will be by revocable divorce and if the marriage has been consummated and the husband becomes more prosperous during the ʿiddah, then he has the right to reinstate the marriage. This is based on Sūrah 2, verses 229-231 (al-Baqarah). What we may conclude from these is that they show clearly the obligation to keep a wife without causing ẓarar to her. A man who is not able to provide nafaqah causes ẓarar to his wife, and to force her to remain with him conflicts with equity in married life. He is then required to release her in kindness. If he refuses to do so then the qādi acts for him in divorcing her as he would in the case of jubb or ʿinnah.

The evidence from the sunnah is that the Prophet gave the right to seek divorce for lack of nafaqah. It is reported that the Prophet said of a man who did not have enough money to support his wife that they should be separated. (33)

If a husband is away from his place of residence and his family for a period of time, and his wife does not have enough money to provide for herself then it must be established whether or not he has left her any money, goods or land. If he has left property then the wife may bring the matter before a qādi claiming nafaqah against that which he has left behind. The opinion of the Ḥanafīs is that if he has money in the form required for nafaqah, of if he has money deposited or owed to
him and the wife asks that *nafaqah* be imposed upon these then this will be effected. This is in effect an emergency action against an absent person which is unopposed and it is then required that the *qādī* make the wife swear an oath that the absent husband had not given her any advance *nafaqah* before his departure. Moreover he must take from her a guarantee with regard to the *nafaqah* in case of the possibility that she has already received the money, or in case she has been divorced and has completed her ‘*iddah* or in case she is considered *nāshizah* and is not therefore entitled to *nafaqah*. If the husband has left property such as houses or agricultural land then the *qādī* will impose *nafaqah* to be drawn from the letting of these as he is not empowered to sell such assets in the absence of their owner.

The Mālikīs and Shāfi‘īs are however of the view that the *qādī* must impose *nafaqah* from that which he has left and to that end his goods and property may be sold if he has left nothing in a form which may be used as *nafaqah*. The *qādī* may not impose *nafaqah* however until he has taken a legal oath from her that she is entitled to *nafaqah* up to this date, and that she has not forfeited all or part of it. If the husband then appears and objects to what has been done, and if it is proved that the *nafaqah* was forfeited, then he may recover from her that which she has taken.

The Ḥanafis are of the opinion that if the absent husband has not left any property and the wife states this to the *qādī* in order that he impose *nafaqah* for her against the husband and authorise her to incur debt in his name, then her evidence will only be heard in relation to the husband and not in relation to *nafaqah* as this is a ruling against an absent person which is not permissible.

The Mālikīs and Ibn Ḥazm are of the view that if the *qādī* is aware of the husband’s affluence then he may impose *nafaqah* but if he is aware that he is not affluent then he will not do so as the poor man is not held liable for *nafaqah*. If he has no
knowledge of the circumstances of the husband then no nafaqah can be imposed until this is established. The Shafi'is and Hanbalis and a group of the Hanafis are of the opinion that the qadi should hear the woman's claim in order to impose nafaqah and to instruct her to incur debt, so long as there is no qadar to the absent husband, for if he later appears and confirms the marital relationship then the debt will be imposed on him. If however he denies the marriage then the qadi will ask her to repeat her evidence, and if she does so then her word will be taken, but if she cannot then her kafil will be held responsible.

If the wife requests separation because her absent husband has neither left nor sent nafaqah, the Hanafis, Shafi'is and Zahiris are of the opinion that her request should not be complied with and that the qadi should not divorce her even if the absence is prolonged or his whereabouts unknown, as dissolution on grounds non-payment of nafaqah during absence may only occur in case of poverty, and where poverty is not established then this is not permitted. The Malikis are of the view however that the wife has the right to ask for separation and that the qadi is required to respond to this. He will then be divorced after he has been written to, if this is possible, that is if his whereabouts are known, and after reasonable time has passed for letters to reach him. It is not specified as a condition that the absence which is the grounds should be unjustified, but it is required that a period of time should have passed which has caused actual qadar to the wife. The Malikis specify this period as one year.

The Hanbalis hold that if the husband is absent without justification and leaves no money and it is not possible to draw nafaqah from his property, and the wife is moreover unable to take loans or incur debt, then she may ask the qadi to dissolve her marriage. (34)
Nafaqah is then the chief material right occurring as a consequence of the contract of marriage.
The second main right of the woman is muʿāsharah bi al-maʿrūf or fairness of treatment and is in effect concerned with matters of manners and morals. It comprises all aspects of marital life, but the jurists have noted certain main points. Amongst these is reliability. Each of the couple should be faithful to the other in the largest and the smallest matters. As partners it is essential that there is honesty and loyalty between them. There must also be mutual trust such that each has not the slightest doubt in the advice, honesty and sincerity of the other. There must be love and compassion. Each of the partners should deal with the other on the basis of sincere affection and companionship which they should share throughout their lives on the basis of Sūrah 4, verse 14, and of the words of the Prophet: "He who does not show compassion will not be shown compassion". Also important are manners in general in the form of kindness in treatment, respect and esteem, cheerfulness and gentle speech.

A further right of the woman over the man applies in the case where he is married to more than one wife. This is the right of qasm or equity between wives in treatment and the evidence for this is found in Sūrah 4, verse 22 (al-Nisā'). On the basis of this it seems that the permitting of polygamy is conditional upon the maintenance of qasm, and if a man fears that he will not be able to apply justice between wives then he should restrict himself to one. This is confirmed by the ḥadīth. The Prophet is reported to have said: "If a man has two wives and is inclined towards one of them then on the Day of Judgement he will be reprimanded for his injustice". What is meant by inclination in this context is inclination in terms of sharing and spending, not in terms of love and affection as
this is not within a man's power to control. ‘Āishah is reported to have said: "The Prophet used to share and be fair amongst his wives] and said: 'O God, this is my qasm in that in which I have the power, do no blame me for that which is in your power and over which I have no control."

The Ḥanafīs confirm that the word qasm means equity or justice between wives. They hold, however, that justice may be impossible to achieve as is suggested by Sūrah 4, verse 22 (al-Nisā'), and that guidance may be found here in the same sūrah, verse 129 which states that whatever pains a man takes, he will not be able to achieve justice, but that he should not follow his inclinations to excess and leave any of his wives neglected. They infer from this that the shari'ah permits a man four wives, but that it is forbidden to take more than one wife if there is a fear that he may be unjust between them.

The jurists have set many principles defining qasm between wives. Some of the Ḥanbalīs are of the opinion that it is not obligatory in terms of nafaqah so long as the wives are sufficiently provided for. Ibn Taymīyyah says, however, that the obligation of qasm is defined clearly in the Qur'ān and sunnah and comprises "just division". On this basis it is the right of each wife to be provided with nafaqah and accommodation equal to the other wives. The achieving of justice in these practical terms is possible. Each wife should have her own nafaqah for food and for clothing and all of her other requirements, just as she should have her house on a basis of equality with the others. Thus, notwithstanding the special position of each of the wives, they all become equally the wives of the man. With regard to staying with them, the basic principle is that the man should stay with each of them to enjoy each other's company and so that they do not become lonely. There should be no distinction between one wife and another in spending time with them, and this should be in
sickness and in health. If he wishes to stay in the house of one of the wives this is permitted only if the other wives agree. This is on the basis of the words of Aishah: "When the Prophet grew heavy [with illness], he asked the permission of his wives to be nursed in my house, and they gave their permission."

The sharī'ah does not leave a wife without protection if her husband marries another woman. On the contrary, it recognises that she may suffer injury and gives her the right to demand separation for such, particularly if she had stipulated in the marriage contract that the husband should not take another wife. This is known as the condition of consent, and the extent of the permitting of such conditions varies in the view of the jurists. (35)

The position of the Egyptian and Moroccan Aḥwāl Shakhṣīyyah with regard to the regulation of the rights which result from the contract of marriage

The position of the Egyptian Aḥwāl Shakhṣīyyah with regard to mu'aṣarah jinsiyyah
The characteristic feature of the Egyptian Aḥwāl Shakhṣīyyah in connection with the right to mu'aṣarah jinsiyyah and the rights derived from this, that is nasab and wirāthah, and the contravention of these rights in the form of ḍarar, is that rather than organising this in the form of principles, it is regulated on the basis of remedy for non-fulfilment or abuse of rights.
The law does, however, regulate the subject of nafaqah and everything related to it, including the requirements and the reasons for it, the entitlement to it and the reasons for its
being forfeit. This is due to its being considered the chief factor on which married life depends in practical terms. It also organises the subjects of the absence or imprisonment of the husband and 'uyūb in the parties under specific Articles which indicate that if these occur, they may constitute grounds for divorce.

The Moroccan Mudawwanah however organises the rights occurring on the basis of the contract under specific chapters, and indicates in separate sections the remedies for violation of these rights. We may note that this regulation, from the point of view of form is in accordance with the organisational framework of contracts in general in that it determines the foundations and conditions, and then organises its direct consequences by defining the rights arising from it. The effect of this is to restrict the judiciary somewhat in that where a dispute arises they are restricted to the articles at their disposal, whereas the Egyptian legislature in organising these matters, with the exception of nafaqah, regulates them in a more comprehensive form. Rather than specifying rights, it indicates in various articles the grounds which if fulfilled allow the wife to seek separation. Amongst them are those which regulate  qedar which the husband may cause to the wife, whether it be moral or material, active or passive. Other articles regulate specific  qedar resulting from an action which the husband may take against the wife, such as absence with no justification. This will be illustrated when we examine the texts of the articles, the disputes brought before the Egyptian courts and the means of arriving at rulings in these.

We find that whilst the Egyptian Law does not specify this right explicitly, it considers its non-fulfilment on the part of the husband a form of  qedar which as such permits the wife to seek divorce. This is on the basis of Article 6 of the Draft
Ordinance 25 of 1929 which states:

If a wife claims that her husband caused ḍarar to her in any manner whereby she can no longer continue living with him, she is permitted to seek divorce, in which case the qādī will grant her irrevocable divorce providing the ḍarar is proved and that he is unable to reconcile the couple.

If the application is rejected and the complaint then repeated but the ḍarar is not proved, the qādī will appoint two arbitrators as specified in Articles 7 - 11 of the same law. (36)

To illustrate the application of this Article we may examine an unpublished case which was brought before the Maḥkamah lbtidāʾiyyah concerning non-consummation of marriage.

CASE STUDY NO. II. (37)
Case study concerning non-consummation of marriage.
(unpublished case)

THE FACTS OF THE CASE
The respondent had brought initial Case no. 74 of 1986, Ahwāl Shakhṣīyyah, North Cairo Maḥkamah lbtidāʾiyyah, against the appellant seeking a ruling to obtain an irrevocable divorce from him, and an order that he should not contact her concerning their marriage. She stated that she was his legitimate wife as per a valid contract of marriage. The marriage had not been consummated during the period of their marriage and he had deserted her after three months. He had not supported her financially and had procrastinated as regards the establishment of a conjugal home.

The Court referred the case for investigation in order for the elements pertaining thereto to be proven or denied. It then
heard the witnesses of the respondent, who stated that the appellant had married the respondent in 1983 and had left her a few months later without having consummated the marriage, as a result of which she had suffered đarar. In the hearing on 24/2/1987 in the presence of the litigant parties the Court granted the respondent a divorce on the grounds that the statements made by her witnesses in whom the Court has faith established that her husband had left her and had expressly failed to consummate the marriage, meaning that he had deserted her without reasonable cause for a period of over three years, thus causing her đarar of a serious nature. The appellant was dissatisfied with this ruling and lodged an appeal by means of a writ deposited on 25/3/1987 seeking a ruling that the appeal be accepted in form and content by referring the same for investigation in order to establish the elements thereof, quashing the original ruling, rejecting the case and obliging the respondent to pay the costs and legal fees of both parties on the grounds that he had not deserted his wife, had supported her financially, and had invited her to join him on 27/10/1986 after having established a legitimate home for her. Her witnesses however were unaware of this and did not know where he lived. She had instructed them as to the testimony they were to give and the Maḥkamah Ibtidā'īyyah failed to adjourn the case as requested.

Before passing judgement, the Court referred the case to the Niyābah ʿĀmmah which submitted its Memorandum and concluded by requesting a ruling accepting the appeal in form, before the matter was adjudged by referring the case for investigation, whereby the appellant could refute the proof submitted by his respondent wife before the Maḥkamah Ibtidā'īyyah.
THE RULING
The original ruling is based on valid reasons of which this Court is satisfied and from which the appeal did not detract, these being a bare statement of evidence, particularly since the appellant had availed himself of the opportunity to deny the claims of the respondent before the Mahkamah Ibtidā'īyyah. It therefore declared a ruling for investigation and the respondent attended the fixed hearing without witnesses as a result of which the Court deemed it appropriate to reject the appeal in content. Accordingly the Court ruled in the presence of the litigant parties to accept the appeal in form and to reject it in content, thus endorsing the original ruling.

The position of the Moroccan Mudawwanah with regard to muʿāsharah jinsiyyah
In the Moroccan Mudawwanah the subject of the right to muʿāsharah jinsiyyah is organised according to the traditional divisions of fiqh, under the title of Mutual rights. This is found in al-Kitab al-Awwal, Chapter 4, Section 34, The mutual duties of husband and wife: 1 Lawful cohabitation. In addition the Mudawwanah stipulates in al-Kitāb al-Thānī, Chapter 2, Paragraph 58 on divorce on the grounds of ṭilā' or abstinence, if a husband abstains from conjugal relations with his wife, she may take her case to a qādi who shall grant a period of four month's grace to the husband. If he does not comply within this period, she shall be granted a revocable divorce. (38)
The position of the Egyptian *Ahwāl Shakhṣīyyah* with regard to *nasab* and *wirāthah*

The Egyptian *Ahwāl Shakhṣīyyah* does not regulate the establishment of *nasab* as such, rather it deals with it from the point of view of claims of *nasab*. Article 15 on claims of *nasab* states: "No disputed claim of *nasab* shall be heard regarding the child of a wife where it is established that there has been no meeting between her husband and herself from the time of the contract, nor the child of a wife who gives birth after a year of absence of the husband, nor the child of a widow or divorcee who gives birth to him more than one year after her divorce or widowhood".

This Article appears in exception to the provision of Article 280 of Draft Ordinance 78 of 1931 on the Regulations on the Organisation of the *shariʿah* Courts (in accordance with the most appropriate views of the Ḥanafīs which state that paternity must be proved even if it is only deduced from appearances, or in other words, even if there is no reason to believe that consummation has taken place or that the couple have been in seclusion together). (39)

*Wirāthah* in the Egyptian *Ahwāl Shakhṣīyyah* is regulated in accordance with Statute 75 of 1943, Article 7 of which stipulates provisions regarding the line of *wirāthah* which is based on marriage, blood relationship and agnate relationship. *Wirāthah* on the basis of marriage is obligatory inasmuch as the spouses are entitled to specific shares. (40)

We may look at the position of the Egyptian *Ahwāl Shakhṣīyyah* by examination of two unpublished cases.
1. Claim of *nasab*
2. The establishment of *nasab* and the right to *wirāthah*.
CASE STUDY NO. III. (41)

Case study concerning nasab.

THE FACTS

The facts of the appeal can be summarised in that the first respondent brought Case No. 273 of 1977 Personal Status, before the Mahkamah Ibtidä'iyyah in Mansūrah against the petitioner and the second respondent, seeking a ruling to establish the petitioner as his legitimate father without objection from the second respondent. In evidence, he stated that the petitioner had married the second respondent under a valid contract of marriage and had consummated the marriage. They had lived together as man and wife and he had been born as a result of their union. The petitioner, however denied nasab and refused to confirm that the boy was his son, and as a result, he (the first respondent) had lodged the case. This was confirmed by the second respondent.

The Mahkamah Ibtidä'iyyah referred the case for investigation in order to establish the facts. Having heard the testimonies of both parties, it commissioned the legal medical department to assess the age of the first respondent. It then reconvened and ruled on 31/12/1980 to establish nasab between the first respondent and his petitioner father. The petitioner appealed against this ruling by means of Appeal No. 2 of 1981 - Ḩwāl Shakhsiyyah, Mansūrah, and on 11/5/1981 the Mahkamat al-Isti'nāf ruled in support of the original ruling. The petitioner was dissatisfied with the appeal ruling and brought a second appeal against it in the Mahkamat al-Naqḍ. The Niyābah 'Āmmah submitted a memorandum expressing its opinion that the second appeal should be rejected. The second appeal was presented to this Court in Chambers and a hearing was fixed to examine the same in which the Niyābah 'Āmmah insisted on its opinion.
The second appeal was based on three contentions made by the petitioner inasmuch as the ruling was in breach of the law and lacked adequate justification. In evidence, he stated that the ruling which had established nasab was based on evidence which one of the first respondent’s witnesses had given in testimony to the effect that the child was the issue of the marriage of the petitioner to the respondent by means of a zawāj ‘urfi following the death of her first husband on 1/3/1956 and before her second marriage to him as per an official contract dated 23/12/1959. This testimony, however, is inconsistent with the first respondent’s claim that the alleged marriage was concluded under a valid legal contract, meaning that a legal document had been drawn up. It is also inconsistent inasmuch as he submitted neither this document nor his birth certificate and his witnesses differed as to whether a marriage contract had been originally drawn up or not, thus detracting from the credibility of their testimonies. The judgement was therefore based on unreliable evidence, and the inconsistency between such evidence and the case was not considered. Furthermore, no response was given to the legal medical report which stated that the first respondent was born in 1961, or in other words, two years after the petitioner’s official second marriage to the second respondent. Similarly, the first respondent had for many years neglected to bring his case without reasonable cause and the evidence to refute the existence of any blood relationship with the petitioner was conclusive. The ruling therefore breaches the law and is inadequate. The Court’s decision in response to the foregoing was that the petitioner’s claims were unacceptable inasmuch as suits for nasab were still governed according to Ḥanafi belief, and for a nasab case to be heard which involves a valid marriage it is not conditional that such marriage be proven by an official certificate. Credence is given to marriages so described
which were attended by witnesses and which fulfilled all the essential ingredients and conditions for validity in law, irrespective of whether an official certificate or customary law document existed or whether there was any written contract at all.

Accordingly, the first respondent's claim that the petitioner's marriage to the second respondent under a valid and legal contract of marriage is cause for the establishment of *nasab* does not in itself mean that the contract was documented by means of an official certificate or customary law document, and there is no inconsistency if a written marriage contract was not submitted. Similarly, it is prescribed within the jurisdiction of this court that the judge concerned has the authority to consider the evidence and ascertain the facts. In this case, the ruling had favoured the evidence of proof over the evidence of denial produced by the petitioner. The ruling was issued on this basis and indicated the same with permissible reason which by nature resulted rationally and logically in the conclusion reached. The reasons put forward in contention by the petitioner are not deemed to be relevant in argument as regards evaluation of the evidence, and as such cannot acceptably be brought before the *Maḥkamat al-Naqḍ*.

The Court, therefore, decreed to dismiss the second appeal.

CASE STUDY NO. IV. (42)

Case study concerning the establishment of *nasab*

and entitlement to *wirāṭah*  

(unpublished case)

SUMMARY OF THE PROCESS

On 9/4/1985, a second appeal was brought before the *Maḥkamat al-Naqḍ* against a judgement passed by the *Maḥkamat al-Istīnāf* Tanta on 9/2/1985, in respect of Appeal No. 21 of Judicial Year 33, by means of a report in which the
petitioner sought a ruling that the second appeal be accepted in form and content by overturning the appeal ruling. On the same day, the petitioner lodged a memorandum in explanation and the Clerk began compiling files of the Maḥkamaḥ ʿIbtidāʿiyyah and the Maḥkamat al-Istiʿnāf. On 5/6/1985, the respondent lodged a memorandum in her defence supported by documents, thereby seeking to have the case dismissed. The appeal deposited its memorandum in which it requested that the second appeal be accepted in form and rejected in content. The second appeal was presented in chambers and it was believed to merit examination. A hearing was therefore fixed to take place on 29/12/1987, when the case was heard before this Department as recorded in the minutes of the hearing in which the lawyers of the first respondent and the Niyyābah ʿĀmmah insisted on the content of the latter's memorandum. The Court deferred judgement until today's hearing.

THE FACTS OF THE CASE

A summary of the facts is that the first respondent in her own capacity brought Case No. 1599 of 1981 - Maḥkamaḥ ʿIbtidāʿiyyah - Aḥwāl Shakhṣīyyah, Tanta, against the second respondent in her capacity to establish that her son was the legitimate son of his deceased father, Mr. X, and that he was entitled to his legitimate share in the latter's estate. In evidence, she stated that she was the wife of the said testator as per a valid and legal contract of marriage which had resulted in the birth of the boy on 30/8/1970. During his lifetime, the deceased had acknowledged that the boy was his son, and when he died on 4/3/1981, the second respondent had disputed wirāṯah and lodged a case. The petitioner sought agreement to his becoming the third litigant in the case and requested that nasab in respect of the young boy, not be attributed to his deceased brother. The first respondent also brought Case No. 267 of 1982 - Maḥkamaḥ ʿIbtidāʿiyyah - Aḥwāl Shakhṣīyyah, Tanta, against the second respondent in her
capacity to establish the death of the said testator and her entitlement and that of her afore-mentioned young son to their legitimate share in his estate as it had passed to them and to the second respondent in her capacity as the deceased's second wife and guardian of her children from their union.

The Court amalgamated the first and second cases and referred the resultant case for investigation. Having heard the witnesses, the Court ruled on 10/3/1983 to accept the petitioner as a third litigant in the case and to reject the content. The first respondent appealed against this ruling by means of Appeal No. 21 of Judicial Year 31, Tanta, and on 9/2/1985, the Mahkamat al-Isti'nāf quashed the ruling, established the death of the said testator and the entitlement of his son, ..., to his share in the estate as a male agnate as being double that of any female heirs inasmuch as the testator had four daughters and one other wife only.

The petitioner appealed against this ruling to the Mahkamat al-Naqḍ. The Niyābah ‘Āmmah presented its memorandum expressing its opinion that that the second appeal should be dismissed. The second appeal was presented to the Court in chambers and a session was fixed for examination thereof in which the Niyābah ‘Āmmah insisted on its opinion. The appeal was based on three contentions made by the petitioner, these being misapplication of the law and false inference. In evidence, he stated that the ruling to the effect that the boy was an heir of the deceased was in breach of the Death and Succession Declaration No. 230 of 1981 issued by the Mahkamah Juz'iyyah, Samnūd, according to which the said child was not classified as an heir. The said Declaration had a determinative effect in accordance with Article 361 of the Regulations on the Organisation of the Courts which was invalidated by the ruling concerned as it had been issued contrary to the established proof and yet had not been deemed invalid.
The ruling was also mistaken in that it had failed to admit the evidence of the petitioner's witnesses who were a man and a woman on the grounds that the required minimum number of witnesses had not been met; this was particularly significant as the woman's testimony had focused on refuting the fact that a child had been born to the first respondent, and a statement that she had found the young child on the street and had taken him to a police station. This does not comprise a complete statement and the ruling concerned which established the deceased as the legitimate father of the boy and the latter's entitlement in his father's estate was based on the fact that when he was alive the testator had acknowledged that he was the boy's father by virtue of a ruling issued on the validity and effectiveness of a contract of sale [in which the boy was mentioned] and on his birth certificate, both of which are official documents. The birth certificate, whilst not constituting proof of nasab, is considered circumstantial evidence of such. It is however inconsistent with the official copy submitted of the family register of the deceased and the fact that it does not contain the name of the said boy, in addition to the first petitioner's affirmation in the official copy of the minutes of a Misdemeanour No. 4166 of 1970, Samnud, that she was sterile and had found the child concerned. The acknowledgement attributed to the deceased therefore has no legality and the ruling concerned is defective having been based on such acknowledgement, and as such, it involved a misapplication of the law and false inferences being made.

The Court's response to the foregoing was that it was unacceptable as in the jurisdiction of the Maḥkamat al-Naqḍ, a legal declaration may by given as conclusive evidence, in accordance with the provision of Article 361 of the Regulations on the Organisation of the Courts, by a ruling from the competent court. As this ruling was issued on the grounds of a plea in the case, comprising an objection by
means of a Legal Declaration, which it is valid to use in an original case, and as the Court which issued the ruling was competent to examine the case, the ruling was inconsistent with the content of the Legal Declaration according to procedures essentially based upon administrative investigations, and it is therefore proper that it be refuted upon examination by the competent judicial authority. Accordingly, ruling was made acknowledging the death and establishing *nasab* with regard to the boy, who is one of the heirs, and as such it breaches the content of Legal Declaration No. 230 of 1931, Samnud. It was not, therefore, in breach of the law, nor was it a misapplication thereof. The second contention is also rejected as within the jurisdiction of this Court, *nasab* in respect of the man is established by means of consummation, evidence and acknowledgement. The Court has satisfied itself within the limits of its competent authority in evaluating witnesses' statements and considering the evidence and reached its verdict to establish the boy, as the legitimate son and heir of his father. This is an independent piece of supporting evidence which alone is insufficient to carry the ruling and the implied response to every other piece of inconsistent evidence. The petitioner is at fault in relying on another piece of supporting evidence based on the acknowledgement attributed to the deceased, and opinion thereupon of whatever nature is unproductive. In application of the foregoing the second appeal was dismissed.

The position of the Moroccan *Mudawwanah* with regard to *nasab* and *wirāthah*

In the Moroccan *Mudawwanah*, *nasab* is regulated according to *al-Kitāb al-Thālith*, chapter 1 concerning *nasab*, under the
following Sections:(43)

section 83: Legal descent.

section 84: The maximum and minimum duration of pregnancy.

section 85: The establishment of *nasab* in the case of a valid marriage.

section 86: The establishment of *nasab* in the case of irregular marriage and similar circumstances.

section 87: The establishment of *nasab* in the case of intercourse which occurs in the event of *shubhah*.

section 88: The consequences of the establishment of *nasab*.

section 89: The methods of establishing *nasab*.

section 90: Denial of *nasab* may only be confirmed by the ruling of a *qādi*.

section 91: The dependence of the *gadi* on the principles of the shari‘ah in confirming denial of *nasab*.

*Wirāthah* is then regulated according to *al-Kitāb al-Awwal*, Chapter 6, Paragraph 34: Reciprocal rights and duties of husband and wife, the fourth category of which is stated as the mutual right of *wirethah* between spouses.

The position of the Egyptian *Aḥwāl Shakhṣīyyah* with regard to *ʿayb*

With regard to the right that the other party be free of *ʿuyūb* which would make married life unfruitful or unsupportable, the Egyptian *Aḥwāl Shakhṣīyyah* divides the ailments which necessitate dissolution of the marriage contract into two categories. The first category involves *ʿuyūb* which relate to the man’s ability to have sexual relations with his wife, namely *ʿinnah* (impotence), *jubb* (mutilation of the genitalia) and *khīsā* (castration). This matter is regulated in accordance with the jurisprudence of Abū Ḥanīfah and is
referred to by the Explanatory Memorandum to Law No. 25 of 1929. (44) Abū Ḥanīfah imposes divorce or separation for ‘innah and khisā providing that the following three conditions are fulfilled:

1. The wife must not have been aware of the ‘ayb when the marriage was contracted. If she was aware of the ‘ayb at the time she cannot apply to a judge for a separation.
2. The wife must apply to a judge for separation.
3. A judge may only issue a ruling in favour of separation once he has established that the ‘ayb exists.

A judge will rule in favour of divorce in the case of jubb. In the case of ‘innah or khisā, the judge allows the spouses a one-year period of grace from the date of the ruling. If, at the end of the year period it is established that the husband has not been able to have sexual intercourse with his wife, and if the wife still insists on separation, the judge will then grant an irrevocable divorce. If the husband makes no acknowledgement and the wife claims that she has not had intercourse with her husband and swears on oath that she is still a virgin, whereas he claims that they have had intercourse and swears on oath that his wife is no longer a virgin, two women or persons of experience must bear testimony as to whether she has lost her virginity or not.

The second category involves separation on the grounds of chronic illness which is either impossible or extremely difficult to cure and which does not allow a couple to live together without ḍarar to the wife. Insanity and leprosy are examples of such defects. This is stipulated in Articles 9, 10, 11, Law No. 25 of 1920. (45)

Article 9 of the law determines the meaning of chronic ‘uyūb and the conditions according to which the term applies. These are as follows:

a) The ‘ayb must be deep seated.
b) It must be chronic or extremely difficult to cure.
c) It must be impossible for the wife to live with the husband without suffering ُقارَر.
d) The husband must have been suffering from the illness prior to the marriage and the wife must have been aware of it.
e) If the ṣayb occurred after the marriage, the wife must feel implicitly or explicitly unhappy about it.

The rulings issued by the courts confirm the interpretation of the said Article. A ruling of the Maḥkamah ُبتيد الأسنان, Cairo, for example, acknowledged the principle that the illnesses mentioned in the context of Article 9 are without limit and as such include any other incurable illnesses. As examples, the ruling mentioned certain illnesses which were common at the time such as pulmonary tuberculosis and syphilis (Maḥkamah ُبتيد الأسنان 8/4/1958 / Case No. 3002 1956).

Similarly, another ruling stated that injury suffered by a wife as a result of her husband's illness did not constitute the type of injury stipulated in Article 6 of Draft Ordinance No. 25 of 1929, but rather the type of injury resulting from a chronic defect as stipulated by the said Article 9 of Law 25 of 1920. Article 6 gave the wife the right to a separation on the grounds of poor marital relations or desertion. In other words, separation was granted as a result of positive action on the part of the husband, in contrast with illness which it is not within the power of the individual to control. (Maḥkamah ُبتيد الأسنان Alexandria 1/5/1958, Case No. 18 of 1957).

It could be commented, however, that in issuing its ruling the Court adopted the word "illness" in its literal sense, because if we suppose that the husband is a drug addict, for example, there is in this instance a positive action on the
part of the husband, namely that of taking the drug. Firstly, this causes darar to the wife and secondly, addiction is an illness. Accordingly, the provision of Article 9 would apply. The reason for calling this to attention here is that in recent years drug addiction has become widespread amongst certain social groups, and the courts have therefore been full of cases of this nature. The legislator should therefore consider the problem and attempt to eliminate the contradiction which exists between the different provisions of the law.

A final remark on Article 9 is that the law does not adopt the position of most jurists in giving either party the right request separation in the case of 'uyūb. Instead, this right is restricted to the wife only on the grounds that the husband has the right to effect a divorce by his will alone. This is based on Ḥanafi belief. Most are of the opinion that if both parties were given the right to separate due to 'uyūb, the husband would benefit if his wife suffered from a defect in that he would be able to end the marital relationship without having the financial obligation of the deferred mahr and nafaqah if the marriage was annulled before consummation took place.

The following unpublished appeal case shows the position of the Egyptian Ahwāl Shakhṣīyyah in this instance:

CASE STUDY NO. V. (46)
Case study concerning divorce on grounds of 'ayb.
(unpublished case)

FACTS OF THE CASE
The facts of the appeal are that the appellant (the husband) had brought a case in the Maḥkamah Ibtidāʾyyah (No. 261 / 1986) against the appellees (the wife and her father) seking a ruling to establish the psychological state of the
respondent (the wife) and her unfitness to enter into a marriage contract. In accordance with a marriage contract dated 4/7/1985, he had married the respondent but had not consummated the marriage, nor had any true khulwah occurred.

It became apparent to the appellant that the respondent was suffering from a chronic psychological illness of nervous origin. During her period of study in the United States of America, she received treatment in a sanatorium, but her father (the second respondent) had her brought back to Egypt so that she could be monitored and treated under the supervision of doctors in Egypt. She was still under treatment when the case was brought to court, and this was reflected in her work at the Faculty of (name of faculty) as her service record contained information which confirmed that the appellant's claims were just as regards his wife's illness of which he had no knowledge when the contract of marriage was concluded. He therefore brought a court case to establish his wife's medical condition as it was an instance of a latent illness which did not manifest itself until after the contract was concluded. This was particularly so as the wife's family had taken pains to conceal it from him, which in law is a case of deceit which invalidates any transaction. The husband submitted the wife's service record in order to demonstrate his claim.

Judgement on the case was reserved until the session of 16/2/1987, when a ruling was issued by the Maḥkamah Ibtidā'īyyah, Gīzah; Aḥwāl Shakhṣīyyah Wilāyah ʿalā al-Nafs, to reject the case as there was no benefit to the petitioner in bringing it to court.

The petitioner (the husband) was unsatisfied with this ruling and challenged it by means of an appeal based on the following:
1) The ruling issued was prejudicial to the rights of the appellant in that it was contrary to fact in basing its ruling on Article 3/ Procedures, which stipulates that cases are only brought to court if the petitioner has an interest in so doing.

2) The ruling was wrong to oppose the case automatically and rule that the petitioner had no interest in bringing it court without a motion made by the appellee to this effect.

Before the Maḥkamat al-İsti‘nāf issued its ruling the case files were referred to the Niyābah ‘Ammah for its opinion. The Niyābah ‘Ammah refuted the petitioner’s objection to the application of the provisions of Article 3 / Procedures in that the Article stipulates the following as regards the question of interest:

1) There must be a legal interest in the sense that it must be based on a legal right or position whereby the purpose of the case is to protect such legal right or position.

2) A personal or direct interest should be expressed in bringing the case.

3) The interest should be current, meaning that the petitioner or the legal position for which protection is sought by the case being brought has actually been attacked or that a dispute in respect of the same has occurred and caused ‘qarar which justifies litigation.

4) In exception to the above rule, the legislator permits cases to be accepted in two instances, even if the interest is not current. The first is where the case is brought as a precaution against imminent ‘qarar. The second is where the purpose of the case is to ascertain a fact in respect of which it is feared that the evidence will disappear.

It is stipulated that the interest should be the object of the case, thus confirming a principle down by a ruling of the Maḥkamat al-Naqḍ to the effect that the potential interest
which is sufficient for a case to be accepted is not fulfilled according to Article 3 of the Law on Procedures unless the purpose of the application is either as a precaution against imminent ُdarar or to ascertain a fact which it is feared will be eliminated (Maḥkamat al-Naqḍ / Session of 15/1/1979 Appeal No. 135 /1946)
The Prosecution finally concluded that according to the above facts in respect of the case, the provisions of Article 3, Procedures, do not apply, as the petitioner's application is not based on a true legal interest, the purpose being to establish that his wife suffered from an ُayb. In accordance with the Ḥanafi viewpoint, as we have seen in the provision of the law, the right of separation is restricted to the wife and does not extend to the husband, who can divorce her of his own accord. Hence, only the wife is entitled to request a separation on the grounds of ُayb.

Article 10 was issued to show the type of separation granted, which in this case is regarded as being an irrevocable divorce, thus concurring with the judgement of the Ḥanafīs and Mālikīs. This Article is peculiar in that if a divorce petition on the grounds of ُayb is finally rejected, the case cannot be brought to court a second time for the same reason. On the contrary, Article 6 stipulates that cases involving separation on the grounds of ُdarar can be brought to court a second time after being refused the first time irrespective of objections to the previous judgement, provided that the wife produces previously unseen evidence.

Similarly, if a husband gives his wife an official warning that she is to show ُtā‘ah and the wife asks in conclusion to her objection to be granted a divorce on the grounds of ُayb, the court cannot proceed with arbitration procedures in this case, and establishment of ُayb is subject to the general rules regarding the establishment of legal matters. The Court may
also use experts with regard to the 'ayb on the grounds of which annulment of the marriage has been requested.

The following court rulings show the meaning of this Article:

A ruling issued by the *Maḥkamat al-Naqḍ*, for example, stipulated legally that a woman represents herself and swears on oath as to whether she has menstruated and whether her 'iddah has ended or not. Hence the judge cannot rule that a medical statement must be produced showing whether she has menstruated and whether her 'iddah has ceased (*Maḥkamat al-Naqḍ / Session 29/3/1967 of Judicial Year 18 / No. 8*).

Likewise, it was ruled that the judge concerned may overturn an application to appoint one or more experts to a case if, in his judgement, there are sufficient elements in the case for him to form a belief that there is no need for experts to be appointed and if his rejection is based on justifiable reasons (*Maḥkamat al-Naqḍ / Session 20/5/1971 of Judicial Year 22 / No. 2 / 669*).

The position of the Moroccan *Mudawwanah* with regard to 'ayb

In the Moroccan *Mudawwanah* these issues are regulated in accordance with *al-Kitāb al-Thānī*, chapter 2, Sections 54 and 55. Section 54 specifies what is meant by 'uyūb. (47) Section 54 - Divorce on the grounds of 'ayb: 1. If the wife finds in her husband some serious 'ayb which is chronic or curable only after a period exceeding one year and she is unable to live with him without ẓarar being caused to her, for example in the case of insanity or either type of leprosy, or tuberculosis then she may ask a Judge to divorce her, whether such 'ayb was present in the husband before the
contract and she was unaware it, or whether it occurs after
the contract and she finds it unsupportable. The Judge then
stipulates a period of one year for the husband to recover and
if he does not then he will grant her a divorce. 2. A wife's
request for divorce shall be answered without delay in the
case of 'ayb in the husband's genital organs which is incurable.
3. If the wife marries the husband knowing of the 'ayb, or if it
occurs after the contract and she accepts this explicitly or
implicitly then she has no right to demand divorce on this
basis. 4. If the wife has some 'ayb such as insanity, either of
the types of leprosy or tuberculosis or 'ayb concerning the
genitals preventing intercourse or marring its pleasure, and
if the husband discovers this before consummation then he has
the option to divorce her if he wishes with no obligation on
his part, or if he wishes he may keep her in which case he
will be bound to pay the mahr in full. If however he discovers
this only after consummation then he may if he wishes keep
her or he may reject her and reclaim any amount which he has
paid which exceeds the minimum mahr, either from her if she
is responsible for the deception, or from the wali if it is he
who is responsible. 5. Evidence shall be taken from experts
from the medical profession in establishing 'ayb.

Section 55 states: The divorce which the Judge imposes on
the grounds of the preceding paragraph shall be irrevocable.

The position of the Egyptian Aḥwāl Shakhṣīyyah with
regard to ʿṭāʿah
Under the Egyptian Aḥwāl Shakhṣīyyah this is regulated
according to Article 11, of Statute 100 of 1985 (48) which
states that:
Should the wife withhold ʿṭāʿah to the husband, without
justification, her nafaqah shall be stopped from the date of her nushūz. The wife shall be deemed nāshizah if she fails to return to the matrimonial domicile after being invited by her husband to do so as per a notice to be served on her or her deputy under the hands of a process server and the domicile shall be indicated by the husband in such notice.

The wife shall be entitled to object to this before the Maḥkamah lbtidā'iyyah within thirty days from the date of such notice, and she shall be required to indicate in her objection petition the legal aspects on which she relies in withholding ṭāʿah, failing which judgement rejecting her objection shall be given. The stoppage of her nafaqah shall take effect as from the date of the expiry of the time limit, set for submitting the objection, if she fails to submit the same within such time.

When considering the objection, or at the request of one of the spouses, the court may interfere to settle the dispute between them by compromise, in order that they continue to live and cohabit together as husband and wife. If it appears to the court that the dispute is complicated and the wife should ask for divorce, the court shall adopt the arbitration procedures set out in the Articles 7-11 hereof.

The above article regulates a husband's right of ṭāʿah over his wife within the provisions pertaining to rifts between a married couple and divorce for reasons of ḍarar. Paragraph 1 of the Article is general and covers both consummated and unconsummated marriages. Nafaqah of a wife who withholds ṭāʿah to her husband shall cease as from the date when she withdrew from his authority. According to the law, there is no prescribed penalty for the withholding of ṭāʿah. The role of the judge is to investigate as to when the wife withdrew from her husband's authority and suspend nafaqah as from the date concerned. Nafaqah in respect of a wife who ceases ṭāʿah without entitlement whilst still in the marital home shall
also be suspended from the date of ceasing ṭāʾah. If the husband lives with his wife in a house which she owns and has been wrongly unable to consummate the marriage, or in other words, if it is before she asks him to move her into his house or to rent a house for her, she is not required to maintain him and show ṭāʾah. The Article covers right of ṭāʾah in the marital home as imposed by co-habitation of the couple. It also covers the establishment of cases where the wife is not under the authority of the husband and entitles the husband to have direct recourse to the normal method of establishing the nushūz of a wife. In this case, he may lodge an initial case seeking a ruling that he have right of ṭāʾah over his wife in a home which he has prepared for her and which complies with the required legal conditions and sanitary facilities.

Such cases are initially brought before a Maḥkamah Juzʿīyyah in accordance with the provisions of Article 6, Decree No. 78 of the Judicial Year 31, pertaining to the Regulations on the Organisation of the Courts which gives Maḥkamah Juzʿīyyah the jurisdiction to pass initial judgement in disputes involving marriage and marital affairs, restitution of ṭāʾah, establishment of a wife’s nushūz and her forfeiture of nafaqah. The provision of Article 11a also infers that a wife has the right to object to applications for right of ṭāʾah, in which case any writs of objection lodged must involve objection to the marital home in terms of its conformity with the requirements of the sharīʿah, the extent to which it is unsuitable for the couple and the fact that the wife fears for herself, on condition that such information is provided on the basis indicated by the judge or essentially, in other words, in documentary form. The wife has thirty days in which to object to a ruling restoring her husband’s right of ṭāʾah within the domicile of her defendent husband (Article 21) or within the domicile of the objector wife (Article 24). It is stipulated that the Court must attempt to intervene to bring about a reconciliation. The final paragraph of the Article
stipulates that a wife is entitled to obtain a divorce provided that the divorce application is made before the *Maḥkamaḥ Ibtidāʾīyyah* and provided that the court has attempted to intervene to end the dispute by reconciliation. The following unpublished case is an example of the way the matter of a wife's *ṭāʿah* to her husband may be dealt with by the Egyptian Courts.

**CASE STUDY NO. VI. (49)**

**Case study concerning *ṭāʿah*.**

(unpublished case)

**FACTS OF THE CASE**

The facts of the case can be summarised in that the objecting wife presented her objection in the form of a writ lodged with the Clerk of the Court on 8/11/1982 and declared to the respondent on 28/11/1982 seeking a ruling to disregard the application for right to *ṭāʿah* of which she was informed on 1/11/1982. She presented the reasons for her objection, these being the respondent's failure to trust her either financially or otherwise and the fact that he had left her without *nafaqah*, and that he had had anal intercourse with her. The objection was examined and deliberated as recorded in the minutes of the hearing. Before passing judgement, the Court accepted the objection in form and referred it for investigation in order to prove or refute the objection. In the hearing on 17/4/1984, the objector and the respondent each called all their witnesses. The objector's first witness stated that when he was called upon to settle arguments between them he had seen the effects of the objector having been beaten. Her second witness also stated that he had seen her being physically assaulted by her husband. The respondent's witnesses denied that he had no trust in her.
THE RULING

The Court issued its ruling to dismiss the objection on the grounds that it had no confidence in the testimony of the objector's witnesses as regards lack of trust inasmuch as the Court concerned has the absolute authority to evaluate witnesses' statements and decide as it deems fit. The court accordingly decided to dismiss the objection, particularly since the case file contained no other evidence to support it.

The objector was dissatisfied with this ruling and appealed against it asking that the appeal be accepted in form and content by quashing the ruling and its the consequences, dismissing the application for right to ṭāʾ-ah, ruling in favour of her obtaining divorce from the respondent, and obliging him to pay the costs and legal fees of both parties for the reasons stated hereabove in the initial ruling, particularly the fact that he had had anal intercourse with her contrary to the proper and legitimate method which the Maḥkamah Ḩabībīyyah had failed to mention in the reasons for its ruling and in respect of which it should have sought medical opinion. After deliberating the case in the hearings as shown in the minutes thereof, the Maḥkamat al-Istiʿnāf - Aḥwāl Shakhṣīyyah Session, in the hearing on 7/2/1985 ruled to accept the appeal in form, and before passing judgement on the content thereof to refer the case to the legal medical department and commission one of its experts to conduct a medical examination on the appellant and determine whether the appellant's claims to the effect that the respondent had had anal intercourse with her were true, and her injuries if any. She was also to provide information about the direct misdemeanour she had carried out against the respondent as regards the squandering of movable assets from the marital home.
The hearing was adjourned until 6/4/1985 when the case was dismissed as the parties failed to appear. The appellant then resumed the case by means of a writ deposited with the Clerk of the Court on 12/11/1985. In the hearing on 9/1/1986, the respondent's attorney pleaded in defence that it was as if the case had never existed in accordance with the provision of Article 82 / Procedures, as it had been dropped, recommenced and announced after the hearing date on 10/10/1985. In the hearing on 7/12/1986, the appellant's representative requested that the ruling to refer her for medical examination be abandoned as the signs of sexual intercourse were no longer present as it had taken place in 1982 when the request for a medical examination was made.

The Niyābah ‘Āmmah presented its memorandum on 20/2/1986 concluding that a ruling should be issued to reject the defence plea that the appeal was as if it had never existed, and with regard to the content of the appeal to quash the ruling appealed against and disregard the application for right of tä`ah which was the subject of the case. The respondent was ordered to pay the costs and legal fees of both parties.

The Court responded to the defence presented by the respondent to the effect that the appeal was as if it had never existed. Appeals against rulings issued in respect of Ahwāl Shakhṣīyyah matters were still governed by the rules stipulated in the Regulations on the Organisation of the Courts (Articles 304-327) not including Article 13 of Law 462 of 1955 revoking these Articles. Hence, appeals against rulings issued in respect of Ahwāl Shakhṣīyyah within the jurisdiction of the Sharī‘ah Courts are still governed by these Articles, which were irrelevant for the said defence. Consequently, it was irrelevant to base one's case on the provision of Article 82, procedures. The defence therefore
had no sound basis in law, thus meriting its dismissal.

The effect of the appeal was that the case reassumed its position prior to the ruling in respect of the appeal only (Article 317 of the Regulations). Article 49, Paragraph 3 of Law No. 48 of 1979 on the *Maḥkamah Dustūriyyah ʿUlyā* states that a ruling which is unconstitutional under a law or regulation cannot be applied as from the day subsequent to publication of the ruling. The Explanatory Memorandum added that jurisprudence and the judiciary had established that the above provision on the non-application of provisions deemed unconstitutional applied not only to the future but also in relation to facts and relations arising prior to the issue of such rulings on unconstitutionality. However, such retroactive effects do not apply to rights and positions established on the basis that a law which is deemed unconstitutional is a non-existent law of no effect whatsoever.

In a hearing on 4/5/1985 the *Maḥkamah Dustūriyyah ʿUlyā* adjudged the Decree Law No. 44 of 1979 to amend certain provisions of the *Aḥwāl Shakhṣīyyah* Laws to be unconstitutional and published its ruling on 16/5/1985. The meaning of the above rules is that this decision was made according to a law which should not be applied whether before or after publication of the ruling as to its unconstitutionality, and that facts and relationships remained governed by Law No. 25 of 1920, Law no. 25 of 1929 and the most appropriate views to be derived from the Ḥanafīs, in accordance with Article 280 of Draft Ordinance 78 of 1931 on the Regulations on the Organisation of the *Shariʿah* Courts, which remained in effect without being rescinded. None of these made it legally binding that a husband have a right of ṭāʿah over his wife under the provisions of Decree Law No. 44 of 1979 adjudged to be unconstitutional and Law No. 100 of 1985, Article 7 of
which made it retroactive as from the date of publication of the ruling as to the unconstitutionality of the decision under Law No. 44 of 1979, or in other words as from 16/5/1985. On 1/1/1982, the appellant was advised of the application for right of تأ اه which is the subject of the case appealed against. Upon appeal the case in its entirety was transferred to this Court and remains governed by Law 25 of 1920, Law 25 of 1929 and the most appropriate view of the Hanafis, none of which contain anything to support the respondent's application for right of تأ اه as being lawful since it was made prior to implementation of Law No. 100 of 1985.

Accordingly, the ruling appealed against was improper and should be quashed and it should likewise be adjudged that the application for right of تأ اه be disregarded. The Court ruled first to reject the defence submitted by the respondent to the effect that it was as if the appeal had never existed. Secondly, with regard to the content of the appeal, the Court ruled to quash the ruling appealed against and to disregard the application for right of تأ اه which was the subject of the case.

The position of the Moroccan Mudawwanah with regard to تأ اه

In the Moroccan Mudawwanah the subject of تأ اه is dealt with under al-Kitab al-Awwal, Chapter 6, Section 36, The rights of the husband over the wife which comprise: 1. The wife's preserving of herself and her chastity. 2. The wife's تأ اه towards her husband on a reasonable basis. 3. Suckling of her children providing she is able to do so. 4. Supervision and running of a home. 5. The wife's polite and courteous treatment of her husbands parents and relatives. (50)
The position of the Egyptian *Ahwāl Shakhṣīyyah* with regard to *nafaqah*

Law No. 100 of 1985 Amended some provisions on the *Ahwāl Shakhṣīyyah* laws. With regard to *nafaqah*, Article 2 of this law states: (51)

ARTICLE 2
The text of Article (1) of Law No. 25 of 1920 concerning the provisions of *nafaqah* and some *Ahwāl Shakhṣīyyah* questions shall be substituted by the following text:-

(Article 1)

*Nafaqah* shall fall due to the wife by her husband from the date of the legally valid contract if she consents to his right of *jāʿah*, even if only arbitrarily, and even if she is affluent or of a different religion.

The illness of the wife shall not prevent her being entitled to the *nafaqah*.

The *nafaqah* shall cover food, clothing, housing, fees for medical treatment and other such expenses as are required according to the *shariʿah*.

*Nafaqah* shall not fall due to the wife if she apostasises or deliberately withholds *jāʿah* without justification or is compelled to do so for a reason which is not due to the husband, or if she goes out without her husband's permission.

It shall not be regarded as being a reason for losing the right to *nafaqah* if the wife goes out of the matrimonial home without her husband's permission in the cases where this is allowed under a provision of the *shariʿah* or by custom, or where it is dictated by necessity, nor if she goes out for lawful work unless it appears that this conditional right has been misused by her or is against the interest of the family.
and the husband has requested her to refrain from misusing such right.
The wife's nafaqah shall be regarded as being a debt owing by the husband as from the date of his refraining from providing such so long as he is obliged to do so, and it shall not lapse except by being paid or the husband being released from it. A lawsuit involving a claim for nafaqah shall not be considered for a preceding period exceeding one year to the date of filing the lawsuit. The husband shall not be accepted to invoke an equivalence between the wife's nafaqah and a debt owing to him by her, except with regard to an amount exceeding that required to provide her essential needs. The wife's nafaqah in arrears shall have a lien on all the monies of the husband and shall take precedence over other expenditure.

The following observations can be made in respect of the said Article:
1. Prior to enactment of the law, payment for medical treatment was not regarded as being part of a wife's nafaqah, in accordance with the Ḥanafi view. However, amendments to remedy this were made, thus conforming with the Māliki view and that of the Zaydīs and Ibn al-Ḥakm.
2. Based on Ḥanafi views, Paragraph 4 of the Article makes a final amendment to law No. 100 of 1985 which covers a wife's forfeiture of nafaqah in the case of her leaving the marital home as a husband may forbid his wife from performing any act which leads to his right being reduced or harmed.
3. Paragraph 5 added instances where the wife is permitted to leave the marital home, in which case the fact that she leaves the home, even without her husband's consent, is not considered cause for her to forfeit her nafaqah. In such instances, the wife is permitted to leave the marital home.

231
according to the *shari‘ah*, or customary law, if necessity requires her to do so without her husband's consent, provided that she is leaving for a legitimate purpose and unless it appears that she is abusing such right, or using it in a way which contradicts the interests of the family. If a husband who establishes that his wife has abused this right asks her to stop doing so and she refuses, she shall forfeit her *nafaqah*.

A comparison of Paragraphs 4 and 5 suggests that the provision in Paragraph 4 concerning the wife going out of the marital home is unnecessary as Paragraph 5 can be applied if a wife leaves the marital home without cause, in which case she shall lose her *nafaqah*. This would in fact be difficult, however, as the meanings of *shari‘ah*, customary law and necessity are not defined.

The Article also describes *nafaqah* and regard it as a debt on the part of the husband as from the date upon which he ceased maintaining her, which does not cease until it is paid or released. The law adopts the opinion of the three Imams that a case can be brought after one year considering *nafaqah* to be a debt owed to the wife from the time she offers *tā‘ah*, actually or presumably, without there having been any court order or mutual agreement for her to do so. The Law, however, restricts *nafaqah* claims to those which refer to a preceding period. It allows the judiciary to specify the period, in view of the fact that freely permitting *nafaqah* claims prior to the date when a claim is lodged raises the possibility of claims being made in respect of several years. The period stipulated in Article 99 of the Regulations on the Organisation of the Courts, namely three years, was also considered to be too long. The law therefore satisfied itself with one year by preventing claims beyond this. Those whom this ruling concerns are not adversely affected as they can take the initiative to seek their rights within one year.
Article 4 of the above law regulates the case of husbands who cease to maintain their wives, and was issued to regulate the provision on inability to provide *nafaqah*.

Article 5 of the law concerns the provision of the Law as regards *nafaqah* of a wife whose husband is absent:

Article 6 concerns the type of divorce for non-payment of *nafaqah*:

The provision of Article 6 is derived from the Mālikī view that a husband who fails to provide *nafaqah* may be divorced. Divorces imposed by a judge are revocable.

Article 16, Law No. 25 of 1929 concerns the assessment of *nafaqah* to be provided by husbands, both rich and poor, at the time due.

This Article concerns *nafaqah* claims and urgent *nafaqah* awarded by a court to a wife and children whilst a claim is being examined. The judge must oblige the husband to pay such within a maximum of two weeks.

Finally, Article 18a concerns compensatory *nafaqah* for divorced women. The Explanatory Memorandum to this Article states that it is established in law that compensatory *nafaqah* for a divorced woman whose marriage was consummated is not obligatory, inasmuch as she is entitled to the entire *mahr* upon consummation of marriage and *nafaqah* during the *iddah* period. Compensatory *nafaqah* is desirable, but not required.

This has been somewhat neglected in recent times however, particularly in the case of couples who no longer have feelings for each other. Divorcees may need material assistance which extends beyond the period of the *iddah* and this is provided by the compensatory *nafaqah*. This article is adopted from Shāfi‘ī *fiqh* as it allows a divorcee to receive *nafaqah* once a marriage has been consummated if the divorce was not at her behest.

The following are some examples of the application of the
FACTS OF THE CASE

The facts of the case can be summarised in that the respondent had initially brought Case No. 204 of 1985 against the appellant before the Maḥkamah Juzʾiyyah, Khalīfah, Aḥwāl Shakhṣīyyah, seeking a ruling ordering her husband to pay her nafaqah of the four types [clothing, food, accommodation and ] including servant's wages, on a monthly basis. In support of her case, she stated that she was the legitimate wife of the appellant as per a valid contract of marriage. The marriage had been consummated and they lived together as man and wife in his home where he had the right of ṭāʿah. The appellant had stopped supporting her financially for no justifiable or legitimate reason as from 1/4/1985. He worked as an accountant and received a monthly salary of LE300 in addition to allowances, incentives and bonuses amounting to three times his salary. He also owned high-yielding agrigicultural land in al-Hargah, Belīnah Centre, Suhāg.

The appellant was the sort of man who used his wives as servants and she was therefore entitled to servant's wages. In law, nafaqah should be assessed according to a husband's affluence. She had approached him in amicable fashion and asked him to provide her with nafaqah, but her request was in vain and as such she was compelled to seek the above ruling. The case was deliberated in hearings as documented in the minutes. In the hearing on 29/3/1987, this Court in modified form ruled in the presence of the litigant parties to question the litigant parties and did so in the hearing on 26/4/1987. The Court then decided to reserve judgement on the case until
the hearing on 15/11/1987, when judgement was further deferred until the hearing on 13/12 1987, in which the Court ruled that it was qualitatively incompetent to examine the case and accordingly that it was to be referred in its entirety to the Maḥkamat al-Isti'nāf, Cairo South, ʿAhwāl Shakhṣīyyah, which would assume responsibility and examine the case in a hearing on 27/12/1987. The case was then referred to the Maḥkamah Ibtidā'iyah, Cairo, which deliberated the case, and on 25/6/1988 it issued its ruling in favour of the plaintiff against the defendant imposing nafaqah of two kinds (food and clothing) in the amount of LE50 per month as from the date when he had ceased providing nafaqah on 1/4/1985 in addition to a servant's wage of LE20 monthly which was also payable as from the same date. The Court set a time limit during which the husband was to make payment. Its decision was based on Article 1, Paragraph 1, of Law No. 25 of 1929, amended by Law No. 100 of 1985, and on Article 16 of Law No. 25 of 1929, both of which have been referred to previously.

The appellant was dissatisfied with this ruling and appealed against it a second time on the grounds that the two rulings issued in respect of the case were in breach of the law and should be quashed. The reasons for the ruling issued by the Maḥkamah Juz'iyyah (Khalīfah) to the effect that it was qualitatively incompetent were inconsistent with the ruling itself. Similarly, the ruling issued by the Maḥkamah Ibtidā'iyah, Cairo, was improper as it was originally incompetent to examine the dispute. It had also relied on the statements made by the respondents witnesses without having received any evidence of the appellant's ownership of the farming land allegedly possessed. Furthermore, the first of the respondent's witnesses was her brother and her wali in her marriage contract dated 29/10/1981, and his testimony should not have been regarded as disinterested. The second witness was the respondent's brother-in-law who lives at a
great distance from the respondent in Suez, and his testimony should be discounted as there is a suspicion of rivalry between him and the appellant. The reasons were stated in the considerations pertaining to the ruling appealed against and the opinion expressed by the Niyābah Āmmah in its memorandum dated 14/5/1988 that the defendant should be ordered to pay the plaintiff nafaqah of all types. This statement requires evidence.

THE RULING
The Court refuted the reasons upon which the appellant had based his appeal. In respect of the first reason, it is stipulated that the Court to which the case is referred is bound by the referral as stipulated by the Explanatory Memorandum of Law No. 100 of 1962, which also obliges the Court to which a case is referred to examine it irrespective of whether it was a lower or higher court which made the referral (See Maḥkamat al-Naqḍ Ruling No. 499/41 QAF FA, of 29/3/1978, and Maḥkamat al-Naqḍ 21/2/1986 Appeal No.400563).

In respect of the second reason, the testimony of any witness is acceptable other than that of a parent in respect of his offspring or vice versa, or that of one spouse with regard to another. Similarly, in accordance with Article 79, Decree Law 87 of 1931, testimony which provides clarification is sufficient in rulings which involve nafaqah of all types. The Maḥkamah Ibtidāʾīyyah also decreed maintenance for the respondent based on evidence from inquiries made into the appellant's work, the statements of the respondent's witnesses and the absence of reasons given by the appellant.

Based on the foregoing, the ruling was valid in terms of its reasons, and a judgement should therefore be passed to dismiss this appeal and support the ruling. The Court therefore ruled to accept the appeal in form but reject it in content, thereby endorsing the ruling of 9/3/1989.
CASE STUDY NO. VIII. (53)

Case study concerning compensatory nafaqah for a divorced woman
(unpublished case)

FACTS OF THE CASE

The facts of the dispute can be summarised in that the appellant in the original Appeal No. 4 of Judicial Year 101 brought Case No. 2136 of 1982, Maḥkamah Ibtidā‘īyyah, North Cairo, Aḥwāl Shakhṣīyyah, against the respondent seeking a ruling awarding compensatory nafaqah for a period of twenty years and an order imposing payment of the same. The appellant had married the respondent on 21/8/1953 and they had continued to live as man and wife once the marriage had been consummated in accordance with a valid and legitimate contract of marriage. As a result of their union, they had one daughter aged twenty-five. Over this long period, the appellant’s youth had faded and she had stood by his side whilst he worked to become a large contractor who now owns land and real estate and is the director of the company named (XXX). She was surprised to learn that he had taken other wives without her knowledge and had ended her marriage by divorce on 13/12/1981 by official certification without her consent and without cause on her part. On 16/5/1982, she was awarded nafaqah by a ruling from the Roda al-Farag Small Claims Court, Aḥwāl Shakhṣīyyah, in the sum of LE30 to be received as from commencement of the ‘iddah period on 13/12/1981 until the end of the period. She had asked to receive payment of compensatory nafaqah but this had ceased without legitimate cause. She therefore brought this case seeking a ruling in her favour. The case was deliberated before the Maḥkamah Ibtidā‘īyyah, and on 20/12/1983, the
Court decided to reject the defence made by the respondent to the effect that the writ was invalid, and secondly, to award a compensatory nafaqah payment to the appellant of LE1800. The ruling was based on the following:

1. The legal announcement of the case petition was valid.
2. The conditions whereby compensatory nafaqah was due to the plaintiff were established by means of official documents and legal evidence.
3. The compensatory nafaqah was assessed in accordance with the respondent's financial and social position as being the equivalent of five years' nafaqah for the entire material period.

Both parties were dissatisfied with this ruling and appealed against it a second time. The wife asked for the amount to be increased to a sum commensurate with the appellant's social and financial status, basing her appeal on the following:
1. The amount awarded for compensatory nafaqah was negligible and inappropriate as she had given the appellant thirty years' service and he was now an affluent man.
2. She had been divorced from the respondent without her consent and without cause on her part.

The respondent also appealed a second time against the ruling and asked that it be quashed, based on the fact that the Mahkamah Ibtidā‘īyyah had not heard the witnesses he had called.

Both appeals were heard before the Court, and before passing judgement, the Niyābah Āmmah submitted a memorandum dated 27/4/1985 in which it concluded that the two appeals should be accepted in form and that in terms of content the ruling should be amended by increasing to LE3600 the compensatory nafaqah payment awarded to the divorcee.
The Court decided that the ruling had been valid in terms of content and that the period assessed was appropriate and in accordance with jurisprudence, law and fact. However it did not agree that the final nafaqah assessed was sufficient to cover compensatory nafaqah for a period of five years. Article 18a of the said Law 100 states that a wife's entitlement to compensatory nafaqah is assessed at a minimum of two years. The appeal ruling issued prior to the ruling in question had awarded the appellant nafaqah amounting to LE60 per month, by the relevant file had not been consulted in this case. On the same basis, however the entire sum to be awarded for compensatory nafaqah should be double that originally awarded, or in other words, LE3600.

The second appellant presented nothing new which required that the ruling be quashed or amended, thus necessitating that it be rejected in content as his case had no sound basis in jurisprudence, law or fact.

The Court therefore ruled to amend the nafaqah to LE3600 and to otherwise support the ruling appealed against and to reject the content of Appeal No. 31 of Judicial Year 101 brought by the appellant husband.

The position of the Moroccan Mudawwanah with regard to nafaqah

In the Moroccan Mudawwanah, the subject of nafaqah for wives is dealt with in al-Kitāb al-Awwal, chapter 6, Section 35, the rights of the wife with regard to her husband, which comprise: 1. Lawful nafaqah in terms of food, clothing, medical expenses and housing.
2. Justice and equity if the man is married to more than one wife.
3. Permission to the wife to visit her family and to invite
them to visit her on a reasonable basis. 4. Full freedom to dispose of her assets without the husband having any control, in that a husband has no wilāyah over his wife's assets. (54)

The position of the Egyptian Ahwāl Shakhṣīyyah with regard to ḍarar

The second right of the wife with regard to her husband, muṣ-āsharah bi-maṣrūf, or kind and just treatment, is dealt with by the Egyptian Law from the point of view its violation in that it is regulated in certain Articles which grant the right to seek divorce in the event of the occurrence of ḍarar. This is regulated according to Article 6 of Draft Ordinance 25 of 1929. (55)

It may be noted that Article 6 does not define the ḍarar on the grounds of which a wife may be permitted to ask a judge to divorce her from her husband, but suffices itself with a general description of such ḍarar as "That which makes it impossible for two such people to continue to live together". That is, it should stem from the actions of the husband and be within his capacity to inflict such upon the wife, whether it be deliberate or something which he cannot help, whether the ḍarar be active or passive, and whether it affects the body of the wife or her honour. The measure of ḍarar in the context of the Article is personal rather than material and will vary according to the couple concerned in terms of social background, education and class and its estimation is at the discretion of a Judge. Separation on the
CASE STUDY NO. IX. (56)

Case study concerning ٰdarar.
(unpublished case)

FACTS OF THE CASE

The facts of the case are that the respondent had brought Case No. 26334 of 1987, Maḥkamah Ibtidāʾīyyah, Cairo North, Aḥwāl Shakhṣīyyah, seeking a ruling to obtain an irrevocable divorce on the grounds of ٰdarar. In explanation of her case, the respondent had stated that she was the legitimate wife of the appellant as per a valid contract of marriage. The marriage had been consummated and she was still subject to his authority, but he had persistently abused her both verbally and physically and had seized control of her assets. The case had been referred for investigation and the testimonies of the respondent’s witnesses had been heard,
following which the Court had resumed and ruled in the hearing on 19/4/1988 that the (then) plaintiff should be granted an irrevocable divorce from the (then) defendant on the grounds that she had suffered ḍarar, placing its faith in the statements made by her witnesses which demonstrated the ḍarar suffered by the plaintiff and the impossibility of conjugal life being sustained.

The appellant was dissatisfied with this ruling and appealed against the same on 14/5/1988, basing his appeal on the following:

1. The Maḥkamah Ibtidāʾīyyah was wrong to refer the case for investigation as the case file proved that the respondent had submitted no minutes or written memorandum against the appellant in support of her allegation, thus indicating that the respondent's allegations were false.

2. A ruling of the Maḥkamah ʿUlyā established that caution must be exercised in referring or presenting cases for investigation for any reason, as it was not right that someone's future should depend on the statements of witnesses in respect of whom there was no faith which was the case here, in that the respondent's witnesses were her sisters, thus meaning that their testimony was rendered unreliable and accordingly that the ruling was inappropriate.

3. The Maḥkamah Ibtidāʾīyyah did not afford the appellant the opportunity to call his witnesses and instead satisfied itself with hearing the witnesses for the respondent, even though the case is one upon which his future depends. Had he been given the opportunity to call his witnesses, opinion on the case might have altered.

4. The appellant had been married to the respondent for twenty years and it was unbelievable that he should change overnight into a violent attacker who had seized control over her assets as charged by the respondent. She had an ulterior motive and the Maḥkamah Ibtidāʾīyyah should have looked for
the real motive hidden behind the respondent's application for a divorce from the appellant.

5. The falseness of the allegations made by the respondent's witnesses to the effect that the appellant had seized control of her assets is confirmed by the fact that he had been working in Kuwait for over twenty years, and that with his earnings had purchased real estate and apartments for the respondent and provided her with liquid funds deposited in banks.

The appellant concluded his appeal by requesting that it be accepted in form and content by quashing the original ruling and obliging the respondent to pay costs.

The respondent's attorney submitted a defence against the statements made by the appellant.

With regard to the first point, it is a disgrace amongst higher social circles for a woman to go into a police station and expose her maltreatment. Resorting to the law would affect the preservation of her dignity due to circumstances which she might encounter inside a police station. Hence, the respondent's failure to resort to the police, did not detract from the strength of her evidence according to the shari'ah and provided that it fulfils the conditions for validity the judge must immediately pass judgement, as it is the witnesses who bear testimony and not the judge.

The second point is unacceptable, as apart from the testimony of a child in respect of a parent and vice versa and that of one spouse in respect of another, the testimony of all other relatives is acceptable providing that any accusation of falseness is dispelled by establishment that the testimony is of no direct benefit to the witness or does not save him from any loss. Such is in accordance with judgements passed by the Maḥkamat al-Naqd (Maḥkamat al-Naqd, 24/11/1981 - Appeal No. 29, Judicial Year 50; Maḥkamat al-Naqd, 24/11/1981 - Appeal No. 45, Judicial Year 49; and Maḥkamat
al-Naqḍ, 29/12/1981- Appeal No. 9, Judicial Year 50). The appellant did not follow up his allegations which insinuated that the testimonies given by the respondent's witnesses were beneficial to them or saved them from any loss, and as such his plea in this respect is irrelevant.

The third point is invalid as the minutes of the investigation hearing show that the appellant did not attend even though he had been advised of the preliminary ruling. Consequently, he did not request the Court to call witnesses. There was nothing to prevent him from attending and calling or issuing summons to his witnesses had he truly wished to do so. It is therefore established that the failure of the litigant to attend the investigation hearing and his failure to call or issue summons to his witnesses resulted in him being deemed unable to provide any proof or denial of his position in the case as he had been required to do. In accordance with Article 69 of the Law on Evidence if a litigant party receives permission to establish proof of facts by means of witnesses, the other litigant party always has the right to disprove such facts in the same manner. Such right of the litigant party is derived directly from the law and is a principle established by the Maḥkamat al-Naqḍ (21/12/1950 / Group 25 / Judicial Year Part 1, p.50, Rule 196). It is also stipulated that the failure of a party to call upon defence witnesses does not preclude a court from continuing to examine a case (Maḥkamat al-Naqḍ 14/6/1980, Appeal No. 402, Judicial Year 46). The failure of the litigant to attend the investigation procedures and his subsequent failure to call witnesses does not prejudice the right of defence as a litigant is permitted to use the right of denial, or not as he chooses (Maḥkamat al-Naqḍ, 25/4/1979, Judicial Year 30 - No. 2, p.169). Hence the claims made by the appellant in his third plea are invalid.

As for the appellant's fourth and fifth points, it would be unreasonable for the respondent to resort to litigation and
lodge a complaint against the appellant after this period if he had not turned on her and become an aggressor who abused her both physically and verbally, thus making it impossible for her to continue living with him as stated hereabove.

The Niyābah 'Āmmah presented a Memorandum dated 27/12/1988 in which it concluded that the appeal should be accepted in form and rejected in content, thereby endorsing the original ruling.

THE RULING

The Court noted the appellant's failure to call his witnesses and held that the provisions of Article 6 of Draft Ordinance 25 of 1929 applied to this case. Accordingly the original ruling was valid within the law. The Court therefore ruled to reject the appeal and endorse the original ruling on 9/3/1989.

A further way in which the husband may cause ḍarar to his wife is by ghaybah or absence.

Article 12 of Law No. 25 of 1929 states with regard to the absence of husbands:

"If a husband is absent for more than one year with no justification, the wife is permitted to ask a qādī for irrevocable divorce, if she suffers ḍarar from his absence, even if she has money with which to maintain herself."

Article 13, also on ghaybah states:

"If it is possible for letters to reach the absent husband, a qādī will grant him a period of grace, warning him that he will divorce him if he does not come to live with her or bring her to live with him or divorce her. If this period expires and
the husband provides no acceptable justification the qāḍī will separate them by an irrevocable divorce. If it is not possible for letters to reach the absent husband then the qāḍī will divorce them with no warning and no period of grace." (57)

Articles 12 and 13 concerning ghaybah refer to a husband who resides in a country other than that in which his wife resides. If, however, a husband resides in the same country as his wife and leaves her for one year or more then separation is granted in this instance on the grounds of qarar in the form of desertion in accordance with Article 6 referred to hereabove. Injury suffered as the result of a husband's absence is of a particular type and is as if the wife has suffered physical or verbal abuse from her husband. A husband may be absent from his wife's side for a long period of time without reasonable cause and fail to make arrangements for her to join him and yet not divorce her, meaning that she is unable to marry another husband. Such enforced solitude and celibacy over a long period of time is considered unsupportable to human nature, even if the husband leaves the wife with funds with which to support herself. It can be inferred however, from the Explanatory Memorandum, that the condition under which an application for separation is permitted is that the husband should have been absent without reasonable cause. The aptness or otherwise of such causes of ghaybah are at the total discretion of the qādi.

Article 13 refers to ghaybah which makes separation necessary and makes a distinction between two types of ghaybah. The first is where an absent husband's domicile is known, meaning that he can be contacted by letter, in which case he cannot be divorced unless so advised in writing whereupon he must choose one of the options stipulated. If he does so the qāḍī will not impose divorce, whereas if he fails to do so by omitting to reply within the time specified by the qāḍī shall impose a divorce provided that proof exists of the
husband's receipt of the notice of divorce.
The second type of ghaybah is where the husband's domicile is unknown, meaning that he cannot be contacted by letter. In this case the qādī shall be order that he be divorced without warning or delay.
The maximum permissible period of absence is 365 days in accordance with the Mālikī view, and as indicated by Article 13. Divorces imposed by a qādī are irrevocable and the wife is not required to provide proof of ḍarar, but need only state that she has suffered ḍarar due to her husband's absence and the judge will grant her a divorce. Divorce for reasons of ghaybah does not require that a proposal of reconciliation between the two parties be made as stipulated by the aforementioned Article 6.

CASE STUDY NO. X. (58)

Case study concerning ghaybah.
(unpublished case)

Application for separation on grounds of ghaybah (as per the above-mentioned Articles 12 and 13).

FACTS OF THE CASE
The facts of the appeal can be summarised in that the petitioner brought Primary Case No. 1069 of 1979, Maḥkamah Ibtidāʾīyyah, Alexandria, against the respondent seeking a ruling to obtain an irrevocable divorce. In support of her case, she stated that she was his legitimate wife as per a valid contract of marriage concluded on 27/9/1978 and that he had been absent from her side for over one year without reasonable cause as a result of which she had lodged the case. The Maḥkamah Ibtidāʾīyyah referred the case for investigation and after hearing the petitioner's witnesses it ruled on 19/12/1982 that she be granted a divorce from the respondent. The respondent appealed against this ruling by
means of Appeal No. 62 of 1983, Maḥkamah Sharʿīyyah ʿUlyā, Alexandria, and on 28/5/1984 an appeal ruling was issued quashing the original ruling and rejecting the case.

The wife was dissatisfied with this ruling and appealed to have it overturned by the Maḥkamat al-Naqd. The Niyābah Āmmah presented its opinion that her appeal should be rejected and presented the same to the Court in Chambers. A hearing was fixed to examine the appeal in which the Niyābah Āmmah insisted on its opinion that the appeal be rejected. The petitioner based her appeal on three reasons, the first being that there had been a misapplication of the law. In evidence, she stated that the appellant had lost his right of appeal as his appeal had been brought after the deadline. He was resident abroad in Kuwait and was advised in executive from of the ruling passed in his absence by delivery of a copy of the advice by the Niyābah Āmmah, whereupon the time limit for appeal began. The ruling had rejected this defence on the grounds that the time limit for appeal in respect of the appellant began as from the time when he was advised of the ruling in person or at his known domicile abroad. The Court responded that this plea was irrelevant as her husband's circumstances were such that he was unable to attend any of the hearings fixed for examination of the case and did not submit a memorandum in his defence. The time limit for appeal in this respect began, in accordance with Article 213, Procedures, as applied by the jurisdiction of this court, as from the date when he was advised of the ruling in person or at his domicile as per the procedures under the Law of Procedures whereby he would be fully informed. Proof of his knowledge by any other method, however irrefutable, is of no use. The ruling insisted on holding to this view and as such there was no misapplication of the law.

The second reason was that the ruling was based on false reasoning. In support of this, the petitioner stated that the
ruling had rejected her case on the grounds that the respondent's presence abroad for reasons of work of which she was aware is deemed a reasonable cause for his absence. Furthermore, she had submitted no evidence of ġarar, whereas the mere fact that her husband had been absent for a prolonged period of time provided ġarar enough for the law to be applied.

This plea is likewise irrelevant, as Article 12 states that a wife may request separation if she claims that her husband has been absent from her side for one year or more without cause and actually suffers ġarar as a result of ghaybah. Appraisal of the cause of absence is a matter which is left to the discretion of the Judge. The respondent's file proved that the petitioner was aware that he was working in Kuwait and that she had continued to correspond with him until 1982, as she herself had confirmed. He, in turn, had sent her large sums of money. The significance of all this is that the appellant was away from the side of his petitioner wife for over one year with her consent and with reasonable cause, namely the fact that he was employed in Kuwait.

This ruling was a relevant and permissible inferral based on the evidence on file which resulted in the end conclusion. The plea is not deemed to be a relevant argument and cannot therefore be used before the Maḥkamat al-Naqḍ.

The third reason was the limited substantiation and the violation of the right of defence. In evidence, the petitioner stated that she had submitted documents and a memorandum in her defence comprising evidence of her marriage to another man and the notifications to the respondent of her case and the nafaqah claims she had brought against him. These are documents which would have altered opinion on the case had they been used.

Finally, this plea is irrelevant, as a judgement of the Maḥkamat al-Naqḍ states that the court concerned is not
obliged to follow up and respond independently to every piece of evidence which litigants produce and failure to do so does not detract from its ruling. The Court therefore ruled to reject the appeal for the above reasons and obliged the petitioner to pay costs.

The position of the Moroccan Mudawwanah with regard to ghaybah

As for the position of the Moroccan Mudawwanah on the issue of the absent husband, this is dealt with by al-Kitāb al-Awwal, chapter 6, Section 35, the wife’s rights with regard to the husband, points 2, 3, and 4 cited above; Also al-Kitāb al-Thānī, chapter 2, Sections 56, 57 and 58. (59) Section 56, Divorce on the grounds of ʿdarar: 1. If a wife claims that her husband has caused her ʿdarar in any manner whereby she can no longer continue living with him and if the qāḍī proves unable to effect a reconciliation between them she shall be granted a divorce. 2. If the divorce application is dismissed and the complaint is reiterated and the ʿdarar not proven the qāḍī shall send two arbitrators to attempt to reconcile the two. 3. The two arbitrators must try to understand the causes of the conflict between the couple and make every effort to reconcile them. If in some way they are able to do this then they shall report this, and if they are unable to do so the matter will be brought before the qāḍī to examine the case in the light of their report. Section 57, Divorce on the grounds of ghaybah of the husband. 1. If a husband is absent for a period of over a year without reasonable cause and his whereabouts are known, his wife may seek an irrevocable divorce from a qāḍī if she has suffered ʿdarar as a result of ghaybah, even if he has left funds for her maintenance. 2. If the husband can be contacted
by letter the qādī shall grant him a period of grace, warning him that he shall be divorced if he does not come to live with his wife, or bring her to live with him or divorce her. If the time expires and he fails to do one of these and produces no acceptable justification the Judge will seek confirmation of the wife's persistence in seeking divorce and upon such confirmation will grant one irrevocably. If it is not possible to contact the husband by letter then the qādī will appoint for him a proxy and time will be allowed for him to attempt to locate him. If he does not the qādī will grant her a divorce with no warning to the husband and no period of grace.

Section 58, Divorce on the grounds of tilā' or desertion [of the marriage bed]. If a husband swears tilā' or takes an oath to desert his wife in the marriage bed and leaves her bed, the wife is permitted to raise her case before a qādī who shall grant the husband four months grace. If the husband does not comply within this period she shall be granted a revocable divorce.

The position of the Egyptian Ahwāl Shakhṣīyyah with regard to polygamy, qasm and qarar due to polygamy

Polygamy has passed through several stages under Egyptian law. In 1899, Shaykh Muḥammad ʻAbdū submitted a report to the Wizārat al-ʻAdl in which he asked the government to regulate polygamy. The government, however did not respond to his request, and in 1926 the students of Muḥammad ʻAbdū adopted a campaign to issue a law which legally would restrict polygamy to those who were able to demonstrate qasm and who had sufficient financial means. The draft was put before Parliament in 1929, but was rejected due to the absence of a representative body. Draft Ordinance No. 25 of 1929 regulating certain family matters was issued, but it contained no proposals whatsoever on restricting polygamy to
cases where a judge has given his permission. In 1943, the Wizārat al-`Adl presented a draft law which included the two following stipulations:

1. A married man may not enter into marriage with another woman and no-one may arrange or record a contract of marriage without the permission of the qādī shara`ī within whose jurisdiction it is.

2. The qādī shara`ī shall not permit the marriage of a man who is already married until his living conditions have been inspected and investigated and it has been confirmed accordingly that he is able to cohabit and provide for more than one wife and any other dependent relatives and children. This draft law was unsuccessful until discussions about it were again raised in the sixties in an attempt to introduce it as legislation. However, the decision of the Islamic Studies Convention issued in 1965 rejected the content of the 1945 Draft Law and gave instructions to reject the restriction of polygamy by the permission of a qādī. The Convention was held in Cairo in the form of a general conference to discuss polygamy being legally restricted to those who were able to demonstrate qasm and who had sufficient financial means. A qādī would also have to see that there was a justification for the polygamy which would require him to give his consent. Polygamy was then dealt with by the 1967 Draft Family Law, which differed from its predecessor in that it did not restrict polygamy by the permission of a qādī and required no justification for it to occur. Most of the restraints which appeared in this Draft Law were consistent with the provisions of the shari`ah. In other words, a man could not have more than four wives and could not marry those whose consanguinity precluded marriage, for example, two sisters, or a woman and her maternal or paternal aunt, or two women, one of whom had forbidden him to marry the other.

Such was the content of Articles 16 and 17. The new element
within the 1967 Draft Law was that it gave the more senior wife the right to divorce her husband if he married another woman within two months of her learning of the marriage unless she explicitly consented to the marriage and her consent implied that she knew he had taken another wife. It also gave the new wife the right to demand a separation if he had concealed from her the fact that he was already married. This is dealt with by Article 134 of the Draft Law. Remarkably, neither the 1945 nor the 1967 Draft Laws were applied in practice until Law No. 44/1979 had been issued in amendment to Decree Law No. 25/1929, of which Article 6 provided remedy in case of *darar* to the wife (as discussed above).

Article 6a appended to Law No.44 also stipulated:

The husband must provide the notary public with a written declaration which includes mention of his civil status. He must state whether he is married, and if so he must give the name(s) of his wife or wives at the time of his new marriage and their places of domicile. The notary public must advise them of the new marriage by registered letter and his wife shall be considered to have suffered *darar* if he marries another woman without her consent, even if she did not stipulate in the marriage contract that he should not marry another woman. The same shall apply if the husband conceals the fact that he is already married from his new wife. A wife shall forfeit the right to request a separation one year as from the date of her learning of the establishment of the reason which caused the *darar* unless she gave her explicit and implicit consent to such. This law, however, did not survive, and on July 1st 1985, the manner in which it was issued was judged to be unconstitutional. Law 100/1985 was then issued to replace it.
and Article 6a in the abrogated law was replaced by Article 11a which stipulated as follows

The husband must declare his civil status in the marriage deed, and if married he must state the name(s) of his wife or wives and their places of domicile. The notary public must inform them of the new wife by registered letter accompanied by a receipt. A wife whose husband takes another wife may demand a divorce if she suffers material or moral ُdarar ُwhich makes it impossible for her to continue cohabiting even if she did not stipulate in the marriage contract that he should not marry anyone else. If the qāḍī is unable to reconcile the two he shall grant an irrevocable divorce. The wife shall have the right to request a separation for this reason within one year as from the date of her learning of his marriage to another woman unless she has given her explicit and implicit consent to such. Her right to demand a separation shall be renewed each time her husband marries another woman. If the new wife was unaware that he was married she may ask for a divorce.

This Article is noticeably different from Article 6a of the unconstitutional Law No. 44, according to which the marriage alone of the husband to another woman gave the first wife the right to ask for a divorce. The qāḍī is bound to rule in her favour, being restricted by the content of the stipulation which considers that the mere fact of a husband marrying another woman causes ُdarar to the first wife even if she did not stipulate in the marriage contract that he should not marry another woman. On the contrary, however, Article 11a of the new Draft Law deemed that a wife whose husband married another woman suffered no ُdarar, and if she felt that she had suffered ُdarar and wanted a divorce she must resort to litigation. In this case the qāḍī should not rule to allow her a divorce until after an attempt had been made to reconcile the two, and if this proved impossible he should then grant
her an irrevocable divorce.

This amendment was based on the opinion of the Joint Committee of the Religious, Social and Waqf Affair Board, which justified the amendment in that it would bring out the intrinsic nature of the provision which each contained, as Article 6 of the Decree Law No. 25/1929 stipulated a general principle of divorce for daqar as a result of discord between the couple. Articles 7, 8, 9, 10 and 11 of the same Decree Law regulating arbitration procedures in such cases then appeared, whereas the later Article deals with a particular type of daqar suffered by the wife as a result of her husband marrying another woman.

We may illustrate the position of the Egyptian Judiciary in respect of daqar necessitating divorce as a result of the husband marrying another woman:

CASE STUDY NO. XI. (60)

Case study concerning divorce on grounds of daqar due to polygamy illustrating the position of the judiciary as regards cases which arose under Law No. 44/1979 (unpublished case)

The appellant had brought Case No. 478/1984 / A’hwāl Shakhṣīyyah, Gīzah seeking a ruling to obtain an irrevocable divorce from her husband on the grounds of daqar, as the appellee (the husband) had married another woman without her knowledge, thus causing her excessive material and moral daqar. The Maḥkamah Ibtidā’īyyah, however, ruled to reject the case and obliged the appellant to pay costs. The ruling prejudiced the rights of the appellant and such she appealed for the following reasons:
Insufficient grounds for the ruling, as it was based on the material and moral darar as the result of her husband taking another wife since the other wife shared his limited income with her and she had seven of his children, all of whom were in school and needed a great deal of money spent on them. In addition, the fact that he had taken another wife led to him being absent from the home of the appellant wife and her children for long periods of time. The moral darar suffered by the appellant wife is inestimable as she suffered psychological injury as the result of there being another wife in addition to herself.

Furthermore, the Court did not examine the appellant's witnesses. In the session held on 9/2/1986, the appellant asked the Court to hear her witnesses in order to establish the material and moral darar which she had suffered as a result of the appellee having married another woman without her knowledge. The Court, however, did not respond to her request and the appellee (the husband) claimed that the wife was unable to prove her allegations. The Court listened to him although the wife's witnesses, who were relatives and neighbors of the husband himself, knew perfectly well that he had maltreated, beaten and abused the appellant. The minutes of the police and the prosecution contained details of such fights which made it impossible for them to continue living together. The Mahkamah Ibtidā'īyyah, however, did not allow this evidence.

Before the Mahkamat al-Isti'nāf issued its decision the case was referred to the Niyābah 'Āmmah for its opinion:

The opinion of the Niyābah 'Āmmah was that the appeal had been brought within the time limit and fulfilled all legal conditions and as such it was accepted in form.

In terms of the content, it is stipulated that the formal evidence procedures in āhwāl shakhšīyyah matters are subject to the regulations stipulated in the Code of Procedure. The
provision in Paragraph 1. of Article 76 of the Law on Evidence replaced the Code of Procedure on regulating the procedural provisions in respect of evidence and if a witness did not attend or was not summoned to the session fixed, the Court or the qādī could decide to oblige him to attend or summon him to another session as long as the date fixed for the investigation had not passed. If he did not then attend the right to use his testimony as a witness would be forfeited. This shows that the aim of the legislator was that litigants should not be able to prolong litigation by needlessly and deliberately drawing out the overall period of investigation. If a litigant failed to produce his witnesses at the session specified for commencement of the investigation the Court or the qādī delegated to the investigation should summon them by specifying a subsequent session as long as the investigation was still underway. If the litigant did not then fulfil his obligation he would forfeit his right to use the witnesses for testimony. It has been established from the documents that the appellant failed to produce her witnesses or summon them before the qādī delegated to the investigation in order for their testimonies to be heard, even though she had been given respite on more than one occasion. Therefore the ruling of the Mahkamah Ibtidā‘iyah was instead cited for the reasons on which it was based and the Niyābah ‘Āmmah concluded by supporting the initial ruling and rejecting the appeal.

THE RULING

After the documents had been examined and the defence had been heard, after the prosecution had given its opinion, and after legal deliberation, and as all the documents pertaining to the facts of the case appeared to have been examined, the Court ruled to accept the appeal in form and reject it in content. It supported the initial ruling and obliged the appellant to pay the costs of both litigants.
The Court reached this judgement based on Article 49/3 of the Mahkamah Dustūriyyah Law No. 48/1979 which stipulated that a ruling which governed that a provision of a law or bill was unconstitutional meant that such a provision could not be applied as from the day following publication of the ruling. This means that the decision and the said law cannot be applied in relation to facts subsequent to publication of the ruling. The Memorandum explaining the aforementioned law added in this respect that jurisprudence and the judiciary had finally decided that the meaning of the previous provision was that the provision was inapplicable not only in the future but also in respect of relations and facts prior to the issue of the ruling on its unconstitutionality, although excluded from such retroaction were legal rights and issues which had been decided when the ruling was issued granting the power of the decided matter as being a final ruling. The Mahkamat al-Naqūḍ had also finally resolved to consider the law which had been deemed unconstitutional as being nonexistant and of no effect.

In the session on 4/5/1985 the Mahkamat Dustūriyyah Ulya therefore issued its ruling that the decision under Law No. 44/1979 which amended certain provisions of the Ahwāl Shakhṣīyyah was unconstitutional. This ruling was published on 16/5/1985 and according to previous regulation, this decision under a law deemed inapplicable could not be applied whether after publication of the ruling on its unconstitutionality or prior to that in terms of its implementation in respect of relations and facts which were complete during its establishment. such relations and facts are still governed by Law No. 25/1920 and Law No. 25/1929 which continued to be implemented without regard for Law No. 100/1985 which appended new articles to the two laws and amended other articles. The law was issued and Article 7 thereof decided that it would be applied retroactively as from the date of publication of the ruling on the unconstitutionality of the decision under Law 44/1979 or in other words, as from
16/5/1985. The marriage of the appellee to another woman, the cause of the case presented, was concluded on 29/7/1983. This appeal was referred in its entirety to this Court which is still governed by Law No. 25/1920 and Law No. 25/1929 and does not take into account Law No. 100/1985 which was implemented as from 16/5/1985. The two said laws included nothing in respect of a husband taking another wife, and for these reasons when the ruling decided to reject the case the valid law was not applied.

CASE STUDY NO. XII. (61)
Case study concerning divorce on grounds of ḍarar due to polygamy
illustrating the position of the Egyptian judiciary as regards cases arising under Law No.100 of 1985, particularly Article 11a appended to this Law.
(unpublished case)

THE FACTS OF THE CASE
An appeal against the ruling issued in the session held on 29/12/1987 by the Maḥkamah Ibtidāʿīyyah, Cairo South, regarding Case No. 98/1985 Āḥwāl Shakhṣīyyah, Cairo South. A summary of the facts of the case is that the appellee had brought Case No. 98/1985 Āḥwāl Al-Shakhṣīyyah, Cairo South seeking a ruling to obtain an irrevocable divorce on the grounds of ḍarar. She stated in explanation of her case that she was his lawful wife under a šafā‘ah contract and that the marriage had been consummated and they lived together as man and wife. She was still his wife when he had married another woman, and furthermore, he had not provided for her financially and had expelled her from the marital home, thus
constituting ḍarar which made it impossible for them to continue living together. She has the right to demand a separation in accordance with the provision of Article 6 of Law NO. 25 /1929. The Mahkamah Ibtidā'iyah had ruled on 29/12/1987 that the appellee could obtain an irrevocable divorce and had based its ruling on statements made by the appellee's witnesses to the affect that the appellant had taken another wife and that the appellee had suffered ḍarar as a result. The Court was unable to effect a reconciliation, and the appellant had indicated his dissatisfaction with the ruling by lodging a writ with the Clerks' Office of this Court (Mahkamat al-Istīnāf).

After discussion of this case before the Court and submission by the appellant of a memorandum in which he requested that the appeal to quash the ruling be accepted in form and content because the appellee was unable to prove her case, and after submission by the appellee of a memorandum dated 21/5/1988 which concluded by seeking a ruling to accept the appeal in form and content, the Court ruled to accept the appeal in form and reject it in content, thus supporting the initial ruling, and obliged the appellant to pay costs. Its ruling was based on the following reasons;

Article 11a appended under Law No. 100 /1985 to Decree No.25/1929 stipulated that if a husband took another wife, the first wife in the case of ḍarar could request a divorce within a year of the date of her learning of the marriage. If the Court failed to reconcile them, the judge could then grant her an irrevocable divorce, and since the Court was reassured by the statements of the wife's witnesses that she had suffered ḍarar as a result of this marriage it concluded by issuing the said ruling.
The position of the Moroccan *Mudawwanah* with regard to polygamy, *qasm*, and *darar* due to polygamy

As for the position of the Moroccan *Mudawwanah*, the issue of polygamy is regulated in *al-Kitāb al-Awwal*, Chapter 5, Section 29, Women with whom marriage is prohibited temporarily, under which the second point concerns the increasing of the number of wives up to the legally permitted number (62). Section 30 then states: 1. Polygamy is impermissible if it is feared that the wives concerned will be treated unfairly. 2. If a wife has not made any stipulation, she has the option to take her case to a *qāḍī* for examination of the *darar* she has suffered. 3. The husband should not enter into a marriage contract with a second woman until after she has been informed that he wishes to marry another woman. Section 31 states: A woman has the right to stipulate in the contract of marriage that her husband should not take another wife, and if the husband does not comply with this obligation the wife retains the right to seek dissolution of the marriage. (63)
Notes to Part Two, Chapter One.

The consequences of the valid contract.

1. Shalabi, Muḥammad Muṣṭafā; Aḥkām al-Usrah fī al-İslām, pp.153,154. On the stipulation of conditions in the contract and the extent of this.

2. Ibn Ḥazm, ʾAlī Muḥammad ibn Aḥmad ibn Saʿīd; Al-Maḥāllā, part.11,p.138.

3. Al-Ḥarānī, Taqī al-Dīn ibn Taymīyyah; Majmuʿat Faṭāwī Ibn Taymīyyah, vol.2, p.175. Question as to whether it is obligatory for a person who is subjected to conditions in the marriage contract to fulfil such conditions.

4. Abū Zahrah, Muḥammad; Al-Aḥwāl al-Shakhṣīyyah, pp.181-185. paragraph 128 on the attaching of conditions to the contract and the consequences of this.


7. On the juristic opinions with regard to the right to sexual relations.

Al-Ḥūṭī, Maṣūr Yūnūs; Sharḥ al-Muntahā, vol.3, p.166.
Al-Ḥārānī, Taqī al-Dīn ibn Taymiyyah; op cit. vol.2; p.234. on the Ḥanbali view


Ibn Rushd, Al-Ḥāfiẓ Abī al-Walīd Muḥammad ibn Aḥmad; op cit. vol 2, p.88


12. Khān, Muḥammad Muḥsin; op cit. vol.7, p.97 Chapter 90
"Your wife has a right over you." ḥadīth no.127.


17. Ibn Ḥazm, ʿAlī Muḥammad ibn Aḥmad ibn Saʿīd; op cit. part.11, pp.727-736. On the different opinions of the jurists on the maximum duration of pregnancy, including that of Ibn Ḥazm himself, under the title "Al-Istibrā' " Question 2015.


Inheritance in Islam is a subject of some complexity, the details of which I have chosen not to discuss here. Coulson provides an authoritative and detailed analysis of this, with particular reference to inheritance between spouses being found on the above noted pages.


23. Khān, Muḥammad Muḥsin; op cit. vol.9, p.193. Chapter 4 "To listen to and obey one’s ruler as long as his orders involve no one in disobedience (to Allah)”. ḥadīth no. 258.


Ibn Qudāmah, al-Ḥanbalī; Al-Badā‘ī. vol.2. p.234.
Al-Shāfi‘ī, Abū ʿAbd Allah Muḥammad ibn Idrīs; Nihāyat al-Muḥtār. vol.6, pp.44,45.
Al-Shawkānī, Muḥammad ʿAlī ibn Muḥammad; op cit. vol.6, p.365.


Ibn al-Ḥamāma al-Ḥanafi, Kamāl al-Dīn Muḥammad ibn ʿAbd al-Wāḥid al-Suyūsī al-Sīkandarī; op cit. comprising also:

Al-Nawaṭī, Zakaṭya Yahyā; op cit. vol.4, pp.436,437.

30. Al-Jazīrī, ʿAbd al-Rahmān; Kitāb al-Fiqh ala al-Madhāhib

32. On the husband’s non-payment of nafaqah.
Al-Juzfyyah, Ibn al-Qayyim; part 4, pp. 154, 155. On the story about the reprimand of Abu Bakr and ‘Umar to their daughters.


35. Al-Qurtubi, Abu ‘Abd Allah Muhammad al-Ansari; op cit. vol. 5, pp. 11-23, and 408, 409 Surah 4, verses 3 and 129.
Al-Nawawi, Zakariya Yahya; op cit. vol. 3, p. 251.
Al-Sa’id, Al-Sa’id Mustafa; op cit. pp. 142-155.
On just treatment of wives.

Ordinance 25 of 1929, Articles 6-11 and commentary.

37. CASE STUDY NO. II.
In the open hearing held in the courtrooms of the Supreme Court of Justice, Presided over by Justice Maḥmūd Ḥasan ʿIlm al-Dīn, President of the Court;
With the participation of Justices ʿAbd al-Qādir al-Ḥabashi and Muḥammad al-Sayyid al-Shāfiʿī,
Attended by Aḥmad Ibrāhīm Sulaymān, Chief Prosecutor, and Hasan Ibrāhīm Ḥamīdah, Secretary

38. Shahbūn, ʿAbd al-Karīm; op cit. pp146,147. Moroccan Mudawwanah. section 34, Mutual rights and duties of husband and wife, paragraph 1. al-Kitāb al-Awwal, al-Zawāj, Chapter 6, Anwāʿ al-Zawāj wa Ahkāmuha.


41. CASE STUDY NO. III.
Case concerning nasab, with regard to Article 15 of Draft Ordinance 25 of 1929.
Appeal to the Maḥkamat al-Naqd, case no.44. Judicial Year 51, being a second appeal against a ruling in by the Maḥkamat al-Isti'nāf with regard to Case no. 273 of 1977, Maḥkamah Ibtidāʾiyah. Aḥwāl Shakhṣīyyah.
Presided over by Justice: Muḥammad Mahmūd al-Bajūzī, Deputy President of the Court;
With the participation of Justices: Muḥammad Jalāl al-Dīn
Rāfić, Muḥammad Ṭaha Minjār, Jalāl al-Dīn Unṣī and Asl Ālāʾ al-Dīn.

42. CASE STUDY NO. IV.
Case concerning paternity and entitlement to succession. With regard to Article 15 of Draft Ordinance 25 of 1929. Appeal to the Maḥkamat al-Naqd no. 47 in the general list, Judicial Year 55 Ahwāl Shakhṣīyyah, against a ruling of the Maḥkamat al-Isti'nāf, Tanta, no. 21, Judicial Year 33. In the open session in the Cairo Courtrooms 26/1/1988. Presided over by Justice Muḥammad Jalāl al-Dīn Rāfić, President of the Court; With the participation of Justices: Marzūq Fikrī and Ṣalāḥ Muḥammad Abmad, Deputy Presidents of the Court; Attended by Mr. Mujāhid Shu‘ayb, Chief Prosecutror, and Mr. Ṣadīq Muḥammad, Clerk of the Court.


44. Al-Jundi, Ahmad Naṣr; Al-Ahwāl al-Shakhṣīyyah (Nafs) Taʿliq ʿalā Nusūṣ al-Qānūn pp. 112-117. The explanatory memorandum to Draft Ordinance 25 of 1929 on the distinction between ṭalāq and faskh, (divorce and dissolution).


46. CASE STUDY NO. V.
Case concerning dissolution of marriage on the grounds of ʿayb. Appeal Case no. 247 in the general list, Judicial Year 104. In the open hearing held in the Supreme Court of Justice, against ruling in Case no. 261 of 1986, Maḥkamah Ibtidā'īyyah, Gīza, ʿAḥwāl Shakhṣīyyah, Wilāyah ʿalā al-Nafs. Presided over by Justice Maḥmūd Ḥasan ʿIlm Al-Dīn.
President of the Court;
With the participation of Justices Khālid Al-Ḥussaynī and ʿAbd al-Qādir Abdul ʿAzīz al-Ḥabashī;
Attended by Ahmad Ibrāhīm Sulaymān, Chief Prosecutor, and Ḥasan Ibrāhīm Ḥamīdah, Clerk of the Court.


49. CASE STUDY NO. VI.
Case concerning ṭāʿah of the wife. Appeal 428, Judicial Year 100 , Mahkamat al-Istiʾnāf, Cairo, against the ruling in case no. 2215 of 1982, Mahkamah Ibtidāʾiyyah, Cairo, Aḥwāl Shakhṣiyah.
Response to an application for right of ṭāʿah.
In the open hearing in the courtrooms, 19/6/1983
Presided over by: Fath Muḥammad Ḥusayn, president of the court; With the participation of Justices: Aḥmad ʿUmīr Muḥammad and Majdī Khālid;
Attended by Aḥmad al-Imām Khābal : Chief Prosecutor; and ʿAbd al-Jawwād Kāmil : Clerk of the Court.

50. Shahbūn, ʿAbd al-Karīm; op cit. pp.152-157. Moroccan Mudawwanah section 36, the rights of the husband with regard to the wife, paragraph 2, ṭāʿah of the wife towards her husband in a reasonable manner al-Kitāb al-Awwal, al-Zawāj; chapter 6, Anwāʾ al-Zawāj wa ʿAḥkāmuha.

Articles 16, 17, 18 and 18 bis.

52. CASE STUDY NO. VII.
Case concerning nafaqah.
Appeal no. 746. Judicial year 105 Mahkamat al-Isti'naf, Cairo, against the ruling in Case no. 204 of 1985, Mahkamah Juz'iyah, Khalifa, Ahwāl Shakhṣiyah.
In the session held in the main court house on 26th July Street, Cairo.
Presided over by: Justice Maḥmūd Ḥasan ʿIlm al-Dīn, President of the Court;
With the participation of: Justices Amīn Tūkhī Salāmah and Zaghlūl Ḥabd al-Ḥamīd Yūsuf;
Attended by: Mr. Yūsuf Sulaymān, Public Prosecutor, and Mr. Ḥasan Ibrāhīm Ḥamīda, Clerk of the Court;

53. CASE STUDY NO. VIII.
Case concerning compensatory nafaqah for divorced women,
Two appeals; no. 4 and no. 31, Judicial year 101, Mahkamat al-Isti'naf, Cairo South, by divorced wife and husband respectively, against ruling in case 2136 of 1982.
Presided over by Justice: ʿĀdil Maḥmūd ʿAbd al-Laṭīf, Deputy President of the Court;
With the participation of Justices: Muḥammad Muḥammad Ghazzi and Ḥamīd ʿĪsā al-Nawawī;
Attended by: ʿĀdīl Ṭalāb Sulaymān, Public Prosecutor, and ʿAḥmad Ḥamīd Khalīfah ʿAbd al-Mu'min, Clerk of the Court.


55. Draft Ordinance 25 of 1929, Article 6. see 52 above.

56. CASE STUDY NO. IX.
Case concerning divorce on grounds of darar. Appeal no. 477 Judicial Year 105. Mahkamat al-Isti'naf, Cairo, against
ruling in case no. 2634 of 1987, *Maḥkamah Ibtidā'iyyah*. Presided over by Justice; Maḥmūd Ḥasan‘īlm al-Dīn, President of the Court.
With the participation of Justices: Khālid al-Ḥusaynī, and Ḥusnī Sa‘d ʿAbd al-Wāḥid;
Attended by: Yūsuf Sulaymān, Public Prosecutor, and Ḥasan Ibrāhīm Ḥamīdah, Clerk of the Court.


58. CASE STUDY NO. X.
Case concerning ghaybah.
Appeal to *Maḥkamat al-Naqḍ*, Alexandria, no. 97, Judicial Year 54. following first appeal against ruling in case no. 1069 of 1979, *Maḥkamah Ibtidā'iyyah*. Presided over by: Justice Muḥammad Jalāl al-Dīn Rāfī, Deputy President of the Court;
With the participation of: Marzūq Fikrī, and Ṣalāh Muḥammad Aḥmad, Deputy Presidents of the Court; and Aḥmad Nāṣir al-Jundī, and Muṣṭafā Ḥāshim ʿAbbās Maḥmūd. Attended by: Mujāhid Shu‘ayb, Public Prosecutor.


60. CASE STUDY NO. XI.
Case concerning divorce on the grounds of *darar* due to polygamy, Appeal Case no. 199, Judicial Year 103. Against ruling in case no. 487 of 1984, *Maḥkamah Kullīyyah*, Giza. In the session held in the main court house on 26th July Street, Cairo, on Wednesday, 7/1/1987, Presided over by Justice Maḥmūd Ḥasan‘īlm Al-Dīn, President of the Court;
With the participation of Justices ʿAbd al-Qādir ʿAbd al-ʿAzīz.
61. CASE STUDY NO. XII.
Case concerning  qedār necessitating divorce, Appeal no. 84, judicial year 105, Maḥkamat al-Istīnāf, Cairo, against ruling in case no. 98 of 1985, Maḥkamah Ibtidāiyyah, Cairo South, Aḥwāl Shakhṣīyyah.
In the open session held in the main court house on 26th July Street, Cairo
Presided over by Justice Maḥmūd Ḥasan ʾImām Al-Dīn, Chief of the Court
With the participation of Justices Maḥmūd Khalf Al-Ḥusaynī and Muḥammad Al-Sayyid Al-Shāfī’ī
And attended by Ahmad ʿIbrāhīm Sulaymān, Chief Prosecutor,
And Ḥasan ʿIbrāhīm Ḥamīdah, Clerk of the Court.

62. Shaḥbūn, ʿAbd al-Karīm; op cit. pp.128-130, Moroccan Mudawwanah section 29, paras 1,2, and pp. 136-139. sections 30 and 31 concerning polygamy. al-Kitāb al-Awwal, al-Zawāj, Chapter 5, Mawāniʿ al-Zawāj

63. A comparison of the laws in Egypt and Morocco shows that they are similar in form and content. As seen, Egyptian law does not comprise clear provisions as regards legal restrictions on polygamy, but leaves the matter according to the position of the advocates of no restriction being placed on polygamy and attempts to impede non-regulation with principle of  qedār. The conditions required by law in this instance have already been shown, and it can be seen that this Article has no justification as it merely reiterates Article 6 of the same law. Indeed, a comparison of the two shows that in terms of content the end result is the same;
Article 6 of Draft Ordinance 25 of 1929 If a wife alleges that her husband has caused her  qedār whereby she is no longer able to cohabit she may ask the judge for a separation whereupon the judge shall grant her an irrevocable divorce if the  qedār is proven and
reconciliation is impossible.

Article 11a (second half) A wife whose husband has taken another wife may request a divorce from him if she has suffered material or moral الذيار which makes it impossible for her to continue cohabiting even if she did not stipulate in the marriage contract that he should not take another wife. If the judge is unable to reconcile them, he shall then grant her an irrevocable divorce.

A comparison of the two Articles shows that there is no difference in their effect. It would have been more appropriate to retain Article 6a of Law No 44 / 1979 which was judged unconstitutional as the said Article deemed that a husband had injured a wife by the mere fact that he had taken another wife without her consent even thought she did not stipulate such in the marriage contract. Similarly, if the husband had concealed from his new wife the fact that he was already married, then a ruling for divorce could be given on the assumption that الذيار had been caused without leaving the matter to be assessed by the authority of a Judge. The report produced by the Constitutional and Legislative Affairs Committee and the Office of the Religious Affairs Committee stated that the reason for arranging the Article independently was to accentuate the intrinsic nature of the provision contained in each. This would be acceptable if the two Articles were different, but as it is the rulings issued have contained certain ambiguities. In the first ruling referred to hereabove, one of the reasons for which the appeal was rejected was that Law No. 44 had been repealed during the case, and the Court rejected the validity of applying the provision of its Article 6 as it did not cover الذيار resulting from polygamy. Article 6 of Draft Ordinance 25 of 1929 on the other hand contained no restrictions an any الذيار suffered by a wife entitled her to take her case to court.

The Mudawwanah, however, takes into consideration the two restrictions mentioned in the Article referred hereabove, namely fairness and financial ability, and brings them out of the realm of religious duties into the realm of legal application, preventing the judge from
endorsing the marriage contract of a man who was already legally married unless it has been confirmed that he is fair and is able to support his wife and children and all dependents. The wife is granted the right to stipulate in her contract of marriage that he should not take another wife, and if her husband does not fulfil his obligations that wife would then have the right to demand that the marriage be dissolved.

Finally the Mudawwanah and the Egyptian law agree on the right of the wife to resort to litigation for divorce if she suffers ُذارَارُ by her husband taking another wife.

---

275
Chapter Two

The Consequences of the Invalid Contract

So far we have examined the conclusion of the contract of marriage and its foundations and conditions, and the consequences resulting from a valid contract. It may, however, be the case that some flaw occurs in the contract, whether it be some fault in respect of the parties or the form, or a breach of one of the conditions, so that the purported contract may turn out to be invalid. What then should be the ruling on such a contract? A legal entity has been created but can this simply be annulled? In other forms of contract this might be reparable by compensation but marriage concerns the lives of people and is not so simple to rectify. The jurists have, therefore, devoted considerable attention to this subject and produced quite detailed rulings on circumstances which have occurred.

Provision in respect of invalid contracts of marriage
Jurists attribute several meanings to the word "provision", one of which pertains to the legal character of the marriage contract, that is, it pertains to whether a marriage contract is farḍ (religious duty), mandüb (recommended) makruh (reprehensible) or ḥarām (unlawful) with regard to the persons making it. (1)
A second meaning pertains to the consideration or otherwise of the legislator, and the arrangement regarding the effects arising from the marriage contract in terms of its validity or invalidity. (2)
Before discussing the provision regarding invalid contracts, we shall briefly discuss the difference between ṭalāq (divorce) and faskh (dissolution), as the provisions on invalid contracts always involve one or the other, and both are governed by specific provisions. (3)

If a marriage contract comprises some factor which suspends it or renders it void or non-binding, then no legal rights arise as a result of the contract according to the general rules of the shariʿah. Exceptionally, however, the shariʿah does establish some legal incidents, not because the contract is legal, but because it has given rise to a dispute between the two contracting parties. Some jurists stipulate that such effects relate to the mahr, the `iddah, and the establishment of nasab as a result of consummation where there is a shubhah (doubt) in the contract, and not as a result of the contract itself as it does not exist in the eyes of the law. Jurists have divided the marriage contract into four categories depending on the extent to which the fundamental pillars and conditions thereof remain unfulfilled. These categories of contract are the bāṭil (void), the fāsid (irregular), the ṣāhiḥ mawqūf (valid but suspended) and the nāfidh ghayr lazīm (effective but non-binding).

If faskh is to be granted, there must be either an impediment to the continuation of the marriage, or a change in circumstances such that the contract is no longer binding. An example of the former is the musāharah relationship where this is within the degree which precludes marriage, and an example of the latter is the khiyār al-bulūgh (the option of maturity) whereby a person married whilst a minor has the option to seek faskh on reaching maturity. Faskh can only take place if the contract is valid and, indeed, is one of the
potential consequences of the marriage contract stipulated by the *sharīʿah*, even if a condition attached to the marriage contract itself was that the husband should not divorce his wife, as this would be regarded as an irregular condition conflicting with the requirements of the contract.

_Faskh_ then, may be divided into two categories: that which invalidates the original contract and that which does not. In the first category, the reason for _faskh_ is related to the establishment of the contract. Such annulments include the _khiyār al-bulūgh_, and lack of _kafāʿah_, in which case the contract is valid upon conclusion but not binding. In the view of Abū Ḥanīfah, marriages can also be annulled in cases where the _mahr_ is less the _mahr al-mithl_. In such instances, _faskh_ is related to the establishment of the contract. The _khiyār al-bulūgh_ is legitimately exercised for reasons of lack of _kafāʿah_ or absence of _mahr_, and is covered by legislation related to _qarar_ caused by a _wali_.

The second category is that where _faskh_ is not regarded as invalidating the original contract. In this case, it involves an impediment which precludes the continued existence of the marriage contract. In other words, there must be an impediment which prevents the marriage partners from solving their difficulties and thus requires a legal separation. An example of this would be _faskh_ on the grounds of the wife having refused to embrace Islam when her husband has done so, if she is not a _kitābiyyah_. _Faskh_ would also be granted if there was a forbidden _muṣāharah_ relationship which did not exist when the marriage contract was originated, or if either spouse apostasises.

The Ḥanafi jurists agree that _faskh_ may occur if the wife apostasises, but differ as to whether the same would apply if it were the husband. Muḥammad is of the opinion that divorce should occur in this case as apostasy is committed by choice. Al-Shaykhān however say that _faskh_ should occur as
there is no solution which would allow the marriage to continue.

The difference in provision between *faskh* which invalidates the original marriage contract is shown in two instances. In the first instance, where a separation is considered to invalidate the contract, there is no *mahr* unless this is specifically agreed upon regardless of which party instigated the separation. This is because the invalidation of the original contract invalidates the provisions attached to it. In the case of *faskh* which does not invalidate the original contract, if it is instigated by the woman before the *mahr* is confirmed then the *mahr* is forfeited, but if it is instigated by the man, then half is forfeited.

In the case where *faskh* does invalidate the contract, the woman may not then be divorced during the ‘*iddah* as divorce is one of the provisions of the valid contract and may only take place where this exists. If marital life is resumed, a divorce which occurred during the ‘*iddah* is not considered to be a divorce for the same reason. Where the *faskh* is not considered to invalidate the contract, the woman may be divorced during the ‘*iddah* if resumption of married life is possible. *Faskh* due to the wife's apostasy may be followed by divorce during the ‘*iddah* and if marital life is thereafter resumed, it is still regarded as divorce.

*Faskh* not considered to invalidate the original contract is divided into two categories; the first is where marriage is temporarily prohibited by an interim interdiction as in the case of apostasy for example. The Ḥanafīs make a distinction between *ṭalāq* and *faskh*. To be precise, separation is *ṭalāq* if pronounced by the husband or by a proxy or representative acting on his behalf and in the case of *khul* (divorce at the instigation of the wife). Separation granted by a *qādi* on the grounds of *‘ayb* in the husband or which is imposed on the
woman at her husband's request are also regarded as being *talāq*.
Separation is considered to be *faskh* if there is something within the contract which invalidates it or renders it non-binding on the part of either the husband or wife, or if there is a *faskh* relationship between the couple. It is also considered to be *faskh* if the wife commits certain acts without the authorisation of her husband, such as if she apostasises or does not follow one of the revealed religions.
To summarise briefly the Ḥanafīs regard separation as being *talāq* in the following instances:
1) If *talāq* is pronounced.
2) *Khulāf*.
3) Where the husband swears *tiyyah*. If the period ends without intercourse having taken place then divorce becomes irrevocable.
4) *lišān*.
5) Separation on the grounds of *ḥayb* in the husband.
6) Separation on the grounds of apostasy of the husbands (according to Abū Ḥanīfah and Muḥammad)
7) Separation on the grounds *ghaybah*, failure to provide *nafaqah*, or on the grounds of incompatibility.

This is effective in Egyptian law and is adopted from Ḥanafī and Mālikī jurisprudence.

Separation is regarded as *faskh* in the following instances:
1) Separation due to invalidity of the contract.
2) Separation due to the existence of *muṣāharah* between the spouses.
3) Separation due to the excercising of *khiyār al-bulūgh*.
4) Separation due to absence of *kafā’ah* or lack of *mahr*.
5) Separation by agreement due to apostasy of the wife or separation due to the apostasy of the husband.
6) The husband's rejection of Islam upon his wife embracing Islam (according to Abū Yūsuf).

*Faskh* requires a ruling by a *qāḍī* in the following instances:
1) *Khiyār al-bulūgh*.
2) *Liʿān*.
3) Absence of *kafāʿah* or *ʿayb* in the husband.
4) Where one spouse denies Islam upon the other embracing it.
5) *Shiqāq* (discord).
6) *Qarar* to the wife.
7) *Ghaybah* of the husband or his imprisonment.
8) Failure by the husband to provide *nafaqah* whether due to financial difficulties or his refusal to do so.

The ruling of a judge is not required according to the Ḥanafīs in the following instances:
1) Pronouncement of *ṭalāq*.
2) *Khul*.
3) *Īlāʾ*
4) Apostasy of one of the spouses. If both spouses apostasise, however, they should not separate according to Abū Ḥanīfah. If they subsequently re-embrace Islam they do not require a new contract.
5) Existence of *muṣāharah* between the spouses.
6) Irregularity of the contract.

Before discussing the provision regarding *bāṭil* marriages, we shall first of all discuss the position of Ḥanafī jurisprudence with regard to invalid contracts of marriage (4). Here, there are two differing viewpoints, the first of which believes in making a distinction between those contracts which are *bāṭil* and those which are *fāsid*, even
though both are invalid as far as any financial consequences are concerned.

Recognised sources such as Kamāl Al-Dīn in Fath Al-Qadīr make no distinction between marriages which are fāsid and those which are bāṭil. The provision is identical irrespective of whether the breaches as regards the contract are fundamental (thus rendering it bāṭil) or descriptive (thus rendering it fāsid).

The Mālikīs hold the same viewpoint in this respect, and other advocates state that a marriage is either valid or invalid.

The second opinion makes a distinction between a contract which is bāṭil and one which is fāsid. This distinction arises from the fact that the marriage contract is a combination between ḍabādat, the worship of God, and muʿāmalāt worldly affairs, as it is a combination of both. With regard to ḍabādat the bāṭil and the fāsid are one, whilst with regard to muʿāmalāt, a distinction is made between the bāṭil and the fāsid.

Using this as a starting point, we shall follow the second view which distinguishes the bāṭil and the fāsid. If the marriage is consummated, the first category entails none of the consequences of the valid marriage whereas the second category does. It is, therefore, preferable for each category to have its own distinct name. Hence, we shall call the contract which engenders none of the consequences of marriage bāṭil, and that which does engender some consequences, fāsid.

Both of these categories involve breaches of the contract, the distinction being that where the breach involves a fundamental element or means that one of the conditions of the contract shurūṭ inʿiqād remains unfulfilled, the contract
is *bāṭil* as it is, to all intents and purposes, nullified as a result of the breach. If one of the conditions concerning the validity of a marriage *shurūṭ *ṣiḥḥah* is involved, the contract is then *fāsid*, as it still exists to all intents and purposes but is unfit for the effects of marriage to ensue. If consummation takes place, some of the effects of marriage ensue as in the case of *zinā'*. 

1) The *bāṭil* Contract

These are where a fundamental element has been contravened or a *shart* *in*ʔ*iqād* is unfulfilled, such as where a person with no *ahlīyyah* makes a contract on his own behalf, or where a man marries a woman who is *muḥarramah* when there is no doubt about the interdiction. The contract is invalidated in this type of case because if such a marriage did occur, none of the legal consequences would ensue as the contract would not seemingly exist. Consumption would thus be unlawful and the respective duties *mahr*, *nafaqah* and *taʿah* would not be obligatory. *Ṭalāq* may not be pronounced, nor *nasab* established, and there would be no *ʿiddah* after separation, no *wirāthah*, and no *muṣāharah* except where *zinā'* was proved.

Consummation of a marriage on the basis of such a contract is forbidden and the couple concerned must separate. If they fail to do so, then a judge will ensure that they are separated. Any person who is aware of consummation taking place in such instances is required to bring the matter to the qāḍī's attention for him to separate the couple, as it would be regarded as *zinā'* and thus an immoral act.

Jurists are agreed on this but differ as to whether the *ḥadd* punishment for *zinā'* should be imposed. Mālik, al-Šāfiʿī, Aḥmad ibn Ḥanbal, Abū Yūsuf and Muḥammad say that there are grounds for *ḥadd* if the perpetrator is of sound mind and is fully aware of the relevant interdiction. Abū Ḥanīfah,
however, says that hadd should not be imposed because the contract is sufficient to preclude this.(22) A marriage which is consummated despite the fact that the contract is invalid is nevertheless a reality and as such is provided for by the shari'ah. It is stipulated that zina' incurs the punishment of hadd, but that hadd may be averted by shubhah (doubt or judicial error). If hadd is not imposed as a result of consummation then the mahr is obligatory. Shubhah sometimes means that hadd is not incurred and that consumption is not regarded as zina'. As such, nasab can be established as well as the 'iddah. Occasionally shubhah means that hadd is not incurred but that consumption is nevertheless considered zina'. In such cases, mahr is obligatory but there is no 'iddah. According to the general rules, nasab is not established but some jurists do establish it to ensure that the rights of children are protected. The majority of jurists agree that the various types of shubhah cannot be listed definitively as they are mostly based on real circumstances which are unlimited. This is a subject to which the Hanafis and Shafi'is have given their concern. Hence, the rule under discussion involves the punishment of hadd being precluded by means of shubhah. Shubhah in this case is something which may appear to be definite but is not entirely so. Jurists believe that this act can only occur between two people and only if they unite together and they advocate dropping the hadd punishment because if one is excused for some action this then produces a shubhah in respect of the other.

Hanafi jurists divide shubhah into the three categories of shubhat al-mulk or shubhat al-hall (doubt in the woman), shubhat al-ishtibah or shubhat al-fi'il (doubt in the act) and shubhat al-aqd (doubt due to the marriage). a) Shubhat al-mulk is also known as shubhat al-hall and shubhat al-mahall. If there are two pieces of evidence in
respect of the woman, one of which is strong and indicates interdiction and one of which is weak and may mean there is no interdiction, a ruling shall be made according to the stronger piece of evidence. If consummation takes place, the weaker piece of evidence may be used, as *shubhah*. An example of this would be if a man had sexual intercourse with his son's female servant, in which case strong evidence for interdiction would exist, as she would be under the authority of another man (his son). If, however, there is other evidence which is not strong enough to counteract the first piece of evidence, there would be a case of *shubhat al-mahall* on the basis of the hadith of the Prophet: "You and what is yours belong to you father".

The meaning of this is that a father has some interest in the property of his son, and a father normally has control over a son's property due to the closeness of the relationship between them. In cases where consummation takes place with the existence of this *shubhah*, the *ḥadd* is not incurred. The sexual relations are not described as *zina*, and therefore the *mahrr*, and *nasab* are established.

b) *Shubhat al-ishtibāh*, or *shubhat al-fiʿl*
This is the case where a person believes that what is *ḥarām* is *ḥalāl* in the absence of any evidence and of information from other people to the contrary. The legislation regards this as being permissible. An example of this would be a man who thought that he could lawfully marry a woman to whom his marriage would be unlawful, such as a woman with whom he has a relationship by *raḍāʾah* where he knew of the relationship but was unaware of the interdiction. This form of *shubhah* accompanies the act and not the subject, and does not include the case of a man who marries a woman not knowing that she is his sister by *raḍāʾah*, having been told by those close to him that there is no forbidden relationship.
only to find at some later time that there is such a relationship between them. This would come under *shubhat al-ishtibāh* because the man had been told by those close to him that he had no relationship with the woman concerned. The doubt would arise in the woman as a result of revealed evidence establishing invalidity. If *shubhat al-ishtibāh* exists, *ḥadd* is not incurred but the description of *zinā‘* still applies. The ‘*iddah* is therefore not established as there can be no ‘*iddah* as a result of *zinā‘*. Neither can *nasab* be established according to the majority of the jurists, except that the Ḥanbalīs are of the view that it may be established as it is in the interest of the child.

c) *Shubhat al-‘aqd*

*Shubhat al-‘aqd*, meaning a doubt in the contract, was included by Şāḥib Al-Bahr within the categories of *shubhah* in that the contract in terms of *ʾijāb* and *qubūl* by the two contracting parties is regarded as *shubhah* in itself, and if consummation takes place in this instance it would involve *shubhah*. Only Abū Ḥanīfah believes that *shubhah* exists if it is known that the contract is irregular and invalid, whereas the Şāḥibān say that the contract comprises *shubhah* if it exists, but it is not deemed to exist if one of the contracting parties is loses his *ahlīyyah*, for example due to some mental condition. When established, a *shubhah* in the contract carries the same significance as a *shubhah* in the act, and although it still entails *zinā‘* it does not incur the punishment of *ḥadd*, in which case the *mahr* is inevitably established. Consummation in cases where the contract is invalid are thus divided into three categories as follows:

a. Consumption without *shubhah*
In this case, there is no doubt at all that the relationship in question is unlawful and thus no doubt that zinā' has been committed or that hadd must be imposed. For example, one of the parties to the contract may no longer be competent or the tjab and qubul may not have been legally carried out within one session. Such contracts do not therefore exist, meaning that the form of contract which Abū Ḥanīfah regards as subhah does not exist, as all the clauses are void. Consummation in such cases entails the penalty for zinā' as prescribed by the šafii`ah.

b. Consummation and Invalid Contracts Involving zinā'.
Consummation which takes place under an invalid contract may involve subhah al-ishtibāh. An example would be a marriage contracted with a woman who is muḥarramah (such as a woman who is already married) which is then consummated, even though the unlawful relationship was known. In such instances, if the contract was concluded in valid fashion and all conditions were fulfilled other than the condition of lawfulness, the consummation would involve subhah and would not incur hadd although the description of zinā' would still apply. This is because such forbidden relationships are proved by means of conclusive evidence, leaving no room whatsoever for doubt. Any subhah which does exist is subhah al-ishtibāh or subhah al-fi'il (a doubt in the act, and according to the Šāhībān, it is only deemed to exist if the man concerned was ignorant of the interdiction). Examples would be a Zoroastrian who, as a recent convert to Islam, is unaware of the interdictions imposed by the faith and believes the relationship to be lawful, or a person who believes in holding women in common and has no knowledge of the interdictions of Islam. In such instances, subhah al-ishtibāh would be involved, but according to the Šāhībān, this would not apply if the man was aware of the interdiction.
Abū Ḥanīfah, however, does not believe that the existence of *shubhah* is dependent on the party concerned being ignorant as to the interdiction, but rather that it exists even if the man is aware of the interdiction, as in his view, a doubt in the contract is a weak form of *shubhah*. Šāhib Al-Badāʾī referred to this in an account of Abū Ḥanīfah’s independent judgement, saying that, according to Abū Ḥanīfah, if a worthy marriage is made to a woman who has the potential to fulfil the aims of marriage, then the *ḥadd* is not to be imposed irrespective of whether the marriage is lawful or unlawful, whether it is disputed or concluded with unanimous agreement, whether *ishtibāb* is claimed if the marriage is thought to be lawful or whether any interdiction is known about. In this case, in contrast to other incidences of *shubhah*, *ḥadd* is not incurred and the description of *zināʾ* still applies. The *mahr* is inevitably imposed where *ḥadd* is not incurred. The *ʿiddah* is not however established as it can never be a consequence of *zināʾ* in whatever form. The establishment of *nasab*, however, is a matter of controversy between the Ḥanafi jurists. Some believe that *nasab* is established in the interests of the child whereas others say that it is not. Abū Ḥanīfah stipulated that the *ḥadd* penalty should be dropped in the case of such *shubhah*, which in his view, is present even if there was no ignorance regarding the interdiction in question.. He also stipulated that the *qāḍī* should, nevertheless, give the strongest form of rebuke.

c. Consummation and Invalid Contracts not Involving *zināʾ*
Consummation under an invalid contract does not incur *ḥadd* and does not involve *zināʾ* if there is a strong *shubhah*. This applies in all marriages which are disputed and also to marriage to those to whom marriage is temporarily unlawful apart from the instances mentioned above. The reason for this is that consummation in disputed marriages involves
shubhah which is substantiated by the evidence provided by the dispute itself, even if such evidence is only weak. In this case, shubhat al-hall is established as it arises from the question of lawfulness and interdiction due to an impediment, where the right of others in respect of the woman concerned is not strong enough to eliminate all possibility of lawfulness. Instead, there is a shubhah as to the basis of the lawfulness, with no impediment to eliminate all its effects. All forms of shubhah are based on juristic differences or disputes based on evidence of lawfulness even if it is not strong enough to be proven and is counteracted by evidence of interdiction. An example would be a person who wishes to marry and is unaware of there being any interdiction of such a marriage, having been convinced by others that there is no reason why he cannot marry the woman concerned. This could occur, for instance, if a man married a woman who was already married, having been told by two other people that her first husband had died, only to discover that her husband was still alive, or if a man married a woman after having been given information that he was not related to the woman concerned, or having formed such an impression by the information having been withheld from him, only to find that there is a relationship between them which forbids marriage. In such cases, there is permissible evidence of lawfulness, namely information received from those concerned that they knew of the unlawful relationship. The ḥadd is not therefore incurred and the description of zināʾ is not applied. Mahr may then be established in addition to the `iddah and nasab, as the act of consummation does not involve zināʾ since there is justification that evidence of interdiction was impeded, thus creating doubt even if there was nothing lawful about the alliance. Such is the attitude of the Ḥanafīs with regard to the question of shubhah.
The Shafi’is divide shubhah into three categories as follows:

a. Shubhah fi al-maḥall

*Shubhah fi al-maḥall* or doubt in the woman, occurs if a couple have intercourse whilst the wife is menstruating or fasting or if they have anal intercourse. In this case, the doubt arises due to the fact that a forbidden act has taken place. A wife is under the authority of her husband who has the right to have intercourse with her providing that she is not menstruating or fasting and providing that there is no anal intercourse. Nevertheless, the fact that he has authority over her engenders *shubhah*, in which case *ḥadd* must be averted irrespective of whether the perpetrator believed his action to be lawful or not, as *shubhah* is not based on one’s belief or ideas but on the legitimacy of an action.

b. Shubhah fi al-fā’il

*Shubhah fi al-fā’il*, or doubt in the perpetrator, arises when a man is given a woman’s hand in marriage and it later transpires that the woman with whom he is cohabiting is not the woman with whom the contract was made. This may occur if the woman is not seen before the marriage and is represented by a proxy at the time of making the contract and some deception then occurs whereby another woman is substituted. The basis of the *shubhah* in this case is the belief of the perpetrator that his action is not unlawful, thus giving rise to a doubt which precludes imposition of the *ḥadd*. If, however, the perpetrator is aware that his action is unlawful, then there is no *shubhah*.

c. Shubhah fi al-jiḥah or shubhah fi al-ṭariq.

*Shubhah fi al-jiḥah or shubhah fi al-ṭariq*, doubt in the party or in the method, means that there are some misgivings as to
whether the act in question is lawful or not. It arises due to the fact that jurists hold varying opinions regarding the act, and wherever there is such a difference of opinion, then a *shubhah* which does not incur *ḥadd* is held to exist. Abū Ḥanīfah, for example, permits marriage without a *wali* and Ibn ʿAbbās permits the *mutʿah*, or temporary marriage, whereas most jurists permit neither. Accordingly, a doubt which does not incur *ḥadd* arises in such instances, even if the perpetrator 'believes that his action is unlawful, as his belief in itself has no effect as long as jurists disagree as to whether the act is unlawful or not.

2. The *fāsid* contract.

This is a contract where a condition of validity is broken once the fundamental pillars and conditions of conclusion have been fulfilled(5). Examples of this are a marriage without witnesses where witnesses are stipulated, temporary marriage, and the marriage of a man to the sister of a woman whom he has divorced irrevocably during the latter's *ʿiddah* where it would be unlawful for him to consummate marriage with such a woman. None of the effects of the marriage contract would ensue and the contract would be effectively *fāsid*. As a result, the following effects would apply:

- Neither the man nor the woman would incur the *ḥadd* for *zināʾ* as it is agreed that there is a *shubhah* which prevents *ḥadd* from being applied.
- The man must provide the *mahr al-mithl* if no *mahr* was fixed at the time of the contract or thereafter. If the *mahr* has been fixed then he is obliged to pay at least this sum.

As already noted, consummation would establish a *muṣāharah* relationship, whereby the woman would have to observe a period of *ʿiddah* from the time when she separated from her husband, including divorce by a *qāḍī*. This *ʿiddah* is the *ʿiddah* of divorce and is calculated in months or menstrual

291
periods to ensure that the woman is not pregnant. It is also observed following the death of a husband and is calculated to last four months and ten days. This form of 'iddah only applies in cases of valid marriage and it is not mandatory for the woman to be paid nafaqah during this period.

With regard to nasab, if a woman in a fāsid marriage gives birth less than six months after consummation, her husband is not established as being the legitimate father of the child unless he claims otherwise. If she gives birth more than six months after consummation then the husband shall be established as the legitimate father without any need for any acknowledgement on his part where this is less than two years after the couple has separated. Where it is more than two years thereafter according to the Ḥanafīs, the legitimacy of the child cannot be established.

Evidently the legitimacy of a child can only be denied if there is li‘ān, and as we have already seen, li‘ān is only relevant to a valid marriage and does not, therefore, apply in the case of fāsid marriage.

Nasab in cases where the consummation involves shubhah cannot be established by virtue of the shubhah unless accompanied by a statement that consummation has taken place, in which case the nasab of the child can be established.

In terms of other provisions, there is no wirāthah if a spouse dies or if a couple has agreed to separate. In such cases the husband is not obliged to provide nafaqah or accommodation. Similarly, the wife is not obliged to show tā‘ah to the husband, nor is divorce imposed on her.

3. The contract which is mawqūf (suspended)
This is where a condition of effectiveness is not fulfilled, such as where the contract is arranged by a person who is
wholly or partly unqualified to do so, whether it be the party to the marriage contract himself, or a wali or wakil. An example of this would be a minor who married without the consent of his wali. The marriage remains valid but is mawqūf until such time as consent is given, preferably by the wali.

A suspended contract is valid but ineffective, and prior permission in respect of the contract must be given by the person concerned. If permission is not given, then the contract is invalid, such as in the case of a contract where the mahr is less than the mahr al-mithl or where there is no kafā'ah. Where permission continues to be withheld, the contract becomes invalid and is deemed null and void. If permission is finally granted and the marriage was consummated beforehand, consummation will be deemed to have taken place under a valid contract. If permission is granted therefore, it renders the marriage contract valid as from the time of its establishment. If permission is refused after consummation of the marriage, thus rendering the contract invalid, then consummation is deemed to have involved a strong shubhah, meaning that ḥadd is not to be imposed. Accordingly, the act of consummation will not be described as zinā', and the mahr, 'iddah and nasab can all be established. A strong form of shubhah is involved due to the fact that a competent and lawful contract was concluded. Otherwise, where there is insufficient proof of lawfulness and consummation takes place after permission for the marriage is refused, there is no shubhah allowing the ḥadd to be dropped. Consequently, the mahr, the 'iddah and nasab cannot be established.

In addition, a mawqūf contract does not allow wirāthah if a death occurs during the period of suspension. Neither does it establish any muṣāharah if permission is not granted as it is rendered invalid.
4) The contract which is *nāfidh ghayr-lāzim*
This is a contract where all the fundamental factors and conditions are fulfilled and where persons other than the marriage partners are entitled to raise objections and to apply for the marriage to be annulled within the legitimate limits. Accordingly:
a) If an adult woman of sound mind marries of her own accord without the consent of her *walī* and the husband is of equal status but has failed to provide the *mahr al-mithl*, then according to Abū Ḥanīfah, the *walī* has the right to annul the marriage and not to raise the *mahr al-mithl*, whereas according to Abū Yūsuf, he does not have the right to do so. Abū Ḥanīfah holds that the right of annulment continues to exist until consent is given either explicitly or implicitly.
b) If a *walī* who is not the father or grandfather contracts his male ward, a minor, in a marriage without *kafā'ah* or without *mahr al-mithl*, the ward has the right to exercise the *khiyār al-bulūgh* once he attains the legal age, as will be illustrated later.
c) If a woman marries of her own accord and stipulates that there should be *kafā'ah* and later discovers that the husband is not of equal status, she has the right to annulment. The same applies if he makes false claims as to his descent which are later uncovered.

In all cases where false or dubious claims are made, the contract is valid but not binding. Consummation which occurs prior to annulment is considered without a doubt to have taken place within a valid marriage as the contract exists and fulfils all provisions which render it effective until the time of the annulment. The provision of *nafaqah* is
compulsory, and if one partner dies after an annulment is requested but before it is granted, the other partner will be the heir by virtue of the marriage and possession will be established in the same way as wirāthah. A mother may not marry the husband of a daughter who is in a marriage which is not binding and who is subsequently granted an annulment before the marriage is consummated, on the basis of the person having the right of objection to the contract. The difference between non-binding and suspended contracts in this case is that an annulment under a non-binding contract does depend on there not having been a contract as a cause of interdiction, whereas in the absence of consent to a suspended marriage the contract is abrogated. In both laws, this is known as the relative contract.

If annulment takes place after consummation, the mahr musammā and `iddah are mandatory and nasab can be established, and nafaqah must be provided until the marriage provisions and their effects end. If the annulment is granted before the marriage is consummated, none of the mahr is due irrespective of which partner instigated the annulment, as in this case the original contract is invalidated by the annulment. Accordingly, a mahr cannot be imposed as long as the marriage has not been properly consummated.

The position of the Egyptian Aḥwāl Shakhṣīyyah with regard to the invalid contract

Under the Egyptian Aḥwāl Shakhṣīyyah, Article 280 of Draft Ordinance 78 of 1931, (on the Regulations of the Organisation
of the Shari‘ah Courts) is weighted towards the Ḣanafi view
(6). The Draft Āhwāl Shakhsīyyah Law, however, differs
from the consensus of recognised Ḣanafi sources in that the
conditions for the validity of a marriage are related to the
woman being a fitting subject. If she is not a fitting subject,
then there is cause for interdiction, particularly if the
unlawful union of two sisters is involved. If a man marries
two sisters at the same time, the marriage to the first
sister is permissible. The second sister, however, must be
separated from her husband. If her marriage has been
consummated she is entitled to the mahr and is able to
establish nasab. If the marriage has not been consummated,
she is entitled to nothing. Draft Article 39, however,
stipulates that no rights or nasab can be established in
respect of the second wife irrespective of whether the
marriage has been consummated, but this only applies if the
husband was aware of the interdiction. (7)
The import of Article 99, Paragraph 4 of the Regulations on
the Organisation of the Courts is that marriage suits shall
not be heard unless proven by the existence of an official
marriage document except in the case of marriages concluded
prior to August 1931. This is illustrated by the following
case which went before the Maḥkamat al-Naqd. (8)

CASE STUDY NO. XIII. (9)

**Case study concerning invalidity of the contract.**
(unpublished case)

**FACTS OF THE CASE**

A summary of the facts of the dispute is that the appellant
submitted Case No. 100 / 1984 Āhwāl Shakhsīyyah,
Damiettah, before the *Maḥkamah Ibtidāʿīyyah* against the respondents in which he sought a judgement ruling in favour of a separation between the first and second respondents and an invalidation of their official marriage contract No. 140 on the grounds that the second respondent had given her consent to marry him in correspondence exchanged between them (as proven by the records which he submitted) as a result of which a marriage was contracted between them, thus rendering invalid the second marriage.

The *Maḥkamah Ibtidāʿīyyah* decided to reject the applications made by appellant on the grounds that his marriage to the second respondent as shown in her letter and his documents was merely a promise of marriage and was not a marriage that had been legally concluded. Its judgement was also based on the provision of Article 99, Paragraph 4 of the *Shariʿah* Regulations which stipulates that marriage suits could not be heard unless there was an official marriage document, which in this case had not been submitted.

The appellant was dissatisfied with the ruling made by the *Maḥkamah Ibtidāʿīyyah* and therefore brought an appeal before the *Maḥkamat al-Naqḍ* based on two grounds. The first reason was that the ruling against which the appeal was being made was contrary to law as it had deemed that his marriage to the second respondent as indicated in her letter and the documents which he submitted was a mere promise of marriage and not a marriage which had been validly concluded. It also rejected his case on the basis of Article 99, Paragraph 4, which stated that marriage suits could not be heard if the marriage was not proven by the production of an official document. As he had made a case for separation, it was not subject to the provision of the said Article. The views of the Ḥanafīs had to be taken into account and as the
ruling in question did not comply with such views it was contrary to the law and should therefore be reversed.

The second reason was that the law in question was erroneously applied to the ruling as one of his defences before the first court was that Article 99, Paragraph 4 of the Regulations on the Organisation of the Courts was unconstitutional. The Court should have afforded him the opportunity to raise a case as to the unconstitutionality of the said Article before the Mahkamah Dustūriyyah Īlyā, but the Court’s rejection of this defence was a mistaken application of the law.

The Niyābah Āmmah then stated its opinion and gave a recommendation that the appeal should be accepted in form and rejected in content.

THE RULING

After examining the case documents and the opinion of the Niyābah Āmmah, the Court issued its ruling to reject the appeal for the following reasons:

1) The first reason given by the appellant is dismissed as it is stipulated within this Court that cases in respect of marriages other than those which took place before August 1st 1931, in accordance with Article 99, Paragraph 4 shall not be heard unless proven by means of an official document or unless acknowledged by the official responsible for the issuing of such documents. It has been established from the facts of this case that the first and second respondents pleaded before the relevant Court that the case should not be heard as the appellant had failed to produce an official document which proved his marriage to the second respondent, thus representing a denial on their part of the existence of any such marriage. The initial ruling was supported by the appeal ruling as a marriage suit could not be
heard despite the appellant's reasons since the letter which he had received from the second respondent constituted neither a marriage document nor a promise of marriage. As he had made a case for separation, it was not subject to the provision of the said Article. The views of the Ḥanafīs had to be taken into account and as the ruling in question did not comply with such views it was contrary to the law and should, therefore, be reversed.

2) The second reason given by the appellant was also dismissed, as Article 25 of Law No. 48 of 1979 on the Maḥkamah Dustūrīyyah ‘Ulyā gave this Court alone the authority to monitor the constitutionality of the laws and regulations. Article 29 of this Law stipulated that the Court should carry out this task in the following manner: If, when examining a case, a Court believes a provision in a law or regulation to be unconstitutional, the case shall be suspended and the documents shall be referred to the Maḥkamah Dustūrīyyah ‘Ulyā to pass judgement on the constitutional matter concerned. (A practical example of this relates to Law No. 44 of 1979 which was judged to be unconstitutional in view of the manner in which it was issued. A case brought before Badarī Court was suspended and referred to the Maḥkamah Dustūrīyyah ‘Ulyā for it to pass judgement on the extent to which the decision on Law 44 of 1979 was constitutional.

If a litigant in a case being examined before the courts uses as a defence the fact that a provision or law or regulation is unconstitutional, the case is suspended and referred to the Maḥkamah Dustūrīyyah ‘Ulyā for its decision. Accordingly, this defence concerning the unconstitutionality is a matter which is subject to its absolute power of appraisal and by applying this to the facts of the appeal before it, the Court believes that it was not mistaken in continuing to examine
the case when the said Article was alleged to be unconstitutional as it used its powers of appraisal to conclude that such a defence was insignificant. The basis of the appellant's claim was therefore invalid and the Court accordingly issued the aforementioned ruling.

The position of the Moroccan Mudawwanah with regard to the invalid contract

This is regulated according to Section 32 of the Moroccan Mudawwanah under the title: "Void and Irregular Marriage", and Section 37 under the provisions on irregular contracts. The Mudawwanah makes no distinction between the bâṭil and the fâṣid contract; either the contract is valid with all the fundamental factors and conditions fulfilled, or it is breached, meaning that it must be annulled.
Notes to Part Two, Chapter Two.

The consequences of the invalid contract.

1. On the meaning of *hukm* according to the jurists:

2. Ruling on the invalid contract.
   Abū Zahrah, Muḥammad; *Al-ʿAḥwāl al-Shakhsīyyah*. pp. 50-53, paragraphs 70-74.

3. Dissolution of marriage and divorce:

4. On the juristic view of void marriages and of *shubhah*.

5. Shalabī, Muḥammad Muṣṭafā; *Aḥkām al-Uṣrah fī al-Islām*. p.321 on zawāj fāṣid (irregular marriage), p.322 on zāwaj mawqūf (suspended marriage), and pp.223-225 on al-faqd al-nālidh ghayr al-lāzim (the contract which is effective but not binding).


8. Al-Bannah, Kamāl Ṣāliḥ; op cit. p.40-46. explanation of article 99 of Draft Ordinance 78 of 1931,

9. CASE STUDY NO. XIII.
Case concerning validity of the contract of marriage.
Appeal Case no.26 Judicial Year 57. Maḥkamat al-Naqqād Presided over by Justice: Muḥammad Jalāl Al-Dīn Rāfīʿ; Justices Ṣalāḥ Muḥammad Aḥmad
With the participation of: Aḥmad Naṣr Al-Jundi, Ḥusayn Muḥammad Ḥasan and Muṣṭafā Ḥusayn ʿAbbās; With the attendance of Muḥammad Shafīq Al-Malījī - Chief Prosecutor
And Sayyid Ṣādiq Muḥammad - Clerk of the Court
Conclusion.

We may conclude that laws according to the *shari‘ah* may be divided into two main categories. The first is laws prescribed by God in specific Qur’anic verses, and *ḥadīth* which He inspired in the Prophet, both of which regulate all aspects of man’s daily life. We have referred in the theoretical section of the main text to some of the Qur’anic verses and *ḥadīth* which regulate affairs concerning the family with specific reference to the contract of marriage.

The second category is laws established by *mujtahidūn* including the Companions of the Prophet, and the *tābi‘ūn* and the jurists of succeeding generations by interpretation of the source - texts of the *shari‘ah*. It was these endeavours which gave rise to the *madhāhib* in Islam, upon which Muslim countries have relied in establishing *Aḥwāl Shakhṣīyyah* laws. We have seen, for example, that Egypt has relied on the four main *madhāhib*, referring in particular, in cases where no clear ruling appears, to the most appropriate opinions of Abū Ḥanīfah, whilst Morocco relies on the more appropriate opinions of Mālik.

This conclusion will be based on a comparison between the two *Aḥwāl Shakhṣīyyah* laws with regard to the contract of marriage and will attempt an assessment of each of them concerning the extent to which they have accommodated the social changes which have occurred in Egyptian and Moroccan society.

The term *aḥwāl shakhṣīyyah* was not known to the early jurists. It is a modern term which appeared in Egypt around the beginning of the twentieth century as a result of the creation of the civil law as a separate branch of law and its division into *aḥwāl shakhṣīyyah*, law of personal status, comprising all that is related to the individual and his personal affairs such as marriage, divorce, *‘iddah*.
maintenance, paternity and inheritance, and *ahwāl ʿaynīyyah*, dealing with financial matters. The definition of those matters which constituted *ahwāl shakhṣīyyah* is a subject which stirred some controversy in the area of *fiqh* and judicial administration in Egypt until the *Maḥkamat al-Naqd* gave a ruling on the subject. These comprise everything by which one individual is distinguished from another in terms of personal and family characteristics and on the basis of which certain legal rulings affect one in life as a member of society, such as whether one be male or female, married, widowed or divorced, whether one has full legal competence, no legal competence due to being a minor or of unsound mind, or restricted or suspended competence due to some legal reason. Financial matters on the other hand fall basically under *ahwāl ʿaynīyyah* being connected with money payable or not payable (*Maḥkamat al-Naqd*, 40,30, p.1, SIN 404, 21st June 1934).

Certain points may be noted with regard to the Egyptian legislation. Rulings on matters of *ahwāl shakhṣīyyah* are left mainly to the religious authorities. This is not an absolute, however, as some matters in this area have been set apart and regulated as unified civil legislation which applies to all Egyptians regardless of religion. These include legal competence, *wilāyah* in financial matters, marital authority, executorship and desertion, which are regulated by Articles 44 - 48 of the Civil Code, the giving of gifts, which is regulated by Articles 486-504 of the Code, and *awqāf* which is governed by Law48 of 1946, amended by Law180 of 1952, concerning the abolition of *awqāf* for purposes other than charity.

The *Ahwāl Shakhṣīyyah* in Egypt is at present regulated essentially by the following:
If we look briefly at the historical background to the promulgation of this law, we find that from the beginning of this century attempts have been made to codify family law due to the existence of material and formal defects in the application of the madhhab of Abū Ḥanīfah. The effect of the formal defects was that rulings on cases relied upon laws which were not collected together in a single body of law. It was thus left to qādis to seek the most appropriate view of the madhhab, and moreover in the majority of instances there was no consensus of opinion amongst jurists as to the most appropriate view. The material flaws were that the application of the madhhab of Abū Ḥanīfah was not in keeping with the developments of the age. There were however views of the other madhāhib which were more appropriate to the spirit of the age in that the jurists of these madhāhib were influenced by the times in which they lived and their fațāwā were not dependent on qiyaṣ drawn from convention in the majority of cases.

The first attempt at codification was made in 1915 when a committee of senior jurists was formed representing the four main madhāhib. On completing its work the committee put forward a proposal for a Law of Aḥwāl Shakhṣīyyah but this was not successful as there did not exist in Egypt at that time a representative body or assembly assisting the government in its work. The proposal was therefore neglected and buried in the archives of the Ministry of Justice until an opportunity arose and part of it appeared with slight changes in Law 25 of 1920. It may be noted that this law is derived from the Mālikī madhhab and regulates certain rulings on nafaqah, some rulings connected with divorce on grounds of lack of nafaqah or of ʿayb, and rulings on ghaybah and ʿiddah.
2. **Draft Ordinance 25 of 1929.**
   This law comprises 25 articles and its rulings are drawn from the four madhāhib.

3. **Law 62 of 1976.**
   This is concerned with modifications of rulings on *nafaqah*.

Following this in 1979, Presidential Decree no. 44 was issued modifying some of the rulings of the *Ahwāl Shakhšīyyah* Law and particularly Law 25 of 1920. and Draft Ordinance 25 of 1929. This, however, was not to stand for long because of the method by which it was promulgated. The problem lay in the fact that it was promulgated without being referred to the People's Assembly for confirmation. It was therefore unconstitutional and its application was halted by a judgement of the High Constitutional Court sitting on 4th May 1985 on the grounds that there had been no emergency situation which would justify its being used in this way.

4. **Law of 1st July 1985.**
   This was passed by the People's Assembly on the basis of a proposal put forward by some of the members to modify the rulings of the *Ahwāl Shakhšīyyah* Law. It became effective retrospectively from the date of the ruling of the High Constitutional Court on the unconstitutional nature of Decree 44 of 1979. The new Law did not cancel Law 25 of 1920 and Draft Ordinance 25 of 1929, but included modification or replacement of parts of their texts.

**Legal jurisdiction.**

It may be concluded that it is the issues of marriage and divorce which have remained regulated by religious principles and to which the rulings of the Shari'ah are applied, as
Christian and Jewish rulings are applied to similar issues amongst those groups respectively. The plurality of laws applicable in matters of *Ahwāl Shakhsīyyah* was for a long time linked to a plural system of courts responsible for the application of the religious rulings. This system was cancelled by the promulgation of Law 462 of 1955 which abolished the denominational courts for non-Muslims, as it abolished the *shari‘ah* courts which were dependent on a Royal Decree of 27th May 1897 and Decree no. 70 of 1930 for the issuing of Law78 of 1931 for their legislation and that of the procedures associated with them. Following the abolition of the plural judicial system cases of *Ahwāl Shakhsīyyah* have been heard before civil courts at their different levels, *Mahkamah Juz‘īyyah* (district court), *Mahkamah Ibtidā‘īyyah* (primary court) and *Mahkamah Isti‘nāfīyyah* (appeal court), in accordance with the stipulations of the judicial system. Rulings are also provided by the *Mahkamat al-Naqd* (Court of Cassation) in certain cases, the president of the *shari‘ah* Court becoming a member of this court. The implementation of these measures was followed by the institution of Code of Procedure for the raising of cases in the area of *ahwāl shakhṣīyyah* with the exception of certain instances for which special rules may be found in the plan regulating the *shari‘ah* courts. This was followed by the issuing of Law 628 of 1955 containing some measures concerning *ahwāl shakhṣīyyah* and *awqāf* which are dealt with by the courts in accordance with Law462 of 1955. This comprises the intervention of the *Niyābah ‘Āmmah* (office of the Public Prosecutor) in matters of *ahwāl shakhṣīyyah*.

If we look at the social and historical background to the laying down of a codified body of law of *Ahwāl Shakhsīyyah* we find that the form of the rulings in the area of family law
has relied basically on the *sharī'ah* and specifically on the Mālikī *madhhab*.

Morocco remained somewhat behind the modern movement by not setting down its *fiqh* in a written or codified form until after independence.

In 1913 a modern Moroccan legal system was set up on the basis of the Protectorate Treaty. In the South, French courts were established and equipped with a civil law derived from the French civil Code, whilst in the North Spanish courts were set up with a civil law derived from Spanish law. Subsequently mixed courts were established in Tangier with a civil law derived from both. These three laws were however confined to the regulation of agreements and undertakings, whilst Muslim Moroccans continued to apply the *sharī'ah* in the *sharī'ah* courts in matters of *ahwāl Shakhshīyyah*, and Jews continued to apply the Mosaic laws in their own courts. In the case of foreigners the new courts applied the laws of the two countries respectively.

Following Independence, a decree was issued on 19th August 1957 establishing a commission to set down the rulings of *fiqh* in a modern form. Subsequently the following decrees were issued implementing the legislation produced by this commission in the area of *ahwāl shakhshīyyah*:

1. Decree dated 22nd November 1957 comprising two documents, *al-Kitāb al-Awwal* in connection with marriage and *al-Kitāb al-Thānī* in connection with the dissolution of the contract.

The commission followed a moderate course in its decisions, basing them primarily on the Mālikī madhhab which prevailed in Morocco and turning to the other madhāhib where it saw greater benefit to be found in these.

The most important items of legislation which have appeared since the creation of the *Mudawwanah* are:

1. Law of 6th September 1958 with regard to nationality. The third article of this stipulated that the *Mudawwanah* applies to all Moroccans, including Muslims and non-Muslims, with the exception of Jews, with the provision that certain strictly Islamic rulings, such as those on polygamy are not applicable to the non-Muslims.
2. Decree of 24th April 1959 extending the jurisdiction of the qadī’s courts which existed at the time to *Aḥwāl Shakhṣīyyah* for Muslims who are not Moroccan but who are resident in Morocco.
3. Decree of 3rd October 1959, Article 27, establishing a criminal penalty for a husband refusing to return to the marital home after the issuing of an enforcible ruling obliging him to do so, or refusing to pay maintenance which he has been ordered to pay.
4. Decree of 4th March 1960, dealing with the registration of marriage before a civil registrar where one of the parties is not Moroccan.

These matters were added to the *Mudawwanah* in response to social changes.
With regard to jurisdiction, a Civil Ordinance (Mastarah) was issued on 28th September 1974, the most important requirements of which in connection with Aḥwāl Shakhṣīyyah were:

1. The unification of the procedures of the ordinance for both civil cases and cases of Aḥwāl Shakhṣīyyah. This was to apply to the means and procedures for evidence, but the Qādis continue until now to incline in many cases towards the application of the procedural principle of fiqh, rather than those of the Ordinance, for example in the verification of witnesses.

2. The introduction of an article which was an attempt to bring about reform in all cases of Aḥwāl Shakhṣīyyah (Article 180).

3. The introduction of special requirements in actions for divorce (Articles 212-216).

It appears that what variations there are between these two laws are on the whole formal, in that Morocco has codified the Aḥwāl Shakhṣīyyah law whilst the Egyptian law has assumed its current form by piecemeal legislation to meet various needs as they have arisen. The same provisions may be found in the Egyptian law as in the Moroccan, but in a somewhat less ordered form than the comprehensive articles of the Mudawwanah; for example whilst the Moroccan law lays down the formal legal requirements for the conclusion of the contract, the same basic provisions may be found in the Egyptian law in the Regulations governing Maḍhūns in their solemnisation of marriage.

It must be recognised that legislative activity in this field in Egypt has been continuous over the period covered by the legislation which we have discussed, and that there are
constant efforts made to amend the law and bring it in line with the needs of society, the most recent example being Law 100 of 1985 which was promulgated following the declaration of the unconstitutionality of Decree no. 44 of 1979. The codification of the Moroccan law, on the other hand, has made it somewhat rigid and, with the exception of a few minor amendments, has to a large extent precluded further legislative activity.

Putting aside the presence or lack of legislative activity, any such activity is limited in practice by a reluctance to broaden interpretation of the texts, to look beyond specific rulings concerning specific matters and to draw appropriate rulings by *qiyaś* from the *shari`ah* as a whole. Marriage for example is regulated by many specific references in the texts, yet there is no reason why rulings may not be derived from other areas of the *shari`ah* where this seems necessary due to some need created by society, and appropriate in terms of the principles of the *shari`ah*.

It would appear that any inadequacies which may be observed in *Aḥwāl Shakhṣīyyah* laws are not faults in the *shari`ah* itself but in its application. In order to remedy this I feel that there is a need first of all to produce a proper analysis and definition of the fundamental objects of the *shari`ah* based on its sources generally and its overall view of the foundation of society and the relationships between its individuals, whilst also bearing in mind developments in society. Once this is established, the detailed rulings regulating the family may be attached to this and made subject to these aims by consultation and interpretation of the source-texts.
It may be noted that the Egyptian Judiciary has for long incorporated the requisite flexibility which would allow it to adopt such a basis. It has indeed shown a tendency in instances of dispute to look to the reality of a case rather than to a strictly legalistic interpretation, for example in the case concerning the absence of the husband discussed above. In view of the fact that there was some dispute concerning the fulfilment of the strict conditions governing divorce on grounds of ghaybah, the court considered that it might best remedy the situation and act in the interests of the wife in the light of the circumstances, by applying instead Article 6 of Draft Ordinance 25 of 1929 concerning divorce on the basis of harm. This is in contrast with the attitude of the Moroccan judicial system as commented on by al-Khamlīshi, who remarks that in the course of examining judicial practice and particularly published cases he found that the courts tended to adopt a strictly literal application of the law. In the field of rulings which are not specified in the Mudawwanah and which are referred to the views of the Mālikī madhhab on the basis of section 82 of Chapter 7 of al-Kitāb al-Thānī, it might have been possible by proper application of this provision to make some movements for reform. In the event however no innovative rulings were made; on the contrary, certain rulings were made which adhered to juristic principles which served only to push the legal system backwards. Al-Khamlīshi goes on to cite several cases as illustration of this.

We may note that there is no difference in essence between the family laws of these two countries, but only in their attitudes towards their application.
Notes to Conclusion

**Bibliography.**

**Qur'ān**


Al-Ṣābūnī, Muḥammad ʿAlī, Ṣafwat al-Tafāṣīr. **al-Tafsīr al-Manqūl ʿan al-Ṭabarī.** Damascus ND.

Al-Shawkānī, Fath al-Qādir al-Jāmiʿ bayn Fannay al-Riwaḥay wa al-Dīrayah min ʿIlm al-Tafsīr. 5 vols. Beirut ND.

**Ḥadīth**

Al-Azadī, Abū Dāwūd Sulaymān ibn al-Askāth al-Sajsūtānī. **Sunan Abī Dāwūd.** 2 vols. Cairo ND.

Bahādūr al-Sayyid Muḥammad Ṣādiq Ḥasan Khān. Ḥusn al-Uswah bi mā Thabata min Allah wa Rasūlihi fī al-Niswaḥ. Beirut ND.


Al-Shanqīṭī, Al-Imām Sīdī Muḥammad Ḥabīb Allah ibn Sīdī Ahmed, Known as Abū al-Jaknī al-Yūsufī, Zād Muslim. fī mā Iṭṭaṭafaʿalaḥayhi al-Bukhārī wa Muslim. 5 vols. Beirut ND.


Works of Fiqh

A. Fiqh of the Four Madhāhib.


B. Hanafi Fiqh.


Ibn Bakr, Zayn al-Din ibn Ibrahim, known as Ibn Najim; al-Bahr al-Ra'iq. Sharh Kinz al-Daghiq. 1st. edition. Cairo 1311 AH. edition also comprises:
in margin:
Amiin, Muhammed, known as Ibn 'Abdin; Minhat al-Khalig 'ala al-Bahr al-Ra'iq.

concluded by:
Ibn 'Ali, Muhammed ibn al-Husayn, known as Al-Turi.
Ibn al-Ḥammām al-Ḥanaffī, Kamāl al-Dīn Muḥammad ibn ʿAbd al-Wāḥid al-Suyūsī al-Sīkandarī. Fath al-Qādir. ND NP. edition also comprises:


Al-Marghinānī, Burḥān al-Dīn ʿAlī ibn Abī Bakr. Al-Hidāyah Sharḥ Bidāyat al-Mubtadā‘. Cairo 1326 AH.


Al-Sarakhsī, Abū Bakr Muḥammad ibn Abī Sahl. Al-Mabsūṭ. Cairo 1324 AH.
B. Shāfi`ī Fiqh.


Al-Shāfi‘ī, Abī ‘Abdullāh Muḥammad ibn Idrīṣ. Kitāb Al-Umm. Cairo 1321 AH.

C. Mālikī Fiqh.


Al-Asbāḥī, Mālik ibn Anas. Al-Mudawwana al-Kubrā. Cairo 1324 AH.


Al-Dardīr, ʿAlī Khalīf wa Ḥāshiyat al-Dusūqī, ND. NP.

D. Ḥanbalī Fiqh.


Al-Zarʿī, Shams al-Dīn Abū ‘Abd Allah Muḥammad ibn Abī Bakr ‘Ayūb, also known as Ibn Qayyim al-Jūzīyyah. Ālām al-Muwaqqatīn ‘an Rabb al-Ālamīn Cairo ND.

F. Zāhīrī Fiqh.


F. Fiqh of other Jurists.


F. On contemporary Figh.


Al-Bījānī, Muḥammad ibn Salīm ibn Ḥusayn. al-Sakādī. *Uṣṭadh al-Marʿah*. Madīnah ND.


Al-Dīwjī, Muḥammad. *Al-Aḥwāl al-Shakhṣīyyah li al-Muslimīn al-Miṣriyyīn Fiğhan wa Qaḍāʾan*. Cairo ND.


Madkür, Muḥammad Salām. Naẓariyyat al-ʿAgd. Cairo ND.

Al-Mawdūdī, Abū Aʿlā. Al-Hajāb. Cairo ND.


Al-Saʿīd, Al-Saʿīd Muṣṭafā. Fī Madāʾ Istiʿmāl Ḥuqūq al-Zawjiyyah wa ma Tataqayyad bihi fī al-Sharīʿah al-İslāmiyyah wa al-Qānūn al-Miṣrī al-Ḥadīth. Cairo ND


(Theses)


Law


**Official Publications.**


Dictionaries.


Al-Farūqī, Hārith Sulaymān. Al-Mu` jam al-Qānūnī. (Farūqi's Law Dictionary, Arabic-English.) Beirut 1972,


Works in English.


*Succession in the Muslim Family*. Cambridge 1971.


Appendix 1.
Best Copy Available

Variable Print Quality
The Ahwāl Shakhṣiyyah for Muslims

with the most recent amendments

third edition

Cairo 1987
قالت المرأة المغنية: "أين القلوب المتشابكة؟" كتبها دار مقدمة للثلاثاء.
(1) የማህበinstein ያ والا መንበር ይላል ይነብ

( ) ይህን ከጭብጥ ይህ ወይ ዉብ ይህን ይካኝ

( ) ይህ ከጭብጥ ይህ ወይ ዉብ ይህን ይካኝ ያለኝ ከጭብጥ ይህ ወይ ዉብ ይህን ይካኝ
\[
\frac{64}{oz.} \quad \text{to} \quad \frac{1}{\text{L}}
\]
älä samastata teid kuidugi, kuna see on Äreaalidestik. 

EELKUTSEMATE KOKKUVÖTTE:

1. Äreaalidestika kujutamine
2. Äreaalidestika toimimine
3. Äreaalidestika kasutamine

HEA TÄHELEPANU:

1. Äreaalidestika käsitsemise hoolimatu suurendamine
2. Äreaalidestika teadmiste vähendamine
3. Äreaalidestika tõhususe tõstmine

KOKKUVÖTTE:

Äreaalidestika kasutamine on oluline praktikale, kuna see võimaldab efektiivselt hoida ja määrata piiranguid. Äreaalidestika kujutamine ja toimimine on olulised osa administratsiooni protsessist.

HEA TÄHELEPANU:

Äreaalidestika kasutamise korral on oluline jälgida, et see ei põhjusta vigastusi ega vigastusi. Äreaalidestika tõhususe tõstmine on oluline, et see võimaldaks kõiki osalejaid koosolekul tõhusalt ja kindlalt toimida.

KOKKUVÖTTE:

Äreaalidestika kasutamine on oluline administratsioonile, kuna see võimaldab ehitada ja hoida piiranguid erinevates osastes. Äreaalidestika kujutamine ja toimimine on olulised osa administratsiooni protsessist.

HEA TÄHELEPANU:

Äreaalidestika kasutamise korral on oluline jälgida, et see ei põhjusta vigastusi ega vigastusi. Äreaalidestika tõhususe tõstmine on oluline, et see võimaldaks kõiki osalejaid koosolekul tõhusalt ja kindlalt toimida.

KOKKUVÖTTE:

Äreaalidestika kasutamine on oluline administratsioonile, kuna see võimaldab ehitada ja hoida piiranguid erinevates osastes. Äreaalidestika kujutamine ja toimimine on olulised osa administratsiooni protsessist.
Цаная подстатверджаю, што я могуе вяшыць."
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة.
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
لا يمكنني قراءة النص العربي في الصورة.
रा ४- ४...

यस- का

इत- प्रि

। वि

८२०

रा

४५७

१२३८

११९५

८८२
विशेषतः यदि तुम रूपांतरण करते हैं तो यह सब जरूरी है कि तुम अपने शरीर से नहीं नियंत्रण कर सकते। तुम किसी तरह का रूपांतरण कर सकते हैं जो तुम कैसे नियंत्रित करते हो।

कठोर रूपांतरण के लिए तुम किसी तरह के रूपांतरण कर सकते हैं जो तुम कैसे नियंत्रित करते हो।

यदि तुम रूपांतरण करते हैं तो तुम अपने शरीर से नहीं नियंत्रण कर सकते।

यदि तुम रूपांतरण करते हैं तो तुम अपने शरीर से नहीं नियंत्रण कर सकते।
...
لا يمكنني قراءة النص العربي من الصورة.
.....
(1) ያለበታ ድራጋ ምስ ይጠውን ይወን ይጎስ ይል ጊዜ ይህ ይህ ያለበታ ድራጋ ምስ በ11/11/2001

(2) ያለበታ ድራጋ ምስ ይጠውን ይወን ይጎስ ይል ጊዜ ይህ ይህ ያለበታ ድራጋ ምስ በ11/11/2001

(3) ያለበታ ድራጋ ምስ ይጠውን ይወን ይጎስ ይል ጊዜ ይህ ይህ ያለበታ ድራጋ ምስ በ11/11/2001

(4) ያለበታ ድራጋ ምስ ይጠውን ይወን ይጎስ ይል ጊዜ ይህ ይህ ያለበታ ድራጋ ምስ በ11/11/2001

(5) ያለበታ ድራጋ ምስ ይጠውን ይወን ይጎስ ይል ጊዜ ይህ ይህ ያለበታ ድራጋ ምስ በ11/11/2001
العربية
لا يمكنني قراءة النص العربي من الصورة المقدمة.
لا يمكنني قراءة النص العربي في الصورة المقدمة.
الفصل ٥٤٨
الوارث بالفرض أو النصيب ولا يجمع بينهما أرضاً: الملك - وبنك الإبن - والأخ الشقيق - والأخ الأكبر -
الباب التالت
اصحاب الفروض
الفصل ٥٣٧
الفرض المقدسة سنة: النصف والربع والثمن والثاني والرابع
السما
الفصل ٥٤٨
لطف الولد الولد فيما يأتي على الذكر والإناث

أصحاب النصف خمسة:
٤ - الزوج بشرط، مم النزيل الولد للزوجة ذكرًا كان أو أنثى
٥ - والبنت بشرط أن يقرأهم من ولد السبب ذكرًا كان أو أنثى
٥ - والبنت الإبن بشرط أن يقرأهم من ولد السبب ذكرًا كان أو أنثى
٤ - والأخ الشقيق بشرط أن يقرأهم من ولد السبب ذكرًا كان أو أنثى
٤ - والأخ الأكبر بشرط أن يقرأهم من الإخوة والأخ الأكبر، وعند

الفصل ٥٤٧
 أصحاب الأرب اثنان:
٤ - الزوج إذا ورد فرع وارت للزوجة
٥ - والزوجة إذا لم يكن لزوجة فرع وارت

الفصل ٥٤٦
وارث التنويع واحد:
٤ - الزوجة إذا كان لزوجة فرع وارت

الفصل ٥٤٥
من قبل موروثه كما وعدنا، وأن بثينة لم يزي من ماله ولا عليه ولا يجمع وارثاً ومن تلقا خطاً ورن من المال
 دون الدنيا وحبيب
الباب التالت
طرائق الأثر
الفصل ٥٤٤
الوراثة ثلاثة أسماء وارت بالفرض فقط ووارث بالنصيب فقط
وارت بها جمع أو تفردها

الفصل ٥٤٣
الفرض من قدر للوارث في التركبة وبدلاً في الشروط
بصاحب الفروض
الفصل ٥٤٣
إذا لم يوجد واحد من ذري الفرض أو ورد ولم يستفرق
الفرض العربي كانت التركبة أو ما بني منها للنصب عند
ذوي الفرض فرضهم
الفصل ٥٤٢
الوارث بالفرض فقط أربعة: الأبن والابن والزوجة والاخت للام
الفصل ٥٤٢
الوارث بالنصيب فقط سنة: الإبن - وابن الإبن - والأخ الشقيق -
والأخ الأكبر - والأخ الأصغر - وابن الإخوة - والأخ الأكبر -
الفصل ٥٤١
الوارث بالفرض والنصيب جمع خمسة: الإبن - والابن - والزوج -
وابن الإخوة - والأخ الأكبر -
لا يوجد نص طبيعي يمكن قراءته بطلاقة من الصورة المقدمة.
নৃপতি পালী শেল্কা
বেহুলা হরি
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
दिन में इतने उष्णकटिबंध में शरीर के लिए उष्णकटिबंध के विभिन्न अंशों को दर्शाता है। इसमें जल होने के कारण शरीर के अंतर्द्वारों में तापमान का विस्तार होता है। इसलिए, यह उष्णकटिबंध का एक महत्वपूर्ण हिस्सा है।

शरीर के अंतर्द्वारों में तापमान का विस्तार होता है।
მაღალი კუთხი მყარ დადები
null
لا يوجد نص يمكن قراءته بشكل طبيعي.
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
Si, 06
Appendix 2.
CASE STUDY NO. I.

Case concerning riddah; no. 144 in the general list, Judicial Year 105.

Case documents: (i) Court ruling (*Maḥkamat al-Isti‘nāf*)
Best Copy Available

Variable Print Quality
Case Study No. 1

 الحكم

جمعية الرحمن الرحيم
محكمة استئناف القاهرة

باسم الشهاب

الدائرة الأولى لائحة فناء الشخصي

حكم

بالبلاغ المستمدة على يقين الحكم الكائن مرفوعاً بعد الدماء المذكورين 22 يوليو 1444

رئيس المحكمة

برئاسة السيد المستشار محمد حسنين البسيس

محمد السيد المستشار

وحيد السيد / أحمد أبو الحسن مصطفى

وحيد السيد / حسن أبو الحسن جمعة

أصول الحكم الآتي:

الاستئناف، المعيد بالبلوغ في النموس، ثم تم 1444 سنة 300.

الرئيسي من السيد / حماد:

ومع مجموعة من السيدات، المحامين:

المحامي:

محترف بالبلوغ ومعها الاستاذ:

المحامي:

الدبلوم:

حيد السيد / المستشار

المستشار:

المؤسس:

استئناف الحكم الصاد راية 1488/1661 من محكمة دعم القاضي في الديور.

1606 لسنة 1587 أحوال شخصية كل شخص القاضي.

المحكمة

بعد الإذاعة على الأوراق وسائل الموافق، والتمام، والثاني والثالث، ثم:

من حيث الباب: وافق هذا الاستئناف، دون أن يكون له المطابقة، حسب أن أقام الديور، حكمها أمام محكمة أخرى، ثم نُقل فيها إلى محكمة مساعدة، وأنجب مثبتن


تابع الحكم رقم 144 لسنة 105 في أحوال مخصوصة

نائلاً أولاد هـ (الذين وقع بينهم في سنوات 1962، 1963، 1964 وـ 1965) وافقوا في قضية

الأسوأ في كند. الآن البي الذي كان يتولى الألفاظ طبباً في محيط وقائه واتهامه الإله في البداية. الخاص

ذلك الوضع الزاهب وتتحدث المرة حيث تميزت مكروبة إلى أن أطل على الأسر ما يهدد تشيياً وانصراف

الأب عن أسرته وتهبط ماله الوحيد الذي كانت وضع تعبيرتته وليات زناه إلى اليدود سماح

فلم تدارست الوضعية وامتنعت إبطالها من إعادة مسيرها عند حقوق تم تأسيسه الكثير من الأخلاق.

في المستقل قلبات الى المرة، فعلى الانتظار لاحقاً إذا تم إعادة اعتباره على العقد المبرم.

أثبتت هذه الانتظار يطلب الحكم لها يساندهم نسب إبطالها من زواجها الماليه بهم مع الزواج الحرام،

والامتناع

وسجل: أن 1حـ 1448/1 تدارست الحالة أي درجة خدودياً بريقة الدعوى والزنا الحرام المبارك، مكروبة

دعاها الى أن زواج الدعوى ود dismissing بالداه عليه، ودوره سليم، فالأب يشيعه نسب وأيضًا لأنه

هذا الزنا يتعلدهم في البداية فلو زواجية ي-align هو الانتظار لما سيعدها من سو سوي عبر عنده ود خلاف

إذا يليد في مساحة للأحكام الشريعة العامة لتعلدهم بالانساب

العام والطريقة دائما الحق في الزنا يتبع الزنا، بهذه الطريقة أن يشترط في العدد

الذي يشيعه نفسه أن يكون مصاباً معه لوزر الخذاء، وأحكامه وكال زواج الدعوى بالصداع عليه يطلق

في العمال حيل الزنا ومعه هو ثم لايتحب يهذب وفكون دعوى الدعوى والدحالة كذلك قد جماع

على ذهب في مهين ونهاي خليفائه للذين.

ومع تقبل المقتضى هذا النداء أي استناده بالاستناد أنه يد بوجبة حديثة تقدمه وتتمه تيار بينه

01/11/1988 واعطت للمستغله: أنه طلب رتبته الدعوى الابحاثه، والالم، وثبوت نفس أبابه المستغل، هو الذي يتصل

بالإلغاء الحكم المباشر، والدم، بيدك نفس أن يظهر المستغل، إذا ذكر الحكم، مصلحة، مصلحة أن يثبت مرسيا

الديد، وذلك لابسحاب جامدًا أو أخطأ الحكم المباشر، أو إذا ذكر الحكم مصلحة مصلحة ترويه ونشرها

لصحي الدناواته، والثابته، في ذلك أن المقتضى هذه الإمبرالة، لسد الزنا، توزيع على المستغل

ويصلد زواجه مغربًا، وتاريخ 15/11/1988 وقد أدين أولاد بسمه، كما هو واضح في مداخله: منطقين

1. أن انضمتة لم ترد في الدعوى الاستدلال، إذ أن المستغلات في حالة من المستغلات، وهو

2. أن الحالة لليابدة الباكره، إذ أن المستغلات المذكورة في الحكم.

لم يعدهها بما

1. أن الحكم أو درجة الانتظار عن المستغلات المذكورة في الحكم لم تخدع ذلك، ولم تستمتع في

ويوم أخرى.
srs

"

3.

&

".
s.
`j
ß...

.

ice.

4. ctý. -++ý ti

,j

.-

'

I
1 +. ýr

1'

"'.:

ýJ

ý". ºýýr

+ý

ý. Li . r. ý

. +'

"S;
i-jj

"'

`ý

1ýý

ýw

"f
"'

ý'

a.

4it
..

ýp"

t.

r;

ý.: `

býý%-i

ý!

S"/ý^

° "". i i

:

. L"iý"

"ýr

.

". :

ý" "i

ý`Y'"'

y. ý

tý

:r

'

i
`,

.4

r.

. ý!

: +... ý

y7

it

tý ;
":..
3

ro...

Lýý

L""`J
::.

!

SJ

X3
:1 t=..

r" -ti;

il'

i.
+.

ý

ýý'+.

ýýi.

":

. ýL

1,
l
Jt
1
i!
sr.:!
.
.
&.::

b
ei _i,,;.. .0it

y

ýý.,

y.

"ý"ý

""-t.

d"". 1

iº wi. +.

ý
.:

_i

i

.r

-

<<;

ýý.:

/"'ýý.

ýr

ý

ý,
J:!:

-3!,. -1

ý3-ý

":

-' wi

LY+

L

'. ' 1r

"'ýý

:

-rr,
.;

jS-:. -:...

"ý.

"..

i!

.,/

91

ý iý

w

f

1l_n.

1y

T

ý.

'
tir

Fý

i

'ý

-"iw'ý.

s.. ir".li

',

1 "'

ý? '

"

r

rr\ý.

"Li?

.. ý _.

ti.

3i

,ýý
itý

"ý

F7'ti''7`ßw1

t .;l
! ":,

,.5

11
1ý
:
JI
ß.:
"L.
yJti " ;, s ý; ýý-'-..

atme

ýr

'

-rr,

v

iý"

ý94;, y.,. ß
"
Sý ýlýý

"

L;.

`O'ma

wVý"!

'sý'Li11iýWt

ý:

i
+
".
":
"ý..

i

."1"..:

ý
`w

.,, j

,1i

r

ýy.::.

. r'i_'

ti. w'ý

UlA.
SI
lS,
l1
:,.:
"ý+
ý:
ý,

"

äs

ýiM
i

,

ýi

"LSi1

;ir:.:

t'
=L

t ly"

wrf.

% V\!

. ý.

"ý

ý

.. r+

1

. fir

+W

ý.:.:.

"'3

'" sý J.

"wý

ý .ýýV.
,;.

vy

i.

"'w

"e

a;.

-v

t
ý'I

`:...

f

'lip

L?
I
lý.
ý
.rI .1

`',

ý=

"

ý '+ ".

.

ý'

rýýý..

ý; ý+vi

ii

ý.. I

-_::!

'"`. Sw
ý-'

L"1

LS

" i1
ý Imo ý.

Fr1iý,

L7

L,.:

ýSt'"LU!.

.,

vLW

ý1

. ar

a"{

.

+1.:

%11..; Vr

S,.. "

/

,-po

rý

y_1

ý" .lf..

z

L.

1
%1i:
1/Y/1
lZ
1
ý
ýý,,
t
s.
;"ý:
.
{1Y
r
'
"
.::
1..;
`ý ý:... t
ý-ý=
..:
ý,,
rsj
:.
'.
1
1
ir"c,
!
s
ý
'.
t
l..;
ý.
ai:
:..
i".
tr::
i
s
r
ý;
ý
L
s
"..
jj
S".;
"::
.
.
s.:
ý. ý...i'ý
.
`

il:
i
. r.ºýj..

i. i ý"+J

11 #
j. -"

U1

r:'.'

aýsos-isoaýasasa

ýsssosasaa

.

r3.s

.

'--'

iý aiý,
ý.
ý.
aý)
ý.
ýi
}ý".
ý
ýýi
ý.
" ... ",..

ý". ý"

ý.iýj.;

-


оваяً الحكم رقم 144 لسنة 1921

لاطل المراة على الصلاة وأحياء للدين والنسب بهيئة الفراع والولدان كما يثبت بالعقة أبا البيتين والذراك
نناما من أمان كاستناده له يعرف أن المس بان الصلاة وفي وقت الحاجب حين الفترة الصحيح والراجح
في مذهب الأمام أبي حنيفة أن الاستناد إلى الشهادتين فلذة الصلاة للإسلام لأن القبلة بالشهادتين أسه
ملاة الإسلام ونونة وزدوج علائه نجى أن المستنادات السهبة الدان الرسم الذي ذكره في المحرر المقدم
بالعقة المستنادة لها أنها ردت جيداً في الاستناد إلى الشهادتين إمام الحجة وقالت أشد أن لا
الله إلا الله وحده لا شريك له وحيدان نحن وأنا حجة عبد ربه ولي هذا الاستناد الأصيح
الصحيح لا يكمن لأننا أن يحكمكناها أو أرتداؤها من دين الإسلام هذا من ناحية الاستناده
ومن ناحية المستناده فقد قدم الاستناده إمام الحجة إلى نجاح حافطة مستداره شهادات
ملاحة الإسلام الثالثة وديثة الإسلام والأماني الأصولية واجبة إسناده بدليل
نائذ موقع مه من المستناده، يعتبر فيه أبلي لملائمه هادئاً وواضحاً وإيا الاستناده الدروي
بالإضافة إلى ونمة الدار على يد السرية المسلمين والانياضاده دعوة وياها وهذا كله
انقيل على نتائج تأثير على الاستناده، تضمنة عليه أبلي للوديان ويكتم على ما جاء به هذه الاستناده
يجب أن تكون قادمة على أن عربة السماحة سلالة الدينود وأن الوهود الذائقة وما قدمه
مواقع ليتناسيرها على صحة ما جاءت هذه الاستنادات كما أن سيأتي ما جاء به هذه الاستناده
يجب أن تكون قادمة على أن عربة السماحة سلالة الدينود وأن الوهود الذائقة وما قدمه
من عصر الاستناده، يحكمه على السماحة طبقاً للمادة 281 من القانون رقم 278 لسنة
1921

فهذه الاستنادة

حكمت المحكمة بالاستناد شكلياً في الوضع الأول - بإلغاء الحكم المستناد
ثانياً - الحكم يعود إلى الأولاد - - - - - إلى أيهما المستناد، و
ولكن الأولاد على جميع من المستناد وجوبه معية عبد الحكم والإيطال المستناد، هـ الصريحة
من الدرويغ وبلغ عشرين جنباً جنباً صحيها مقبول استناد المحكمة.
تابع الحكم رقم 144 لسنة 1988 أحوال متمم


رئيس المحكمة

امين المحكمة
CASE STUDY NO. II.

Case concerning non-consummation of marriage; no.321 in the general list, Judicial Year 104.

Case documents: (i) Court ruling (Maḥkamat al-Isti'nāf)
باسمكم الله الرحمن الرحيم

حاكمة استئناف القاهرة
الدائرة الأولى للأخلاق المدنية

حكم

بالسجل العثماني، طالع سوالف البينة الثالثة المعدة للقضاء المنال، بنسان عام 1674هـ.

زيادة الميدان، استئناف البينة الثالثة المعدة للقضاء المنال، بنسان عام 1674هـ.

تتولى الميدان، استئناف البينة الثالثة المعدة للقضاء المنال، بنسان عام 1674هـ.

النيابة.

لا يوجد أي مادة قانونية.

استئناف البينة الثالثة المعدة للقضاء المنال، بنسان عام 1674هـ.

لمهجة 1400 أحوال، على الاعتقاد.

من حيث أن واقعة السوالف تدور على ما ذكر في النص، فأن المحاكم شهدت عادات نفادها، فبالمحتوى المذكور.

وقرر 24 سنة اجتهاد، كتب المحتوى المذكور.
بعدم البت برسالة إلى Evo و长寿 السرية على أنهما أنقذوا حسب المعنى غيره في
118/2013 أو الملك فيديو بوريه في عقد بتاريخ وقع عليه رفعه والد رفعه ممثلا
تتم إعداد الهيئة وفقاً لذلك، قررت هذه المرة 118/2013 بمجلة
18/2013، بالإضافة إلى ذلك، أنه على النحو الذي يرى عند الفحص، فإن إعادة استعمال المحكمة
التي قام بها المحكمة البارزة في النزاع المتعلق بشأن Evo كان بعدة
افتراض ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
وتثبت النشاط الذي كان عن طريق Evo في النزاع السابق بشأن Evo. 1984
بجدية "لم يتحقق
انتفاح ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
مجلة 22/2013، ووفقًا للتحقيق، فإن إعادة استعمال المحكمة
المباشرة ضد Evo في النزاع السابق بشأن Evo كان بعدة
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
بجدية "لم يتحقق
من الانتهاك الشامل. التطبيق إجراء المحكمة أن Evo كتب عليه بطرق أخرى.
وعلى العميق للغاية، Zumpe يحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
لعين ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
"لم يتحقق ضده أن يدخل بينهما تجارب أخرى، بمجلة 22/2013.
رحيل الخان من المحكمة، ولهذا فقد طلب الاستئناف ناهيكًا عن جرائمهه، فإنه اتهم بالحالة.

أبلغت المحكمة، وحسبلاحظين الاستئناف، شكلي الموافقة على طلب الحكم، وسنتان، وثبتت
الاستئناف السريعة، وعليه، استمعنا جنباً إلى جنب بائبلة الحالة.

صدر هذا الحكم رقلي على النائلي، ب赞同 الاستئناف، 1/2/1422

رئيس المحكمة
CASE STUDY NO. III.

Case concerning establishment of *nasab*; no. 44 in the general list, Judicial Year 51.

Case documents: (i) Court ruling (*Maḥkamat al-Naqd*)
الدورة والثانية عند إمكان التوقيع، وأزواجهما في نفس المكان، إذا كان تكتيب المدعى هندسه في نسخة迫使 من الدعوى.

المحكمة

بعد الاطلاع على الأوراق وراجع القرر الذي نلقي قيد المستقبل المقرر ولمدة وبد المداولة.

حيث إن الطعن استمر أوضاعه الشكلية.

ويجيرا الواقعة على ما بين من الحكم المطعون عليه والأوراق الطبيعية. في عمل عن المدعى عليه في آخر أيام الدعوى 237 لسنة 1983.

أحوال شخصية

(1) أحوال شخصية: درى "دروي إنشاء النسب".

دروي إنشاء النسب ويعتبرها يمكن ل Во. ولو في المدعى عليه. وقد يوجد زواج يطرأ أوزار وتواتر دعوات وترددات أو حتى تهرب أو كان في مكاب.

(2) أحوال شخصية: "البيئة الشامية" إنشات.

البيئة عند حالة ملة. يرتكب أن تكون موانع من تراث. مطاعة الاحداث الدمار.

وزاء 590 إلى 3 إيلوان، إلا إذا كان المدعى عليه لا علاقة لنور هذا التراث إذا كان تكييف

المدى للمطعون في نسخة من الدعوى.

(3) دواد النسب لازالت البيئة على حكم المقر في المدعى المقر لا يشترط دفع الدعوى إنشاء النسب ويعتبرها إذا كان بو زواج صحيح أن يكون هذا الزواج ثبتًا دقيقًا رسمًا ورسامًا يصدق على هذا الزواج ويصف

وكان يلزم النسب اعتباره كذلك من تصرفات شهود ورياض وأوزاو. وسائر

شروط مصورة. ويريد أو أن تأثر يجوز تعديل أو كان يبين

(4) المدريد عليه عند حالة المطاعنة أنه يشترط في المدعى على الأوراق فإنا حالتها لا تأتي إلا إذا كان المدعى

...
وحيث إن الطمأنين أحد ثلاثة أسباب يتبعها الطمان في الحكم المطعون فيه خلافاً القانون والنصوص في التطبيق. وفي بيان ذلك يقول إن الحكم يتألف من قضاء بثبت اللبس على مدة شهور، بما تقدم الطمان عليه الأول من ألا يكون زواجها عليه الطمان عليه الثانية بعد مدة زمنية في أو خير عام، وأن مياج اللى شأنه ليس من أن هذا الزواج لا يعكر رق وحوض شهوته لتفادي مع موضوع الدعوى، ولا يلزمه في جوهره الشهادة: اختلاف الشهادتين حول هذه الرأية بأنيات هذه الزواج أو عدم أمرها لأن هذه الوالدة زائدة عن موضوع الدعوى والتناقض فيها لأي شهادة. فإن الحكم المطعون فيه إذا أقام غذاه ذكرت لمدة من هذه البينة الصحيح شركة، وتأتي جمايات فإلا يمكن قد خالف القانون، فإن ذلك كان القرار في فضاء هذه السماحة التي تؤخذ الموضوع من جواز الطمان وقد أقام فضاء باليد لما تأتي إليه فإن مياج الطمان بأسباب اللى في هذا الحخصوس لا يحسب أن يكون مادة موضوعاً في تقديم البديل مما لا يقبل إلا في أصل مكة النقص. ولا تقدم عرض.

وفق الطمان.
CASE STUDY NO. IV.

Case concerning nasab and wirāthah; no. 47 in the general list, Judicial Year 55.

Case documents: (i) Court ruling (Maḥkamat al-Naqḍ)
الدعاة المدنيين والإداريين والإحلاح العقاري

المادة من المبدأ: استناداً إلى المادة 495 من الدستور.

لاحقة: حسب المادة 500 من الدستور.

الحمد لله، وحشٌب رئيسي. النائب السيد معاذ شميش.

وأمين النادر السيد مساعد محمد.

في الجلسة الولائية المشتركة يفتتح المحكمة بعدها التورية.

في يوم الثلاثاء 7 من جمادى الآخرة 1444ه الموافق 26/1/2023.

الأمر بالحكم الآتي:

ففى هذا المنبى في جدول المحكمة برقم 247/557 للمادة 156.

المادة 156:

السيد:

لم يوجد عداً واحد بالساحة.

(1) السيد:

(2) السيد:
الطابق: وحجز عن المعنمون عدد 18 الأصل / -- المسند
عن الاستناد / -- المسند.

الواضح:
في يوم 28/12/1985 تم بتلفيق التقرير في حكم محكمة استئناف. أما المسند:
بتاريخ 28/12/1985 في الاستناد رقم 2373. وبناءً على القرار:
في الطاعن، الحكم بقبولالعفون مكلا في الموصية بناء على الحكم الداموني في:
في نفس اليوم أودع الطاعن مذكرة مارحة كما قام ضم الكتاب данным الطالبين
الابتراض والاستئناف.

وفي 1/12/1985 أعلن المعنمون طبيبا بستر الطاعن.
وفي 17/12/1985 أودعت المعنمون عليها الأولى مذكرة بدعائية مدرجة.

طبقتها رئيضة الداموني:
أودعت النتيجة العامة مذكورة وأعلنت القبول بالعفون مكلا وعده مزويا。
ضرر découvrir على المحكمة في غزوة يوم ورغم تجاهه جديًا بالتنازعية، خلصت إليه:
1/12/1471 /29 /1/1985 حيث تم الحكم على هذه الدعوى على ما يوجد فيها
جلسة حيث صدر كل من معنمونان باعتبارهان مدافعين وإقرار الحكم إلى جدية
بالمذكرة، المحكمة أوجب إعداد الحكم إلى جدية النتائج.

المحكمة
بعد الاطلاع على الأوراق، وبناء التقرير الذي تلاه السيد المستشار الشيخ:
مصافح حسبها بحسن وعفوية وبناء المداول، 1945.

8
يندان الطلمن احترام ارضاع البقاء.

وهماً على الرأي)، على سبيل المثال، في الحكم العام، فإنه لن يكون
في أن الطالم سوف لا يُداهَل أنفسهم، بغض النظر عن أدواته، حتى 1954 النشأة
لأحوال شخصية تلقى يستخدم المبادئ والمبادئ، ووضع المرأة محمد شار جيمي، واستضافة
في تزويج السعير، وربى زوجها، ثم فارباً، وهو كان زوجة المرأة، المذكورة
بجح العقد الداخلي منها والمعروف منذ 1/3/1970، وتأمل
الموردة المذكورة له حال حياته، وكنية المرد في 1/3/1970 ونارذها المدعية
في السياق فقد اقتاد الدعوى، وطالب البالغ، قبل تدخله خصاً تأنيس
الدعاوى، وأطالب بعدها تمت صيغة لاغية المرحرم

إحالة ضيائية على طلاب الدعاوى، تتم تلقيهما، والمادة 34، والتأنيس
في تزويج السعير، هل يعني نظام 1954 النشأة، وينتشر الموردة، والمادة 34، والتأنيس
وتأتي هذه العملية حتى أولادها، من بعدها السامية الدعوى، إذ الأول إلى التأنيس
أراد الدعوى إلى التأنيس، وبد إلغاء الشهود حكم في 1/3/1970، أتبرع
دك الدعاوى، خاصه بالنفاذ في الدعوى، وهي المواد، والفوضى. أتبرع الماردة،
بين كل هذا الحكم بالاستثناء، رغم 1954 النشأة، بـ 1/3/1970، ووبس
1954 النشأة حكمت محكمة الاستثناء بالدعاية الحكم المستند، ومحمد، الأسند
وأدت هذه النذرة في تركب

زوجة المرأة المذكورة واحتياج الطالم، بما في للأول، نتيجة، ثم تكز
PROPERTY AND LOST/STOLEN PROPERTY IN A HOUSE IN ZARKA?
لم تلمح إلى أن الزوجة الثانية، عادية أخرى فقط، وظف عاطفًا في هذا الحكيم، بل هي
النقيض. وقدرته على البينة العامة المذكورة أبدع فيها الرأي، في بنية المصلحة، السياق، 
على هذه المحكمة، حيث مغيرة قضاة، بحثت تجديدًا لدعاوى، وتبنيت المبادئ، النشأت، وربما، 
وحي أن الدلائل، أين على تحليله، أساند نفسه، مبادئه وحقوق، يكفل أن الحكم، 
فيها قضى فيه من إخبار الولد، من وراء السؤال، ثم خلاصة، أقر النظر، بأمر، 
والوراء رقم 126 لسنة 1984 الماد ومن محكمة، سند، بناء المبادئ، المتبعة، 
ذكرا اسم الولد الكثير من بين الموهوب، فإن كان ليزا، ينعي، اشتراقب، 
لمادة 133 من لائحة المحاكم الشرعية، وادعى الحكم الداخلي، في هذه الحالة، 
بعضها على غاية ما موظفيه، دون أن ي عليه، بسيطة، في حالة، 
تاجيك القانون.

وحي ان هذا النص، غير محدد، إلى جانب، من الطرقية، وراء هذه المحكمة، 
ان حكمة الاعلام الشرعي تناولتها لدرجة المحكمة، 366 من لائحة تجابهة المحاكم، 
الشرعية. يحكم من المحكمة المختصة، وهذا الحكم كاميرون، بما فيه الدعوى، 
التي جرت الانتقادات، فيها بعلامي الشرع، يرجح أن يكون في دعوة، في الحالة، 
التي أصدرت، سند بناء الدعوى. نازعه، 100 من أبرزها، بعضها، 
فيها رد خلاصة، والاعلام الشرعي، الذي مدركها، على احرازات، قسم، 
بعضها على وجهات، أدركها يجب أن ينعيها، خصوصًا، ويعمل، إلى التدابير، النموذجية، 
لما كان ذلك، وكان الحكم المجمع، فيه تم تذويج، زواج المواد، 
صل بين وثائق، وذلك خلافًا لما بوري في الاعلام الديني، رق 1000 منه، ذكر.

النوع بورا الحس على غير سلـ:

ويستناد الداعم إلى البيانات النوعي والثالث على الحكم المزعوم، فيهما.

الخطأ في تطبيق القانون والсад تجاه الادعاء، في سبيل ذلك، فقد تجاوز

لم يحقق على شهادة ماهية والرجل، وأولاده، وان تعيينه لـ4،

يكشف في حين شهادة الأولاد، في زواج رابط الرضا، بـ1.4

الصغر متعلق في الطريق العام ويبقى إلى مركز الحرية والتقاليد. ويشير

المهنة الكلة إلى أن الحكم المزعـم، في استناد في قضاية: 7-

الصغر لا يعفيه وقواته تم تدريبه بـ5، ونفاذ عند بـ1، وبـ1،

المجلة جوازات في الحكم المزعـم، في استناد في قضاية: 7-

وضع وأخذ في جميع مسائل الميلاص. ليست حياء في أثبات: 7-

تم إدراشه عليه و بيانهم في الدعوى، ماهو تأكيد بالأمر، الرسوم المقدمة: 7-

الملك والمذكرة وخلو من الحكم المزعـم، والتفاوض المدام، همـا.

الرجل في الربوع السفاحين محذو الجنه، كما 79 السفاحين من عـا-

ياء، وعين هذا الولد في متعامل وهو ما يفتي الدخان السبب في المذكرة،

الحكم المزعـم فيه أن استناده في تدابيره، إلى في دابية: 7-

العمل في الاسترداد.

ويستناد هذا النص، مريدًا، ذلك أنه ما كان من المقرر في دابية.

هذه المحكمة أن النبي في جانب: واجي، بالنزول، ما يليه بـ1، وإلا: 7-

في تدابير النبي، في شهادة رجلين أو رجاء. وأهمال. ما، و، الحكم المزعـم: 7-

لـ.
على وقع مقتلين متهمين اخرين نع نجتهم والذين نع نجتهم أن نومنا القضاء. كان الطابع الفردي في تشييعهم في القضاء. الأول، ربه، نجبت، في حسبته، ومات باليك.

على وقع مقتلين متهمين اخرين نع نجتهم والذين نع نجتهم أن نومنا القضاء. كان الطابع الفردي في تشييعهم في القضاء. الأول، ربه، نجبت، في حسبته، ومات باليك.

الولد معتقل لأبيه العقلي، وفر منه وتم دعوة معتقلة في حسبته وحده ما لمساكن القضاء فيها والولد النصي السмаг لكل حاجة تخلفها. فكان تنبيه الداعم للحكم في إحدى مدعمة أخرى قوامها الإقرار النصي للعذر، ولابن وافر، إلى أن يكون غير ترجيح.

وحي التي لما تقدم تعمد رضوان الداعم، لذا...

وفدت المحكمة الداعم، بلا卖场، إلى المحكمة، وبناءً عليها،رزق: 105

 Grip التي المحكمة.
CASE STUDY NO. V.

Case concerning divorce on ground of 'ayb; no. 247 in the general list, Judicial Year 104.

Case documents:
(i) Subpoena

(ii) Written defence by the appellant.

(iii) Opinion of the Niyābat al-Isti'nāf with regard to the case

(iv) Court ruling (Maḥkamat al-Isti'nāf)
محكمة استئناف القاهرة
الدائرة الأولى
للحول الشخصية والولاية على النفس
مذكرة

بداية المد / الأربعة

مذكرة

في الاستئناف رقم 147/148 في والمحدد للحكم فيه
جلسة 15 حيثومنة 1982

المواضيع

ارتفعت من النكار وردت تعديل بحثة الاستئناف وحل البضائع بها طالباً على وقائع الاستئناف
رأى النكبة التي انتهى إلى طلب تأييد الحكم المتناقض في النحو الوارد بالمذكرة

العنوان

نص مذكرة على ما أدبه بذكرة نهاية استئناف الفاعل للحول الشخصية والخادمة منها بجلسة 1981/1 وذلك في النحو التالي:

أولاً: امتزجت النكبة بذكرة أخرى بمعتبرات مكملة على المادة الثالثة من تأمين الموارد
والذي تDbTypeها أن لا يوجد ولا نجد غير ملمعية الديمة هنواً من طرف الداعي ويتم بالذات
النفاذية العملية التي عمالة على رفع الدفع، وفي هذه النكبة تنتهي سلاطات النكبة من
الانطلاق بتحويل لا تأدياً على أنها فيما سبق من مادة أو كمية 1982 ود أوضحت مذكرة النكبة
الخادمة التي يبدو أن توفر في الساحة لا يتم الدفع، يعده:

تاني: تكون الساحة ورخصة ملهمة وهو ما يتبينه بالرغم - يتضح هذا الشروط في

الاستئناف الدائم:

تنتج أن زعيم المد للعدم الذي لم يغلب وال يكون يخلو بخلال سماحة بالذات أخذها
وفقًا للذين تبين له أنها مفيدة جدًا، وذاتها انتبهت ذلك جبل التارين
كما وأنها تلبس لها أسلجة بالمستقبل للمحاكمة الفنية في الولايات المتحدة الأمريكية
لتمازيد سماحها للحصول على درجة الماجستير 1982 وهذه النكبة المكملة وجال طليها

كذكربينات خطية المائدة والطعام

وتتم أخذ المكاسمة هذه النكبة المادية سيكون أثراً بها على الساحتين والأخيرين.
عائشة النصر

الموضوع

1. أن تكون مصلحة نافية، أي أن تثبت الدعوى من دعوى آخرين، بحيث يكون الفائز من
الدعا Há día هذا الحد العاطفي الذي يكون المصلحة تقديره إذا نزعته
ما لا عدل فيه ولا يدلي اللسان إلا بجمال أن المستراينة مصلحة قانونية أبداً، فقد إن
الحوز الفعلي من حقهم الالتفاظ على حقهم في هذا الجزء و إضافته إلى من أشار
ويستدعي للإمارة واللائمة وهو المشهد في بناء المسألة.

2. أن يكون هذا الشرط ملائماً على هذه الدعوى؟

أو أن يكون ذلك يحقق ما لنا عقولًا؟

3. أن تكون مصلحة نافية إذا يثبت دفع حق دعوى اعتماد بالعمل أو

حالتنا نية تحقق النتيجة الذي يعرف بالاتجاه الى النفي.

أثبتت الحالات التي تنازلها المستراينة في هذا الذي يكون عليه خطأ ذلك
اللائمة، ولم يثبتها إلا بعد المدد، خارج عن دعوى تبرير المستراينة وأصر مستملا
الحجة للإمارة التي تؤديه على هذا النوع في تنفيذ قرر الزواج بالدكون بالسيف
فقدها.

وللأسف، فهذا النوع للدكون في نظر النفي لا يشكل ضرراً فعلياً، إلا أن أو
الخاطر، cắtحت نفسي الزواج تجربة الدعوى، وذكرت ذلك في إثبات حالة النيابة.
والتي نحن بعددها وانتفاهاً مصلحة الزواج، بل قرر في مصلحة زوجيها حال حياتها
وقد لابنتها على دائمة النفي في جملة هذه الحالات، والبنا بها، بينما الاستناد إلى
هل الزواج، في حياة المرجعية، والملف والليسان البنفسية

1. أن تكون مصلحة نافية، وأن يكون تبرير الانتفاح في هذا النوع، فليس الفوز
بغير العقل. وهو ما يجب أن يكون في مصلحة نافية، وأجال أحوال الدعوى، ولو لم تكون مصلحة نافية وذل
في طالب من الدعاوى.

أو أن يكون القاضياً الاستناد لحقه على تولى الدعوى، حتى إذا أخذت الدعوى بحث أن تكون
الملحية مباشرةً، لذا المناطق الدعوى.
لا يمكنني قراءة النص العربي بشكل طبيعي.
مكتب المحامي

القاهرة

المراد في بيان الزيان من أيته خيراً بالغاً إذا ما أقدم على طلاق زوجته (ال🌟🌟🌟
فدها) ١١٧١١١١٠١١١١١٢٠١١١١٠١١، فهذه الحالة مبينة ه١١١١١١١١١١١٠١١١١١٠١١١١٠١١١٠١١٠١١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠١٠ Savings and practices in the Department of personal matters in the case of the household and for the

علاه

بناءً على

ن-Jul

البضائع من عند الحكم بقبول الاستثناء شكلاً

وفي الموضوع باللغة الحكم المستأنف والحكم بطلبات المستأنف المؤزرة بصحيف الدعوى

المستأنف حكمها بحذف كائنات ألسنتها بسائر النوايا،

وفلاكم الله والبضائع تتسامى وأولكم محبة المسئول

وكيل المستأنف

المحاس
نوايا استئناف الممارسة
للإحول المخزي

ذكرى نوايا استئناف 1986
في الاستئناف رقم 124 لسنة 1986

البرقوق:

واخر

جلسة 2

1986/1

من حيث أن المستانف قد أقدم استئناف صدرت حكمها طالباً اتباع قانون الاحيان الصحي...

النفي للملحق عليه ودم صاحبته لتفادي عقده الزواج واللزم المدعو عليها

بان يکفده ملاشه على الدعوى ونال 200 ريال دونه أن يوجد مساعد زواج

رسوم مدرة 1986/2 يوجد بالملحق عليه وبعثت به السبب من عقدت العريس

سنجو الاحيان التي على مرضية بالكلا يان된다 ووكاله انها تقابل

في إحدى الاحيان الطبية بالولايات المتحدة الأمريكية وقد استفادت وذات تطبيق العناية حتى الان ونا

ويقد ذلك كله الإجازات الطبية الطبيعة التي تعمل عليها من الجنا والليا

ملف الدعوى أفضّل فيها بالانضمام إلى اندور أكلة للسياسية والاقتضى التي تمثل

بها في استئناف قد التي بحث في الدعوى الخاصة و dbname مثنى البحر

الحالة المرضية وقد لاحت الدعوى هذه الحال مؤثر وذكى من شريحة، الحال

حيث تابعاً حالات عدم الإحساس بدخان الموجودة بجوه وعدم قابلية لتناول

الصمام ما ينتج عنه نوبة القلب و هذا بالظاهرة التي كثر تناولها للهدوء والتفاقيف الطبيه ما يحقق معهما دعوى بناء على اناحال الدعوى على الوضع وذكى بحالتها

الطب الطبي لتغير حالات الطبي للحالات المرضية من نزول الزواج على

يصفه بتشديد ملف الدعوى عليها بيان الحساب حيث للمعطيات للملايين المرضية

الطويل والانتظارات التي تتم محلها وما من الجمال حتى من التدريين

وقد تأبى الدعوى فاعظيته مستندات حريات على رفضه الزواج بإلتئام عليها
وجلسـه 20/2/1982 - 132 - وقيل اليد على، بعدم تباع
الدمو. لتخلف ركن الصلح، التي يحمها القانون، وتخالفه، الطلب لا حكم
الشريعة. ودعيتented مذكورة طيبتي خاتمها: أحكم اليد على، للطب الشرعي
لبث حالاتها والاستمرار بانتهار النبهاء بعضها: لحكمها الصدية والعودة
ملغ خدمة، بجبه عليها.
وجلسـه 27/2/1982 - 132 - تغذى خذتة ان، دوجـة حضرية بعدم قول
الدمو. لانتظار، الصلح، تأتي على أن، إياها بيد، اليد، ليشل شه هذه ملحـه
قانونية، تركز على، أو مركز، قانونية، يكون، المر، في الدمو، حاسة
إلى أن، وفق اعتداء، وني الله، أو ماضي على هذا المركز، أو الحق ما تنفتح معه
صلحه اليد في دوء.
لم يرئ المستانف هذا الحكم، في النصف، عليـه، باستثناء المثال، بحث، كـ.
في 1982/3/11 طليـي خاتمها الدخ، الدعـي، المدان، والقاضي، لن يحل لطبارها الورد،
بحث نـي انزاع، الدعوي، في، ونجم، المستانف، على، الثاني، يرتب ورس
استنافـه، على، طالع (1) الحكم المستانف، جاء، حجـى، المستانف
لمخالتك، الدارخـه، لصحيح، الواقـع، وداني، فيما، في، كان، كان،
3 موفات، من، vows، لا، ولي، السلم، لا، بها، فيها، ونها، وراء، عنها، وأن، لولا، ولن،
بغير، ملحـه، إذا، المصالحة، محتاج، الدmeta، وتصـب، وغيره، أو، وبد أختا الحكم
المستانف، فيما، قضى، به، وعند، عدم، شبه، وفاء، الد، و، وتعزيز، يخرج،
لائد، حملات، الدعوي، كـ، من، المستانف، هذا، تحت، ظل، القانون، 100
(2) أختا الحكم، المستانف، عندما، تم، من، الذن، نفس، رفض، بانتهاء، الصلح،
دوران، كـ، المستانف، ضدـه، هذا، الدفع،
ويحي، أن، الاستناف، قد، أقيم، في، البيـاء، واستمر، ونها، الذكرر، قانون
فمن، فهو، تبـع، لا، إـ.
وجيه، أن، الديان، الثالث، أي. من، تأثر، الدعا، عابا، إلى، أن، لايقبل أي
طلب، او، تفعـي، لا، تكون، لجاـب، عليه، ملحـه، قانون، تأدي،

ذلك نكتي صلحنا السمح، إذا كان الزوج ساد. له أن يبتعد.

والقاضي الذي تنص عليه هذه المادة هي من إنسان لا يطلب السلطان به في

الشروق والضوء، يتعود عنها بالله من دون رجوع به. للدعاوى. أما في ناحية الدعاوى

وقد يستحق القاضي العاليم الذي ندمته على دعوى فلا تقبل طلب هذه القذائف تنظيم

ختام من الإيداع بدعوى لا يقبل طلب خادم. ولله عاقبة متين، وله خداس متين.

هنيئاً

(1) لا تكون مصلحة قانونية في إنسان وهو حسب أو مركز قانونى، يحيى يكن الفوضى

(2) إن تكون مصلحة شاذة، وهو بارع عندها المراقبة بوصفها في

(3) إن تكون صلحنا قانونية، خاطئة، فإن تنفيذ الدعاوى أو المركز القانوني الذي

يفقد حاكمه وخذل الدعوى، ستكون النافذة في سلطة,

هناك في حق القاضي القاضى الذي يثير اللامع، إلى بينته، للإنسان، للإنسان، للإنسان.

بضائع ملء طبقات زوجها ابنة حلاق، نحن إن لم يقرر، ولإنسان للإنسان.

بضائع: (4) استناداً القاضي الساحر، أجاز الشرع قبل الدعوى، وما يعنـ اصل

ثاني، وذلك في طالقين من الدعاوى الأولى التي يحكم من التراويح لا الأحياط، في

خضير بعدن والثاني، الذي يزيد شرع أنها الاستثناء، في جزئه ديله

عند التشريع 3000. ومن المقرر أن صلحنا السمح، في مناطق الدعوى حيث لا تقبل

كأن الدعوى غير قانونية (الحذى على تأثير الإلهام) لحذ الدعوى، الدعوى، وحاذد

هنا، حق القاضي القاضي ليس عنوانه من 1962. و11، و11، والمقدمة على الأداء، 2، موانع 2

(جلب 27/2/1968، في 14، 1962، بالخبر سابع، 20).

وقمنا فتح حكم القاضي، أن صلحنا، بعدما لا الراداء، إلا إذا كان خلق

لا توجد عنا في الدعاوى الثلاثة. من تأثير الراداء، إلا إذا كان الخلق، من الطلبات، 1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9 + 10 + 11.
وطبيعة الاستنادات لحق يخشى زوال دلائل الأرتلا بما...

(تقرير جلسة 15/1475) في النقل، سنة 1475 الهـ

اليه بمسرعة الساقين 21.

ويخطئة لما كان متفقد واحترام الإيحاء ما سأبى البيان على الوعو...

البائيه فلبيتين علم ان بيكون تアー احكام الفرادة بباباد اللائحة في قانون الواجه.

من عليها أن ان يصلح يجوم الصيام لا يكتم الي، يعني، يحظر.

اذا انتقد حتى بفراش وسقى بقائتم وسأبى، لا فثار حول حق طلب...

الخرى لنسيب على الزوجه نحن دون الزواج، الذي يحل الخلط دونها برفع ان ينادی...

ليا وحدها حتى بفراشين تعزب، والرمل من سباقها، بينها 11/10/1919.

في الإسلام للدكتور نور الدين فيز، تناول تصحيح ف מחكمة المسألة.

س 1919، إذا أتى إلى ما جاء في تحقيق ان يخلي على طرق أن المستحب...

يوجع الله على زوجته المستحبة، بما في ان 1/10/1219، حيثا، وراء...

وفا لبي هيئة العمل بالمجلس باستثمار ورد النبات 280 من اللائحة الشرعية.

وحيده أن لنا كان نظام في الحكم المستحبة فين بعد قبول الدعوى...

لاستفاء الملحمة فانه يكون قد صادف مناجم القانون ونظام التنهج...

النحو الملحمة كبا يجمعеры منه أشياء لا سيما لا ليسن اسبا بالاستناف...

ما يخبر من هذا النهجه، وربنا الى أن عام بأسباب الاستناف ف...

من أن نحن أول دقيق، قد مسنا ثانيا، نذكها، ونقدب الملحمة...

هو امامي، يباجي بالابزه ان اثناء، مستحث جلالة...

ان ركين المدة عليها -- المصالحة --، قد دفع بعدم قبول الدعوى لتأخ...

ذكر الملحمة

لذا...

ترى التلبية العامة الحكم؟

قبول الاستناف، مسالة...

ورث -- مزايا --، الحكم المستحبة.
 باسم الخبير
محكمة استئناف القاهرة
الدائرة الأولى للأحوال الشخصية

حكم

بالجلسة المنعقدة على أسرى المحكمة الكائين مقرها بدار القضاء العالي بتاريخ 22 يوليو 1941

رئيس المحكمة

وزير النيابة

حضر الاستاذ/ أحمد د. إبراهيم سليمان
حضر السيد/ حسن إبراهيم صهيب

صدر الحكم الآتي

في الاستئناف المبرم بالجدول المبين تحت رقم 1947/499

النظر في:

المحامين:

حضرته في الجماعة الأستاذ/ المحامي من الاستاذ/ المحامي

المبرم:

القاهرة

القاهرة

استئناف الحكم الصادر بلجسية 1947/411 من محكمة الجزيرة الابتدائية في الدعوى رقم

1947/411 أحوال شخصية من الجزيرة

المسند:

بعد ساع المراجع والاطلاع على الأوراق رأى التدقيق بإصداره تأميناً

من حيث أن وقائع الدعوى تحمل حسباً من أروقة والحكم المستأنف في السناتور

/project_61/claims/912719383/3785629358974_2.png
الحكم بذل جلالة الملك على الأولى السجية، ثم صلحتها لتنفيذ عند الطلب والزراعة بالصرف والقبض ليدفعه كاملاً، والزكاة للصيادين، وإلا للحث على أن يدفعه، وعلى ذلك أن يدفعه. 1887/7/27

الملف نفسه على الأولى ولم يدخل ولم يخطر بها، جلب عنها صحيفة وأيضاً مرفوضة نقية

وتبقيت صحة أثناء إدارتها للحصول على الهامش بالولايات المتحدة الأمريكية وكذلك تحلل بعض الصحفية فيها، وإلا فإنها لالت، لأن يوجد ذلك كرزة الإجازة الرفعية.

الطويلة التي تتحملها المجلة والثابتة على النسخة الأولى أن اثقلية البيفتاء والعادته التي تعمل بها إلكستاد، وذكراً، بسحب جدول التدريس الخاص بها وتعمد من التدريس لحلالة الرفعية وقراً لاستعباطاها هذه العادة، وقرراً في صحة الجملة، فعند

تبقيت حالات عدم الإحساس بالأماناء الدروز في بيانها وحدها، وعمد قابلتها لتناول الطعام مأجوج، عن تحالف غير عاده بالإضافات، إلى كرزة: تزاي، المذكور، والخطير، الطبيبة، خشوفاً من اختصار

الملف على الثانية يكتب للإمام به بويع، المشهود، يذكر أن الأولى لبيان السحب الحقيقي

للاجئات بالمرضية الطويلة والنضالات التي تصل إليها، والسينابين من أجل حرية من التفريض وطلب مما سبق الذكر، والباحثين للطابع، وموضوعها، بعد تجربتها، للمجلة الدروزية، من المحمية، ولا يوجد، بعد تدوم

بتكلفة أفصل الدعوى بالجلسات، وقريباً، من المحمية، ولا يوجد، بعد تدوم

من القتلة التي يحويه القانون، وتحلق الطوابع، بها لا لاحظ الدفعة يقيدكم التبليدة

برزتها قضى محكمة أول درجة حضورياً، بقرار، 1887/7/27، بيع، في الدعوى لاضطرال الصلح

والملف المحمية بالصرفات وبشرة جنود، تأمل اجتماع المحاكمات على اتفاق صلاحي الدعوى

إلى دعوى

وحي أن الحكم ضعف لم يرض هذا الدعا، فطلب على كليه، بالاستناد إلى دعوى

الكتاب، وردت تحت رقم 244 في تاريخ 1887/3/11، وعلقت تأويل طلبية خامس الأحكام

يتحلى الاستناد، من الموضع بالغنا، الحكم واثقة، أن الحكم تم الاستناد والحكم بالطلبات، والرد على يحكيم، من حيث الانتقادات، ويجتمع الانتقادات، على الأولى بالصرف، ويجمل انتجوع الحفاظ، من الدور، ببعض الفقر، حقوق الانتقادات، الأخرى، بعث

إدعاً أي الانتقادات، عليها الأولى لأسباب، سماها 3 إجابات الحكم، الانتقادات، القول

لخالقته، يرضخ له القول والثاني، نية تقد، به توجيه، ثم، ندم رأى الدوين، وهي أشبه بإجراء

تحظى لمسة إصلاحات وفق، دعاي كبد، من الانتقادات، عليها الأولى عهد تحول ظهور القول، 3 خلاص، الحكم الانتقادات، تعديه من ثلاثة، نداء رسول، وعهد، وانتباه، بانتقادات، العمل، دون أن يتبين الانتقادات،

15
لا يمكنني قراءة النص العربي الذي تقدمه.
CASE STUDY NO. VI.

Case concerning ṭā‘ah; no. 428 in the general list, Judicial Year 100.

Case documents:
(i) Subpoena to the appellee by the appellant wife
(ii) Ruling of the Maḥkamah Ibtidāʾiyyah in this dispute
(iii) Opinion of the Niyābah Āmmah with regard to the demands of the appeal
(iv) Court ruling (Maḥkamat al-Istiʾnāf)
Case Study No. VI

النوع:

الجهاز، على طلب السيد/...المقدم

الاستاذ المحترم.

إنه يحفظ

أعلى مقدم

الاستاذ المحترم.

العاصمة.

الجهاز.

نُقلت إلى مساعدة:

السيد/...المقدم.

تم التوقيع معها.

واطئضه بالله

الحكم السابق:

المنهاج، بتاريخ 17/7/1411 هـ. بموجب أمر

نظام العدل، رقم 171 من السنة 1411 هـ، من الموافقة

على أي القضاة في المصلحة.

المحادثة المحكمة - حxon.

أعمال المحكمة.

واطئضه بالله.

توفيق:

يُحدث بسليمة أودع ثم كتاب المحكمة.

وامتنعت المحكمة.

وأطلقت البستر وشدة من 1411/07/22.

المحادثة، بعد الانتباه إلى الشعوب المعنية.

نظام العدل، رقم 171 من السنة 1411 هـ، من الموافقة

على أي القضاة في المصلحة.

المحادثة المحكمة - حxon.

أعمال المحكمة.

واطئضه بالله.

توفيق:

يُحدث بسليمة أودع ثم كتاب المحكمة.

وأطلقت البستر وشدة من 1411/07/22.
لم يصرنا على اسم التاليم وثبت هذا بحاضر الجماعة بجلسة التحقق:

لتين: 1. قرت المحكمة بحجة الاعتراض أن المصليم التاليم كان يتمتع بغير منجع الحريات والتنزه. إن حجته كانت مزيفة وما دمرها ولم تثبت.

 medidas ما هذه الوثيقة انتقد كل من المصليم المبكر للشمامود، ولعب دورًا في فضله، حيث كان له دور بمساهمته في التماس القلم بين الزهريين والسريعة.

 وخصمه، ثم تبعت خشية هذا الأموال الذي يبحثه له عرض.

 الموطن من قلق محكمة أول درسي لم تستقي أيه:

 الأسقف، حيث لم تتسرع بالحكم، والكاذبة له، بما أن:

 تلخصت إلى أقوال الله، وهو، ولعب دورًا في ثقته، للاستفادة من هذا الأسقف لسائر المسلمين، ومنطلقة من محكمة أول درسي.

 حتى تخلصنا أنا اتزاوا ماء، جامع، وبرحمكم:

 إذا كانت له المحتجزات، وتناسى من كل برحمته، فإنها:

 الأسباب والأسباب الأخرى التي تهيدها الفضيلة بالشهادة، والذكارة.

 بشارة علمه:

 أدناة المحترم الذي، انتقلت إلى ح喹 أعلنت استئناف ضد، هذه الاستئناف وغلبه بالحضور أمام محكمة الاستئناف، لم يتم بعد.

 العالي بشراة 26 يوليو الفالسفة، وذلك بخدمة التي تمثلت فيها طريقة بعض المؤسسات، 1885، من السنة التي، أطرف إصلاح الدائرة، وليست ذلك لبضع السنين ضد.

 تقبل الاستئناف دنيا وقرن، بالفعل، جملة أول درجة رقم 221.5.
طلب من كل مسلم أن يحرز وترى النزاهة والصدق في الدعاة
ولتحري بطريقت معينة يحترم نزاهة الدعاة.

السؤال: هل يمكن أن نعتبر الدعاة جزءًا من المجتمع؟

الجواب: حفظ كمامة الحسناء الناشئة على مر السنين.

الجواب: ...

(الصورة متموجة ومتلفة)
سياء النسيم: المحكمة

البند: 1

بتاريخ 21/1/1982

وزير العدل

Rejecting the appeal, the judge has decided:

- To reject the appeal of the plaintiff.
- To accept the counter-claim of the defendant.
- To order the defendant to pay the plaintiff the sum of 200,000 Syrian pounds.
العاجل الحمد لله نانتفية اللهانية رقم 1158 منعظمنة
ولشعبنا كل عام

وإنما هذا لبناء دولة مدنية ووقاية للامة من الأخطار عندما كا حكم
بليغ الله إن الله دائماً كنا نعرف أن الناس إن باعوها وهم
وقد أعناه وما أنجبنا في الناس لا نعدر شئه فلتباها

流域 الإقليمية

أو ببساطة الشعوب الأخرى نشرت الحكمة جيراً جيراً
للحكم بعيد دار الدين لم يشأ دخن في علم وذلبت
بالإمام بن之作 السليمان، تكلموا الأثاث بجنسية

الموضوع الإقليمي

ليس للشعب الإقليم بذكورة دفاعه

يبذل الحكمة معه لا يمكنه بعد عوفها العلوج والمعروفه

ينبغي أن أنواة الحكمة يوفر على هذا بإسهاده ناعسة المعرفه

في غيأ سوء مراعي الآلهة عليها إذا لاحوهدومن في حكمة الموضوع
السلطة المجيدة لن بادرانا اليوم، وتقدروا التقدير الذي تبنيه
الله وانفراداًǒ، الحكمة التي نراها وبين اثنان الحكمة والاحياء
تنحب بوزن الاعتبار، نحذرو ما عن دلل الدعومنه دليل آخر في

اعترافينا

وحيت أنه في المسؤولية فبلغ بعضاً من خمس الدعوى حال مفهومة
رقم 1158 من المدحنة والمساحة رقم 184 بأعمال المبادرة

علي أمر الحكمة

(7)
اتخاذ الحكم في قضية الكنيسة رقم 1108 لسنة 1921 (أحوال مالية)

ظهياء السبب:

حتى الحدث، حسب(IB)، رفض الاستمرار والتزام المعروف بالمسروا. وبناءً على ذلك، منح民国 أن ينصح المحكم:

إلي المستمر

[توقيع]

[توقيع]
مذكرة التدابير العامة
المستند رقم 18 لسنة 1980
الموضوع: ضبط النباتات

تاريخ 1/1/1980

مرجعًا إلى السالفة ذكرت النباتات، فإنها تشكل خطراً على الصحة. بناءً على
القرار المؤرخ في 1/1/1980، وتأتي بهذا القرار، فإنها تُزَيد النباتات.
حسنًا، في المدة القادمة، يجب على جميع مكاتبها، ويبتكر من جميع المعلم،
وأنه يُنحاث إلى في الطاعة. وإذا تعترض أي
انذار الأمانة لمسارب: 1
(1) النباتات سدده، دائرة تنفيذها في البضائع والحرف. (2) داب السائحة ضده
على ملاذاء النباتات بالازدياد، معتمروه، غاز، وأيضاً النس (3). تريد السائحة ضده
النباتات ضد، بعد نمطها، وتكتيكيها، (4). قام السائحة ضده، بتحديد
مستندها بما استشرها أخرى، مباشر، ضده.

وقد تم اتخاذ التدابير العامة في سنار حدداء الإدارة المعنية بها بتاريخ 1/1/1980.
وبتاريخ 1/1/1980 فقد دونه أخرى، في مؤسسات الشككون، مثل النباتات،
بها الحدود الانتقادات المتبعة، بتأكيد طرق الاستخدام، بما في البيئة
أن تعتمد صادقة على نفسها، وسادة، وأنه يتأثر بها عبر موقع الحفر
وتحت للتعتمد صادقة، بين ذات، ذات الظروف.

وقد لدندن الدلائل، في حلقة، السائحة من ناحية والنباتات، وهما تؤثر محمد،
وبهذاقرر في البضائع أولاً، وطبر من النباتات، (1) كان، النباتات، (2) كان، النباتات،
النباتات ضده، وآمنها كأنه يستعين، في الولاء الخلاص الغامض، بين البدع،
وزيجها، كان يأخذ آثار النور، على جسم السائحة، فإن النباتات ضده، تتكو
له، محامل، زوببا، لدينا (1). إذا أخبره، أن النباتات ضده، كان يأتيها عبر موقع
الحر، والمسح.

وجد النتائج أنه بإدخال النباتات ضده، ويعتبر، بالخدمة على العمليات أكثر
شريًّا، وإليك، إذا كان، رمزًا، إذا أعلم أن النباتات ضده، قد يُعد
وزيرًا، ومساهمات السائحة، إذا انها، عبر النتائج، أن تأتيها بخلاف
الدليل، لجودته، ماناً أو كثيرًا، أو ما. 

أما بالنسبة إلى ما يتعلق بالنباتات، فإنه
المستند رقم 18 لسنة 1980، معتمد، بالخدمة على النباتات، نفناً، والعمل
لأغراضه، مع تقديره، لزيادة، وللرضية، النباتات، بأدائه، إلى منزل الزوج، ولا
أحياء.
النيابة العامة

لا يوجد أي نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
النيابة العامة

السيد / الباحث

بالقاهرة

وباختصار اسألته بالجلسه الاخيره الاستاذة/ المحامي من الاستاذ/ المحامي

(الموضوع)

استئناف الحكم الصادر بجلسة 1982/3/19 من محكمة شمال القاهرة الابتدائية في الدعوى رقم 2115 لسنة 1982 أحوال شخصية كلي شمال طاع

(المحكم)

بعد ساعتين ونصف وانتباه على الأوراق ورأى النبابة والمداولات

ومن حيث أن وقائع الدعوى تتحصل حسبا بين من أوراقها والحكم الصادرة فأن المحكمة

سبي أن استدعى أوراق الحكم بدل الحكم بحل الاستئناف في الدعوى رقم 2115 لسنة 1982 كلي أحوال شخصية نفسها

شمال القاهرة ضد زوجها الاستانف ضده بطلب الحكم بحل الاستئناف اذاعها بدل الحكم بحل استئناف الدعوى رقم 2115 لسنة 1982 بدل الحكم بحل

في طاعة والعدل لله في 23/6/1983 ومدتها 4 شهورًا مع لائحة عليها فيما وقاولا وتركها ببلاغة وانتهاء لله في غير موضع الحفر والملل وبعد استئناف المحكمة لتأديب كل من

الطرفين نفاذة الحكم التحقيق في هذا الخصوص فرضت المحكمة غرامة بحجة 1983/6/19

برفض الاعتراض واللغة المعتزرة بالحروف والراجعة 10 جرائم جنائية مقابل أتماب المحامين

ولا لم ترد المحكمة بدلاً من هذا القضاء طمعت عليه باستئنافها الأتل بالفسحة وأبدت قسم

الكتاب ويد صحتوا لسنة 1982/7/2/1983 وملحقتنا طليت في ختامها

[ملاحظات]

[التوقيع]
الحكم: تقبول الاستئناف، ومصونًا، وفي الدعوى باللغة الحكم المستأنف مع طابعًا على ذلك

عن آخر ورد: أن تكون، وعاديًا، فيما يتعلق بالمنطق من المستأنف ضده مساع

المادة بالداية، وقابل أصحاب المعاوضة عن الدراجين لصاحب محاولة اعتقلاً، ما يليها على

اعتماد المستأنف، فيما عليها بالضر، وإذابته لها في دعوى رفغا عن حالة في ذلك الشهير

الذي القاضي، والمحكمة أول درجة في ذلك في استباق حكمها، وكان يعتني عليها حالة

المستأنف للذاتي الشرعي.

يحدد تداول الدعوى بالجلسة: في الوعد الثالث بباحة قضاء محاكمة الاستئناف بجلسة

2/6/1985، بلغ الاستئناف، كما وقبل القاضي في الموضوع وإعادة الدعوى إلى جلسة

الدعا إلى الداده، إلى أن صارت المحكمة بتوجيه الكشف العلمي على المستأنف،

مساءدة مكيه، وهذا من أن المستأنف نفسه يانتيه في موقف الحرف، وعليه من طابع أو

يرفع وجد ف hoáها ايدل المدة تدراها 30 خاتم جنيبة على ذمة حماية، وإعادة

جلسة المادة الدعوى، وعليها، يتوافق ذلك في الجلسة الباعرة التي أقامها ضد المستأنف

ما بين توضيح، وتوجيهات، والToOne لجلسة 2/6/1985، وتسهيل الجلسة شطبة الدعوى

أضافت ماري 4 من الدعاية جزء من المستأنف، بموجب صحيفة أورده قلم الكتاب بتاريخ

14/5/1985، وجلسة 10/10/1985، أعيد شطب الاستئناف لخليفه، مستأنف المستأنف

بتاريخ من الراج، تجددت، بموجب أورده قلم الكتاب بتاريخ


82

62

1887/7/12، طلبًا للاعتراف من المستأنف المدعو عن حكم الإخالة للذاتي الشرعي

وجلسة
الزوال معاية الجنسية إذ كانت هذه المعاية مطلب الاحالة للطب الشرعي سنة 1982.

وحيده أن النيابة العامة قدمت ذكرى المؤرخة 20/6/1982 ابتدأت فيها إلى

الرأى بالمحام برد الطلب بعد الاعتراف باليادة: كان لم يكن في موضوع الاستئناف بالفساء

الحكم الصادف والقناع بعدم الاعتراف بإلاترا الطلب تبين الدعوى مع الزام الاحالة

ذبدو بالبارك من الاحلاب وقابل أتعاب المحامات كناث النيابة قد رأت بذكرتها

السابقة الحكم بقبول الاستئناف شكلاً

والمحاكم يقرر حجز الدعوى للحكم لجلسة اليم...

وحيده أنه سبق الفصل في شكل الاستئناف بالقبول.

وحيده أن الدعوى ضده باء الاستئناف كان لم يكن داعية

لما كان استئناف الأحكام الصادرة في سائل الأحوال الشخصية مازالت محايدة بالقانون

النصوص عليها في لائحة ترتيب المحاكم في المواد 327 إلى 327 بعدم اشتمال

اللهجة الباردة بالمواد 327 من القانون 162 سنة 1955 على هذه المواد في قضية

استئناف الأحكام الصادرة في سائل الأحوال الشخصية التي كانت من اختصاص المحاكم

البردية محكمة بهذه المواد التي ليس بها خلأ للدعوى الشك، وذلك فلا يلزم الاستئناد

إلى نص المادة 82 مريمات خلافاً لم يكن هذا الدعوى غير خالق على سند

سيء من القانون ما يجعله جدير بالرضي.

وحيده أن الاستئناف بعيد الدعوى إلى الحالة التي كانت عليها قبل صد الحكم

الاستئناف على ذلك بالنسبة لما رفعه الاستئناف فقط مادة 317 من اللائحة النفيه

وحيده أن المادة 124/8 من قانون المحكمة الدستورية العليا رقم 48 لسنة 1971

بجرى نصها ( وتزب على المحكمة بعد مستويته نص في قانون أولًا) وفازت

تطلب من القيم التالي لنشر الحكم "إضافة إلى مذكرات الاضافية ان الفقه والقضاء

(5)
قد استُغرق على أن مُؤدِّي الدعوى السابق دون تطبيق القص، ويعتبر
الدستورينص السابق لنفسه إذا كنت ماكدلك بالنسبة للالニアت
والعلاقات
السابقة على حد والحكم بعدم دستوريته على أن يستشهد من هذا الإشتيار
الرجعي الحقوق والارتكاكات التي تكن قد استمرت على اختصار القانون الماضي بعدم
دستوريته هو زمان بعد لم لا أثر له على الالニアت لما كان ذلك في المحكمة الدستورية
العليا قد أصدرت بجلسة 1985/5/24 حكمًا بعدم دستورية الدستور بقانون رقم
44 لسنة 1971 بمعدل بعدم إحكام قانون الآلهة الشرعية. وشر ذلك الحكم
تاريخ 16/5/1985 فان توجيه الدعوى السابقة أن هذا الدستور بقانونين
يتعين عدم تطبيقه سواء بعد نشر الحكم بعدم دستوريته أو قبل ذلك منه نفاده
على الأالニアت والوقعات التي تتسب النهاء في معظم محكمة القانونيين 25 سنة
280 من اللائحة الشرعية التي ا_Taskر نفادها دون اللائحة وليس قسم أي مما
الرسام قناعيا بطاقة التزقة لزوجها بالإبراقات الباردة بالقرار بقانون 44 لسنة
1971 المحكمة بعدم دستوريته والقانون رقم 1985 لسنة 1985 قررت هذه المسببة
العمل بأن رجعي اختصارا من تاريخ نشر الحكم بعدم دستورية القرار بقانون
44 لسنة 1979 أي منذ 5/5/1985، والثاني لايحكم بين الواثاغ
والالニアت التي تقع بعد هذا التاريخ 1985/5/16.
ولا كان ذلك الجرافي المذكور والطاعة محل الدعوى المستأنفة حكما قد
أعلن للسناة بتاريخ 1982/11/5، وكان الاستثناء قد قل يدعي بحالتها
الهذا المحكمة فانه يقل محكما بالقانونين 25 سنة 1970
5 سنة 1979 وارجع الآلهة في مذهب أبي حنيفة وليس في أي مما يلزم المستأنف
ضده في مثل هذا رقم بالطاعة ليكون على نهج النزاع أو القانونين إذ كان سابقاً
185
وحيده ترتيباً على ما سابق نان الحكم المستأثَّن وقد قصى برفعه
دعوى المستأثَّن يكون قد جانب الصواب تعينه القضاء بالغاء والقضاء
بعد الاعتداد باذان راطاطم
وحيده أن يُدخل في النيابة المستأثَّن ضده لخسارة الدعوى
علي بالمادتين ٢٨١ و٢٩٢ من اللائحة الشرعية
(( فلذ هذه الأسباب ))

حكم المحكمة:

حضورياً أولاً: برفض الدعوى المبدى من المستأثَّن ضده بإجبار الاستئناف
كأن لم يكن. ثانياً: في موضوع الاستئناف بالغاء الحكم المستأثَّن
والقضاء بعدم الاعتداد باذان راطاطم موضوع دعواه وألزم المستأثَّن
ضده بالمحارسِف عن الدراجتين ويبلغ ٢٠ عشرين جنيهاً مقابل
إعجاب المحاكم.

أمين الشرع
رئيس المحكمة

(٥٣)
CASE STUDY NO. VII.

Case concerning nafaqah; no. 746 in the general list, Judicial Year 105.

Case documents:
(i) Subpoena to the appellee by the appellant wife.
(ii) Court ruling (Maḥkamat al-İstiʿnāf)
Case Study No VII

بسم الله الرحمن الرحيم

امرأة بمصر

بناء على طلب السيد/ة

التهم.

发行

骷髅 المحتاجن الاستثناء

العذر.

المصدر في القاهرة

القاهرة.

ماحة محكمة الطبيبة الجزية قد انتقلت في التاريخ المذكور.

إحراز شخصية بكل

جنوب القاهرة

محافظة القاهرة، مخطب.

واستنتاج تابعة من هذا الاستثناء

العنوان

أقيم المعلن إليها بعد رجوع الطالب الدموي في 20 سنة 1885

أمام محكمة الخليفة الجزية للأحوال الشخصية، فقرر محيله أودعت تظلم

الكتاب في 27/8/1885 وأطلعت نقونا للطالب. وطلب من ختمها الحكم بالزام

الطالب ان يودد لبهاءة زوجته بانواعها الاربع فما في ذلك الجراح الخادمة

أمواله، بالإضاافة إليها مع الزواج المرتفع عقب اتمام المخالطة، وتالت

شراها، ونهاها إليها زوجة للطالب بصحيح المتعدى ودخل بها وصولها

مباشرة الأزواج وهي مل حسب وقع طالب للنوم.

وإذا الطالب اشتر من الاتفاق عليها دون موافقة أو تأنيث اعتبار من

1885/8/7. إذا الطالب يشمل محاسب بشركة سجلابين، ينتج م心想

بانية null جنية ثلاثية جنية بخلاف البذلات والايروت ومقتلى

المتاج، والثواب التي تقبل فيه كل اعضاء رزبه المدفوع据了解

من ملكه، لا ركز راجع ذات الاحوال القير، بطة الحجة مركز البلينا.
سحاج وإن الطالبة من تخدم زوجته نيحق له انضمام، وإن عقته الزوجة على زوجها نير ويدفع حسب مهارة ونهاة الباعة بالاتهام طيبة ودا، ولكن طالبها لم يجد.
نما رانته في ختام الصيحة إلى طلب الحكم بالطلى السالفة الذكر.

وتدارى الدعوى إلى الجلسة 27/2/1987 تعهد محاكم الاستجواب، وقررت المحكمة حجز الدعوى للحكم.
ثم اتجه الحكم إلى جلسة 27/12/1987.
فهذا الجلسة تقصد المحكمة في جلسة 27/12/1987.
والتاني للغالب لل.hashCode Chicago للليالى على النفس.
ولقد تم تدريع الدعوى لاحقةً حكم المحكمة القائمة لل.hashCode على النفس.
بذا نوعاً يتحت تئتم عام 1987، وصلت نعمتها.
وكل جنبة القاهرة، والتي تصدرها وتصل فيها وجلسة 27/12/1987.

حكمها الآتي:
أولاً: حكم المحكمة حصرية للدعاء على النمسا، على بيع النافذة.
بضعة قدرها 50 جنيهًا مبرورًا بلؤلؤي دمي وفق سند تاريخ
ثانياً: بيعنجر نجمة 20 جنيهًا، مبرورًا بلؤلؤي دمي، من ذلك التاريخ.
بتفادية المحكمة بكتابة الفرضين في الوقع، وتأمل ذلك بالصرار، ومحدودة
بتصبح مقبلات بتحاب المحايدة. وينفع ماء لا يملاً من طلب.
رحيل هذا الحكم بجزاء استثناء. وقد جاء نصه يحقق الطلب وأن حكم
المحكمة الإدارية القاضية في الاستثناء، هيئة لنظر الدعوى والإجلاسة قد
بمقابلة القانون ومن ثم جوز استثناء مع هذا الحكم.
والطالب يستنكراً بما للاستنكار
أولاً: من حيث المبدأ نأتي الاستثناء قد وقع في سبيل القانون لمبرة ولا شك
ثانياً: من حيث الوضع فإن الحكيم المستعدين واجب الاعتراف لما استندت
على إجراءات بطلالة وحالية وعامة لحكم محكمة الخلابة الإدارية فقد
استنادت
اصلة فيما بينهما مع الشروط: إذا الحكم محكمة القاضية الإدارية قد جلب
الموارد بالفصل في الدعوى حيث أنه غير مختص بالفصل بها لبد أن هي
ما دا في قضاه وطبيعتها تابعاً من الحالات المعمول بها في السادة
80 من قانون الرباحية. وكان يتعين عليها أن الاحالة إلى محكمة
الخليفة الإدارية الخاصة أصلاً بالفصل في الدعوى.
ثالثاً: ضغاء محكمة القاضية المختصرة بالإقوال غيرية للعالة المستثناها
طلبه دون أن يردنا الحكم أي دليل على ملكية المستثنى للعالة الأصلية.
ذات الاحوال المذكورة بالإضافة على ذلك أن الماء بن أوا جمع
دقيق لا يستثنى عليها وبركلها في ظل الزواج الموافق 1981/10/29.
ولا يوجد بشهادته محلة النجوم للتو لا تجوز مادة اوكل لي وكل
والتأتي جزاء لفقتها ورغم بذل المحاورة بعدم المسترنف
عليها التي تقدم مع زوجها المستثنى، جهاد ولا يوجد بشهاده أن
ال شيء الخروج بعد وقع المستثنى.
رابعاً: جل في حييث الحكم المستثنى على ما لايستثنى التالية العامة في ذكرت عرف
الموضعة 1981/10/29 بأعمال الدعوى عليه بأن يومي للدمة نفسه
وزوجة يتأثر ذاتياً اعتماداً من 1980/10/19 والذى تولد الحكم
هذا في حالة للعالة الإدارية والمباشرة ورغم أن القول بوجود
الدليل
كة أن المستأنف ليست آن حكمة الجالية الإمارة للحكمة التي أصدرت هذا
الحكم
خاصة: قرر أن الحكم المستأنف بأن يوجه للمستأنف
عليها غلطة مأكلا وليس لها 50 جنيهًا شهريًا اعتبارًا من 1/4/1980
فحين أن المستأنف علينا ترك طول الرجوع رغم ارادة المستأنف اعتبارًا من
12/5/1985 - سوف يقدم المستأنف لمحكمة أخرى
ساسا: قرر أن الحكم المستأنف بأن يوجه للمستأنف
خادر أجره 30 جنيهًا شهريًا اعتبارًا من 1/4/1985 لأنهم ينصحون
بوجّه وهذا الافتراض لا يرسى إلى جلسة الواقع الدموي
فلمكتبة لل иметь

والأعمال بالإخباري التي سمعت بها المستأنف جلسات الشروط والمذكرات
بناء على

انا العين سالم الذكر قد ألمت بالغلابه بصورة من هذا الاستثناء وофاتها الحنيف
المم حكمة استثناء القاهرة وقرى بقلادة العالى بـ 22 يوليو لمحافظة القاهرة
دائرية الأحوال الشخصية حسبما لها متعدد ملائمة بعد 115 لـ 1988
السنة الثانية مباعًا للواقعية وسلع الحكم بقبول هذا الاستثناء
غالبًا في الرسوم بالألبان والإحالة إلى حكمة أول رجاء يافضل في موضوع مع لوجاء
الاستثناء
ولا يشمل

(4)
محكمة استئناف القاهرة

باسم النهضة

الدائره الأولى للاحوال المرجعية

حكم

بالجلسه المنعقدة على سريال المحكمة القاضي مقرراً بدء الاستماع اعماله يوم

بولي بلافاهـ،

برئاه السيد الاستاذ المستشار / محمود حسن علي الدين رئيس المحكمة

وءضيوع السيد شهاب الدين / أمين وخطي سلامة المستشارين

زهور السيد الدكتور يوسف

وهدى السيد المستشار / محمد سليمان رئيس اللجان

وهدى السيد المستشار / حسن إبراهيم حمزة أمين المسـ.

سداد الحكم الإتفاقي:

في الاستماع ..التي أقيمت بالجلسه العلوى تحديداً 1072/5/10

المرخص:

السـ:

وـ:

ٍالlama

ٍالدامـ:

ٍاللماـ:

ٍاللاـ:

ٍالـ:

ٍالـ:

ٍالـ:
الاستنادات المعبر عنها بالحكم

1. 

الطابع المطلق

2. 

الدومي رقم 516 ع. 1988

3. 

الصالح

4. 

المعالج

5. 

المصادر وطاعته الوراثي، والناجية والمداولات الناقدة

6. 

عند معالج المحاولة، وطاعته الوراثي، وطاعته الوراثي، والمداولات الناقدة.

حيث أن الوثائق حسبما بين من الحكم المستند، فإن أوراق الدعوى تمثل في أن

الاستنادات جزءًا من الحكم المستند. حكمها يطلب الحكم ولا يوشح

الاستنادات. لوجود الاستنادات، هنا تنتهى لها بالوراثي، التي يدعمها

وامرأته بحاجة إلى مطالبة من الوراثي، وطاعته الوراثي، والمداولات الناقدة

إنها روحًا للوراثي، بحاجة المصاريف، وطاعته الوراثي، والمداولات الناقدة،

ولعل هذه وظيفتها وندع استناداتها من الوراثي، التي اعتمدها من

1989 ع. 1980

الاستنادات يفعل محاسب بوت بحاجة تدريس

1000 ج. بحاصيل البلاعات والهوازوت والثالثات

الجديد

وبلج. 1986/12/31

استنادات حكم الخانكة في حكمها حذفهم، بعدم

اختصاصها بما ينفع الدعوى، وإحالةها إلى محكمة

الاستنادات جنوب القاهرة للإحوار.

الدومي 12/27/1987 للفائدة، وجلسة

السروات. مرسومًا فيها في إدانته، هذه الدعوى على أن المدد، الوراثي،

الاستنادات. أنه قطع بسجلها 27/12/1986 في الدعوى، رقم 327

الاستنادات. في كل جنوب القاهرة، بحاجة استنادات قد دم من زوجها، طالب، للنظر

وأما استنادات بسجلها 26/12/1986/4/1986، أن حكم التشريع، ملهم، عليه بالاستنادات

ما ي تصفع بين المحكمة القضاة، بعدم اختصاصها بما ينفع الدعوى، وإحالةها لحكمها

استنادات جنوب القاهرة، تفر لنظرها علماً بالضوء، رقم 520 من قانون

وقد تمثل هذه الدعوى أمام محكمة أول دورة (محكمة جنوب القاهرة للإحوار.

الدومي 12/27/1987) وأصدرت محكمة جنوب القاهرة، بسجلها 12/12/1988/12/27

على الجدية على أولى بـ: بخذ البحبة بيخببها ماء والثوب تدمها في نفسيّة مملوء بها المدي على من تأمل الشهادة عن الانفصال الحاضن في 1986/4/11، ثانياً:

يفترض أن يتمّ نقله مدرّن بعد جسمه بـ: بخبو بها المدي على من ذات التاريخ، وتتمّ المحكمة بجاد الفوضيّ في الم伍اد وتلقيه كذلك. بالنفاذين بعليه جسمه

فقابل انتساب المحاماة موسى حكما على أن نتعدها وتمّ 23 من ذات المواقف

على أن تنظّم المحكمة المصالح البشريّة بـ: بخبو بها المدي، إن تنظّمها حسب

المال لدعاية بأمان من استماع المحكمة التي احالتها وهي وليّ اخطاءً

المحاسب بالاجهاد كما تتحّم المحاد الأول من الثانون 415 340236

وعتمد 4105/015 ذكره 1 على أن تجب التغية للزوجة على زوجها من تاريخ التماد

الساحج إذا اسفت نفسها البهامو وحكمها حتى ولهكات موسى أو خلقت معه في

الدين وتعتبر نفسيّة الزوجة بـ: بخبو على الزواج من تاريخ الشهادة في الانفصال مع

ولا تتخذ إلا بالسادة أو镫ا كما تتحّم المحاد من الثانون 415 340236

بالغانة رقم 41105/015 ذكره الأول على أن تنظّم هذه الزوجة حسب مال الزوج وقت

استحاثتها بـ: بخبو 400 الم

وبعد أن المستوحى لم بـ: بخبو الحكم المذكور قبله لديه فقد أمن عليه باستماعه النافذ

وبهجوم مجمد تدلّى بـ: بخبو كتاب هذه المحكمة في 41105/07/11 1898 نفي ختمها

الحكم يقبل الاستناد كـ: كوق الموقع بالغوجىصالحاً الحاصلاء إلى محكمة ابن درجه

لللسل في موقعه للأسباب التي حاسلة أن الحكين وجوب الدائبة لاستفادها

على احتراماً لـ: لب بالله له حكمة محكمة الخليل الجزيء فهي تتنافى إجابه نماسا

بـ: بخبو أين النهاية لـ: على محكمة الشهريّ الامله نقد جامعه السواب بالنسل في الدعوى

حيث أنه لم يختص بالفعل في الدعوى حيث أنه لم يختص بالنسل فيها ابتداؤها مادام

المفرّم صريح إلمها بـ: اتعداد نقداً، محكمة الشهري يلائمه الشهري بالألواح الشخصية بالنسل المرئيّ
للفصلي المشهود عليه دين أن ينتمي للمحكمة أي دليل على ملكه المشهود للرغم
النافذة ذات المحصول الوثبات بالذات على ذلك أن النافذة أي منهما فيتي للجهاد
عليها وكفلها في تفقد الزوج ولا يفتي بشهادة
والثاني يفتي

لختبئ

وحيث أن النبيضه الدانية تقدمت مذكرة مựa بن 11891/1111، أيدت الوداء فيهما
الحكم بقبول الاستئناف شكلاً في الموضع وردته وتبين الحكم المشهود والزام المشهود
بالاستمرار واتباع المحاله لأسباب التي ارتفت بها بذلك المذكرة وجعله الورث

حجزت المحكمة الدعوى للحكم لجلسة اليوم بتقدم مذكرة خلال السبع

وحيث أن هذا الاستئناف استوتن أوضحه المكلفة لتقديمه في البعد ومن ثم بتعسيين
تبليه شكلاً

وحيث أنه بالنسبة للموضوع فإن مانع المشهود، ومن السبب الأول من أسباب الاستئناف
من أن محكمة النادر الكلب في ممتهن، بالفصل فيها أن الاختصاص يفيد للمحكمة
الخليفة الجزيئية مرود عليه إذ أنه من المقرر أن المحكمة المحال البها الدعوى
تعلن بالإحاله وليست على نائبه خاصة إذ أن الدعوى الإجهاضية للباحثة رتبت

1942، تعرض بذلك، والزام المحكمة المحال البها الدعوى على تدارشها سواء
كانت المحكمة الدعوى من أهل الوداء، وفي ذلك حكم النقض فإنه لنقسم
1942/11/29 في 29/12/1891 ونقر على 1891/27/2/632، ولا من
السبب الثاني من أسباب الاستئناف والذي تلق فيه المشهود أن الشهود بين أصدقاء
دقق المشهود عليها والثاني نجع شقيقه، في هذا التلق مرود عليه حيث ان القاضي
ضره أن شهادات الإثارة مقبولة فيما عدا شهادة الأمل للоде، وفقه لاصله كما أن المستفز
عليه في فضاء النازين أن مجرد القروه الذي لا يعجب منه أو يتفنن على لصق البريد فيما بين الوجد
والشهود بأن يتمتع شهادة لابين فيها كما أنه علا بالأصل، رقم 34 من المرسوم

يأن تفعلا 31/1881 إعادة شهادة الاقتصاد في الجريدة 11038، 17/11/1410 الهـ.
ان محكمه اول درجه نفت بالنقض للمستند عليها بناءً على دليل مستجد من التحريات من جهة العامل المستند وعطاء شهادتي للمستند عليها بناءً على نتائج الأسباب التي اثارها

الاستند، فقد تغلب الحكم المستند بالرد عليه بإصابته حسبه وساقه وتعميم الحكم مكتبه لإصابته بناءً على معتقد نان الحكم المستند قد جاء صحيحاً للاحتمائه

إصابته نفسها استند إلى الأمر الذي يعين مفعول القضاء، ورد هذا الاستناد، وتابع

الحكم المستند،

وبحث أنه من الصواريخ فيلزم بها المستند حيث خسر استنداته علاً بالمادة 5

222 من المرسوم رقم 1931/68

* تلبي هذه الأسباب *

* * * * *

حكم المحكمه حديثاً بقبول الاستئناف دكولاً وموقف تزويره وتتابع الحكم المستند
والبحث المستند والموضوعات وثيق جداً بناءً على محابه المحكمة.

صدر هذا الحكم وعلى ذلك جلسه في شهر FOX /1931/1

لبنى المحكمة

رئيس المحكمة
CASE STUDY NO. VIII.

Case concerning compensatory *nafaqah* for a divorced woman; two appeals, no.s. 4 and 31 in the general list, Judicial Year 101.

Case documents:
(i) Subpoena to appellee husband by appellant wife
   (ii) Opinion of the Niyābah with regard to first of the two appeals (no. 4)
   (iii) Court ruling (*Maḥkamat al-İstīnāf*)
اطلعة عليه

ال محمود

لاستئناف الحكم رقم 2114/1982

من دكان على أبن عبد رحمان في الأزهر، وعليه المختار كتب الاستئناف

ال محمود بالتجديد بالفعل والدولي

ال القاهرة

انتقلت في تاريخ "النـذيه الأتام

السيد

عتمد عليه بالتفويض

استئنافاً لحكم محكمة شمال القاهرة البتيد بالاجراءات الشخصية للولاية على النقص.

في كشف 103 سنة 1982 الدائرة 17 شام الجرسة 220/1242

ال القاهرة برفق ببلغ 1800 الدفنتان جنحه صبي تحت مسواحه

الycopg

أطلعت المستفاده على الاستئناف ضد الدعوى رقم 2114/1982 بإحراز

كلي شمال القاهرة، وتلت شراً لها أنها كانت مزاجاً لsemblies العيد الشرعى

وقد دخل بها وأمرها معايرة الأزواج وتثبت منه على قرار الزوج السمح.

بينت تتم سماه لا الآن ينفع على الخمس وحرون فالأ وطب في خماص

دعاه الحكم لطيف نطقته، تقدم بحالة 10 عشر سنوات على المثل، وذلك

يطلب من الاستئناف لطيفه اللازم والاجتهاد المشروحة بعد رحيبة دعوى

السيد

1983/12

صدر الحكم الدوائي بنطوطه آنفاً

وحيث أن حكم محكمة أول دوري قد جاء بالتفاوت الطلب المستأنف

وبعد كل البعد من جدة الحق، والدروى الإلى الذي متبطن عليه
بيطريق الاستئناف للإسباب الآتيه:

أولاً: أن هذا الاستئناف قد قدم في المحكمة الأولى 1800 جنيهاً فناء وكافح جنح في فناء استئنافه، فلذاً ما أن قررت محكمة الاستئناف على خديخته وتم تقضي على استمتعاد آخر من ثلاثين طابعية دون أن تتأخر لحظة واحدة في تلبيبة إصلاحية وإيجادها واعضاء كافحة حفظه الزوجين.

ثانياً: أن السيدة كانت زوجة مدخلا بيا في زواج صحيح وإن زوجها السامورة ضدها التي ظلت تعاشره وساني، وتراجعت طيلة ثلاثين طما كان قد طلقها بتاريخ 12/12/1981 بدون رضاها ولا يسبب من قبلها في الوقت الذي أقتضت فيه حياتها في سبيل استمتعاد وبيت وثقات جانيه، وهو تقرير يعد بعد أن أصبح مثيرة دون ذوى الاعمال والمعارف والمزاينات بعد أن أصبح مثيرة كبيرة على مستوى الجمهوريه، وبعد أن كان لا يجد قوته اصبح دخله الشهري لا يقل صافي عن 1000 جنيه ماهي الدنيا من اشواق وعوارض أو إساعد كان يعمل رئيس حق بالشركة المصري لصناعة النشأة والكلوز بمرتب شهري لياقل صافي عن 200 جنيه بالنسبة من ملكية للمالرية رقم 1 شارع مكرى البيرة والتي يقدر دخلها منها شهرية ببلغ 100 جنيه، بجنبها إضافة إلى المتنر رقم 21 شارع البراد ومسار بحارة إسورة الشتاء من عشان الفناء وآلى دخله من كل ذلك لا يقل صافي عن 500 جنيه خصاً إلا من الجنيهات علاية على كونه للإعمال الثانوي وبيان والدهم الحوادث والعضاوات و الواجبيه وعضاواتها وكل ذلك يدر عليه دخله ويفترا ولا يقل

جميع دخله الشهري عن ذلك عن 2000 ماهي الدنيا من إضافه.

رابعاً: أن الطالبة كانت قد انت زهرة مثابة في فناء وظاء زوجها المستأنف طه، والذي طلقها بدون رضاها ولا يسبب من قبلها، وكانت تزن للزوجة المثالية وخلاصة الرعاية في ذلك حتى زوجها ويدعوها للرطامتها وخلاصة الرعاية في امر الله به بدون

مضمون
نما: إن لم كان من أمر تفسير التعبد ولا تعبير، وتعالى ضعفه على الصيف، وعلى المتنزه، إلى 232 من سورة البقرة، وكان
البحث هو نزاع الحقائق، حيث ارتقدت على المتشابه للматериал، بعد الدخول، أن لم تكن الترجمة أنها أو تسميتها، وهو قول: لمحمد
اختاره ابن تيمية، وعلي هذا واتفاق من الماء، في كامرون 44 مكر وبناء إلزام.

1279 مراعاة ضوابط هذا الأية، هي
سادس: (تولى المساعي والجهة لكل، مسحته، له، أده مال يعطيه
الزوج خلفة زيادة من الصداق لذا طلبت نفسها، وضعما لها من الأليم
الذي لحق بها بسبب الأثر بعينها.

ولما كان حكم محكمة أول درجة قد جاء بجانب للحوار، وربما عن جماعة
الحقوق، وربما في حق الطالب، وأن ما نصت محكمة أول درجة من مضمته
للطالب السنة، قليل جدا ولا يتتفت مع بعضه: دخل المستأعد، هذه وراء
الفاحشين كا لا ينتسب مع حدة الزوج، التي انت فيها السنة، زهرة شابها
مع مطلقة، والتي تقل عن ثلاثين، هما مواصلة كانت خلالها مثالا للزوج المختلطة
الزوجة، التي قيل في حق أطفالها إذا نثر أبها سرته، إذا غلبه لها حفظه في
مالها ورضاها كما أننا ذات دين، وقرار الأمر الذي مه يتسع زيادة البلاء الحكوري
ه، حجة إلى الحد الذي يتسبب مع حالات السنة، على الالي، والاجتماع
الشريعي، بصد صحة هذا الاستثناء.

فهذ الاضراب، واللاحال الأخرى، التي تحتفظ بالطالبية، بحق الإشارة، بجلسات
المراجع، النفس، والذكاء، تطعن في الطالب السنة، على حكم محكمة
أول درجة.

يشاء الله
انا الحضرسالف الذكر قد أعنت المعلم البسيط، من هذه السعيدة، وكئف الضحى.
بالحضور آم، بحثة استثناء الثامن الثاني، في ما بين دار القضاء العالي بدائرتها للحالات الشخصية، الاستثناء نقل في بلواء، بطلتها التي استمدناها من الستاثا في يوم (١١) والعديد (٤)/١٤٦٦ ابتداءً من السنة التامة الأرثومي.

سيراهاياها لساعة الحكم.

أولاً: يقبل هذا الاستثناء مكنلتقدمه في اليعاد الثاني.

ثانياً: وف نبضء: يزيد البلح الحكم بالسبتبتها إلى الحضد الذي يناسبه مع حالتى الاستثناء عليه البالي والاجتماعي المبرعه.

بقدر هذه الصبحه وذلك مع الزاما بالحروف بحكم مضول بالتفاذا.

وتوصول وكمائه.

مع حفظكية الحقوق الأخرى.
مذكرة ضرورة التمثيل العليا

في الاستثناء رقم 4 لقانون أحوال الجماعة

والمحدد لنظام جملة 4/4/1950

المراجع

من حيث أن المستفدي قد أقامت الديون المستحقة علاها فرضية مالية لبا عن المدي علية

تقدر بعشرة عشرة سنة على الاقل ونالت شرحا لعدمها أنها تزوجت بالندم عليه بصحب العقد الشريعي

وأنجبت منها ثم طلبتها مركبة 1981/12/13 دون رد لها ولا سبيل لشيء بعد زواج استمر حوالي 8 أمنة

وقدمت أتيدا لهما حفاظة مستدعات تصميم ما بين (1) صورة زوجة زوجها بالندم على

في 1953/8/31 (2) صورة اشهار طلاقها بالندم علية 1981/12/13 طمعت أخرى رجامة

في غياب الزوجة بين العقود.

وقد أحدث محكمة أول درجة الادعوي إلى التحقيق، مدته واجبة تصرفية بالزواج والدخل والطلاق

الحاصل في عام 1981 بدون رد زوجة المدعية ولا سبيل لشيء بقدر أن المدعية في غيابا من أصل

الدوى للحكم بحافظة مستدعات بسببها انتماجها دون الأصر ب большое

بي بها للعدد قدرا ستون جنيها شهريا.

وبتاريخ 12/12/1982 نفس غلة أول درجة، وليب ان بسرت بينية فاحيا قدرها 1800 جنية

استحضاها عال ويمكفاءن، ساعدت المدعية في تبرير النزاع المالية المستحقة للمدعية من

سنوات لم تزوجها المستحقة هذا الحكم ومسن علية بالعربية رقم 4 لسنة 1984

طلبت من ختمتها قول الاستناد نسخين من العروق، مادة البلح المحكويم،

كما لم يرتب المحكمة عليها صفة المحكمة دون درجة فصل بعضها بالاستناد رقم 31 للملاءة

في مدة بتاريخ 11/12/1984 طبت في ختمها قول الاستناد نسخين من العروق بناء الحكم المستحقة.

وفي الدعوى.

وقد قرر المحكمة ضم الاستناد رقم 31 للملاءة إلى اعتماد رتم 4 للملاءة للإربد ولبيد فيما

كملا

وحيدهما الاستثناء تقدما إلى اليمين وسرعتهما اورابهما التقنية بينهما وفصول مقبولات شكلها.

وحيدهما اللادة 16 كميراً أولا، ثم بالترنت رقم 77 لسنة 1984، للمثاقة بالعربية رقم 1177

نص على أن "الزواج المدخل بها إلى زوج جذح إذا كان بها زوجها بدون رد لها ولا سبيل لشيء و

تحت علي" فرق فيها عدها معة تاقبة بينة رهبة أصلها على الشراء والطلاق رضا

الطلاق علة الزوجة يجوز ان يبر. مقرر للمثيقة يسادت هذه النقطة على اقتصاد

وحيدهما ما كان بالحسم وكان النتائج نواران مديدان. أن الخطاب قد وقعت باردة الزوجة وندرت رضا

الزوجة ولا سبيل لشيء وهكذا وفقا لهما التوقيت، معاً التقيمان باقولة الجهود وندرت النقطة

تحت علي مثالية بعد مفسدتها وفقا للمثنية ساندة البداية وتتر الانتقادات الامام التي الحكم المستحقة.

6
قد أتى بالحقيقة أن قضية نهاية للمسألة تقدم لسنة وليم لم يرد درج على الوجه اللازم.

إذاً أن التأبين لنفس المدة المحكوم بها للمستوى تقدم دون جلبه وإلهام، وسمّى بذلك، من عضو محكمة.

أول درجة أن قضى للمسلكة بصلح 200 جنيه وهو البلاغ الذي تزوره النية العامة أن المصلحة تستحقه، كمسألة وذلك بالنظر إلى حال المصلحة وظروف الخضير وردية المصلحة.

وحيث أنه لم نتمكن فتحيتها الباطن 1844 من النية المرحلة لدائم

تنير النية العامة الحكم

بقيت الاستثناء مذكورين، وعميد الحكم المستند إلى بواجهة البلاغ المذكور، ستنهال للمسألة ليكون 1200 جنيه مع الراوي، حاملاً، في هذا، ابتدأ.

1985/9/4

(سُفان)

رئيس النيابة

ناثان شفيق
يمن الله الرحمن الرحيم

باسم الله الرحمن الرحيم

محكمة استئناف القاهرة
الدائرة الأولى لتدوين النسيمة

بالجلسة المشتركة برئاسة المحكمة الكائن منزلها بإدار القضاة العالي بسناع
11 يوليو بالقاهرة في يوم الخميس الموافق 1881 م

برئاسة السيد الاستاذ المستشار/ عبدالمحمد عبد الله الطليع
نائب رئيس المحكمة

خضعت السيدان الاستاذين: محمد محمد غـزـي و حسن حسن النزاوي
وزعماء السيدين الاستاذين: حسن حسن النزاوي و حسن حسن النزاوي

رئيس النبأ
وحضرما الاستاذين/ عبد الرحمن عبد الكريم عليان وعبد الرحمن خليل عبد المومن

بيرئيس الحكم الأساسي:

في الاستئناف المندي بالجدول النسيمة تحت رقم 4 و31 سنة 103 قضائية

في الاستئناف المرفوعهما برقم 31 سنة 103 قضائية

المدعي:

السيدة / السيدة

النجمة / التي

القاهرة وملوك الخانري الاستاذ

المحاكم

حضرهما بالجلسة الأخيرة الاستاذ

المحامي

في الاستئناف المرفوعهما برقم 31 سنة 103 قضائية

المدعي أمام الاستاذ

المدعي في الاستئناف الأول

المدعي في الاستئناف الأول

المدعي

استئناف الحكم الصادر بجلسة 20/11/12 من محكمة شمال القاهرة التأديبية في الدعوى

المحامي

المحامي
المحكمـة

رقم 2136 لسنة 1982 أحوال شخصية

بعد الإطلاع على الأوراق وسماع المرافعة النظرية والمداولات قانونية ومحيطة بحالة حسب ما هو من اختلاف الأوراق - تحصل في أن المستأنف في الاستئناف الدعوى رقم 101 في دعوى ( ضد المستأنف ) عليه الدعوى رقم 2136 لسنة 1982 (كل أحوال نفاذ) أمام الدائرة 12 بالمحكمة شمال القاهرة الابتدائية ( أحوال نفاذ ) بمصـيت معلنةً له قانوناً لجـلسة 1883/1/24 طلبت في ختامها الحكم لبليه بترغيم مدعية تقدرت فئة عشر مسـن سنة وامرأة بالاباء، والزواجه الشاذ شرارة دعوى بما حاصله منها تزوجت المحالنة اليه في 1953/8/21 واستمر زواج الزوجة بينهما بعد الدخول والمعاهدة على اتفاقيات في خدمة زوجها المعلن عليه واجتهد بهجتها "به" بالفاعلة من المعـة خمسة عشر سنما و بعد هذه الفترة الطويلة التي انت فيها زهرة شبابها ورفعت بجانبها إلى أن أصبح مًؤذًا كبيرًا يملك المتتارات والإرادات وعمل رئيس تمس بالشركة المصرية لصناعة النما والجلوكوز يستمر إذ تزوجت بزوجها باخريات من نراق .. ظهرها ثم اتبعت زوجيتها به بالطلاق الصادر في 1881/12/13 بإشهاد رئيس

بغير رضا ولا سبب من قبلها - و بتاريخ 1885/11/6 فرض لها إلحاق

المحكمـة رفـة العـين الجرمانية ( أحوال نفاذ ) على تكـاشين جنـباً معـاً لـتحت

من 1981/11/13 تعرض نفاذ عدة لإياها فلم تكن لدعاية من

من ثم فقد اكتفت هذه الدعوى إنشاء الحكم لبليه بما طلبـ

واتدلل نظرة تلك الدعوى أمام المحكمـة أول درجة على النحو الودي ب محاضـر

جلستها و قد تكفل الحكم المستأنف بسرد ورفع الدعوى ببيان سير الأحداث اتـ
فيها وأدلتها وارواج الدفاع والدفاع فيها وأصدر حكم تعهد فيها بالحكم...

التحقيق لائحة ورغم ما دون بمراجعة وصي البناء بما ترى من المحكمة

الإكترأ اما جاء به في هذا الصدد فقط للإطلاع ودرر للنظر.

جلسة 1982/12/20 قررت تلك المحكمة - حديثاً باختبارها - أولاً: برض

الدفع اليد من المدين عليه ببطلان اذون صحية الدوى 000 تانيا: للمدة

على المدين عليه يغوض معنة مالية قدرها 1800 (التي شملت جنيه) والرسوم

الصرفات وبلغت عشرة جنيهات مقابل أتت الداداء ومساء شناها على

الإسباب التي حاصلها (1) محل اذن عريضة الدوى تانينا 000 (2) تشوب

شروط استحقاق الديدة للمدين بالإوار ورسالة والبيتات الرسمية 000 (3) تنديس

الديدة بما يواسى نقية خمس سنوات لدائم فترة الزوجية وندبر ثمانية وعشرون عاما

وعلى ما ثبت من حالة المالية الاجتماعية.

ولم يبهم كل من المشايخ تلك الحكمة فهمها عليه بالاستناد تقيد الحكم

لها الاستناد الأصل برم 4 سنة 100 وفقاً صحية قدمت لائم الكتاب بتاريخ

1982/12/2 وقعت فيه برقم 4 سنة 101 في طالب من خصامها = قبول هذين

الاستناد شملاً وتحريضات زيادة البلاء المحكم به بالاستناد الفعلية إلى الحد

الذي يناسب مع حالة السئاد عليه المالية والاجتماعية بصورة يحول هذه

الصحية وذلك مع الراية بالصرفات والنقاش المحصل بحالة طعنها على الاسباب التي

haustها: (1) المرض للفترة تليل جداً وغير ماسب (2) انتهت تام وكملة

الستات على ثلاثين عاماً حتى اغتصام موسراً (3) انتهت طلبات من السئاد عليه

 دون رضاها وغير سبب عنها.
كما طعن عليه الحكم ضد بالاستناد؛ المعذوب بمحبة قضية قيد
الكتاب بتاريخ 1984/1/16 وقامت في إدماه 31 سنة 1010 طلب في سبيله
قبل هذا الاستناد شكلاً في الوضع بالرغم الحكم المستناداً نفياً ضابط بـ-
والحكم يؤثر في المستناد هما مع الصارف موسى طه على الأسباب الـ
حاسماً: (1) يُبطل أن حقيقة الدعوى (2) لم تصبح حكمة أور ذريه إلى
شهوده ولم يتم الدلائي إلى طلبها في مذكرة مذاته.

واستناد 1985/3/7 قررت هذه المحكمة في استناد الأخير 31 سنة
101 ق ساليف البيان إلى الاستناد الأول رقم 2 سنة 101 ق الدار البيضاء
للاربعاء والصيحة حكم واحد.

وتداول النظر في هذا الاستناد المباشري (الجدير والمسمى إليه) الأصل.
هذة المحكمة على النحو الوارد في محاضرة تكبيري كـ الطرفي بالمقابلة
وولح رأي بـ دون رأي كما قدم الاستناد الثاني (الاستناد دوم في الاستناد
الثالث) محكم بالمهمة 1985/12/10 خذها دائياً وصن فيهما أسباب استناده
واستناد إليها إلى طلب احالة الدعوى إلى التحقيق وارتقباً بفاحذة طويه على
الاستناد الاتفاقية: (1) صورة ضرورية من شهاداؤه طفيف للاستناد عليه.
(2) صورة ثابت غامل من سجل مدني "الصينية غنية" لم يكن "الضنائي احمد
سعد أحمد" (3) شهادة من مبأة الفاخرة الأكبر للحوار الشخصي موثقة
1985/10/12 تمديد دعوى ضد المستناد مرتبة في من أجل نقاشه محمد
حسن مسعود بيرق 2765 لسنة 1984 كل شمل بحالة 15/5/1985 وقدمت النتيجة
العامة مذكرة موثقة 1985/4/27 أنتهت فيها إلى إبداء، الرأي بقبول
الاستنادين شكلاً في الوضع بمعدل الحكم المستناد على الحاجة المبلغ المحكمة بقبوله.
مالية لمدينة ليكون 1050 مع الزام خارج الاستماع الحادث وللجلسة الأخيرة مثل كل من الدورين وليذهب المحكمة عبر الهاتف للجلسة اليوم مذكرات لمنيشا في عشرة أيام تقدم في الأجل الصغير في الاستماع الضمير والمنشأ عليه في الاستماع الأولي مذكرة وقعت فيها اوجه دفاعه وانتهى فيها إلى الدليل الا توجيه المسأله مكمل لاحتياطية...

إحالة الدعوى إلى التحقيق.

وحيث أن كذب الاستماعين قد استوجب رقابة الاستماع المكلفة تأتي في

وحيث أن الحكم المستنفر صحيح في أصل الدورين سابقا في المصداق...

حبس تقدم إلى محكمة أول تربة من حكم الغير الزيز.

وحيث أن المسندرة لم تقدم لائحة المحلة الضدر الاستماعي بزيادة تفشي...

الفقرة يكون بقانون ستين جنباً ضمها لتفشي...

وحيث أن المسندرة عليه في الاستماع الأولي (مستنفر في الاستماع...

الضمر) قدم لمحكمة أول درجة بجلسة الشئان الموافق 1422/12/13 حافظ...

مستندين أولهما صورة ضريبة من أجل الضمير المرتكب 1423/1/14 ثابت فيه...

أن المفروض لائحة المسندرة (والمستنفر عليه) قد نُكّد إلى الإبل 60 ستين جنباً ضمها...

شبهاً يمتهن الحكم الاستماعي الرقم 2000 سنة 1482 إحالات شخصية استماع...

فمال القاهرة الصادر بتاريخ 1428/2/28

وحيث أن المادة 4 (الدكولا) من القانون رقم 100 سنة 85 على أن الزيز...

الدخل بها في زواج صحيح إذا طلقها زوجها دون ضابطا ولا يحبب من قبله...

ضحت فوق نفق مملكة مملكة تقدير بنكهة كتبها على الأقل...

وحيث أن الحكم المستنفر تأتي ان يلاحظ في مدارضته التقدير النهائي ككتب...
السند (والسند عليه) وهو بلغ ١٠٠ ستون جنباً شهرياً يغطي الحكم
الاستنادي سالف الاقتباس والصادر قبل سند الحكم المستناد في هذا الاستناد
المش عن الوجه المنتفع آنفاً والذي لم تعالى عليه استناداً حافظة المستندات
الذكرى لعدم التصحح بهاءً

وحيث أن تأسيساً على ذلك يكون التقدير الصحيح لجدة البلغ هو
الحكم به للمعنة أبدانياً وهو بلغ ٣٢٤

وحيث أن الاستناد يعيد الدعوى إلى الحالة التي كانت عليها قبل سند
الحكم المستناد وذالك بالنسبة لما رفع عنه الاستناد في محاكمة
الاستنادية أن تعيد النظر فيما رفع عنه الاستناد على أساس الدين والدليل
المقدم إلى محكمة أول درجة وعلى أي دفع أو دليل آخر يتم في الاستناد فيمن
قبل الخصوم طبقاً للمادة ٢٣٤ ثم يحكم المحكمة بعد تدار الدعوى طبقاً للجهة النظر
اما بأياد الحكم المستناد أو بالغاً أو تعديلها (المادة ٣٣٧ من الورشة بقانون رقم
٨٨ لسنة ١٩٣٣)

وحيث أنه يعد بياناً كله منافياً إليه أن الحكم المستناد صحي في أصل
الموضوع وناسب في المدة التي قدرها لها بناء عليه يبقى مستالةً
النقطة حيث جرح القانون والواقع إلا أنه لغيره في تقدير النقطة النهائية ليتوي سلسلة
 всем البلغ المقدر لمدة السماة البالغة خمس سنوات على ما هو مرن جنباً بالحكم الاستنادي
للنقطة النظرية إليه في أول السباب وترفع سنة جنباً شهرياً

وحيث انهماكلاً ما تم تقديم إيضاحه من السباب الخلقية الممتلئة شموخاً وفجحاً
على النقطة والقانون والواقع السليم في تقدير نسبة المدة يتعين جنباً في الاستنادي

٣
الأصل في الموضوع وإجابة المستأنفة إلى طلب الزيادة وان تكون هذه الزيادة هي على حسب المقدر لتقضي بالحكم النقدي ووزرته ستكون جميعها شهية لمدة خمس سنوات الحكم بها إبدائية ويجب جميعة الحكم في هذه الاستئناف
الأصل بالدالة في هذه الحالة
وحي أن المستأنف في الاستئناف الضمت لم يكن يتوجب التماس الحكم
الاستئناف ابتغاء فيكون جميعة مستوجب رفعه منواب عليه على غير ست مليم من النظام الثاني أو الوافق.
وحي أن يضحى جليل الحالة ما ذكر ان الحكم الإبدائي للمستأنف
قد اصاب القانون وفقه وراءه ليس في بدون التقدير السليم لاص النهدة السبب
بين عليه فرض المتصلة ما يناسب تقديم بالدالة للأسباب التي استثناها ووالاسباب
الواردة به موجه أورقة التي ترضيها المحكمة وتصل بها جزء مكاد لاسيابها هذه.
كما يتمكن أتم بعد ما تقدم جميعة الحكم بالدالة.
وحي أن الحكم عليه في سبيل بالمصاربة طبقا للمادة 181 و224 لائحة
شاملة مقابل اتصال المحامات طبقا للنادي 6 مرات دام 187 محاكمة
قل هذه الأسباب:
حکم المحكمة مؤقتاً: أولاً: يتعين الاستئناف في الأصل وضم
1855
شمولًا: وفي الموضوع بالنسب والاستئناف انتهى 4 سنة 10 ق بتعديل
الموضوع للمتصلة بالحكم المستأنف للمستأنفBitte نظر في صحة مبلغ
1700 (ثلاثة أذق جنيه وتسام جينو مدر) ويجب الحكم المستأنف فيما
عدا ذلك 100 نائباً: وفي موضوع الاستئناف الدعم رقم 31 لسنة 101
ورفعه.
وتأييد الحكم المستأنف فيما عدا جملة المبلغ المعقد بها بنتجها وتدرجه ٨٠٠ وتمددها إلى المبلغ ١٥٠٠) (سنتين وثلاثة أشهر) (رابعاً)
والزمن المستأند (في هذا الاستئناف المقيم والمستأند عليه في الاستئناف الأصل)
بالصالح عن الدراجين وبلغ شرين جنيه مصري مipel انداد المحامات...

٥٥٥٥

أمين

٥٥٥٥
CASE STUDY NO. IX.

Case concerning *qarar*; no. 477 in the general list, Judicial Year 105.

Court documents:
(i) Subpoena to the appellant wife by the appellee husband requiring her to show *ṭā’ah*
(ii) Written defence by the appellant wife
(iii) Court ruling (*Maḥkamat al-Isti‘nāf*)
محكمة استئناف القاهرة
قضاء الدائرة الأولى حوال شخصية
ذكر

بدعاء:

البدعاء:

(ستانف عليها)

(ستانف)


الواقعة

لاقامت الستانف عليها الدعوى الستانف حكمها بطلب تطليقها من الستانف للضر دارف دعاها لأنها زوجه للدعي عليه ويشكل الدعوى الذي وصل بها وإثرها إحالته للعفو والقاضي واستولى على جميع الإсталب وأن الحاجة بينهما اصبحت استحالة وmAHA عدة للدعي وعفوه الدعو

الستانف عليها داد بالحكم نقض بجلسة 12/4/1988 يطباق الدعوي على طلبه بانتهائه للدعي التي اتُظهرت منها اضرار الدعي عليه بها واستحالة

دوم العجر بينهما.

تستانف الحكم عليه هذا القضاء بالاستئناف لتل.

الدعوى

أولا: الرأي على المبادئ الأول من سبب الاستئناف

بيان السبب:

يقول الستانف في هذا السبب أن محاكاة أول دعوى قد اخطأت لاحتياجها الدعوى للتحقيق لأن الستانف عليها لم تقدم محضر وذكره احول ادعاء الستانف عليها بالضر ولأنه تصرف اعتداء عليها بالضر كانت قد حازت محضر الدعوى للتحقيق دون وجود محضر

 france 1988

(2)
الأرجح في النّعي في هذا اللّبس:

النّعي في هذا السّبيحة لحلّة لاologne فلاحدق أنّ السّئانف ينتمون توحه هذا حا،

ومن الشرّان المكاح فيه ينطوي بالبيث على الدّفاع الواضح السّماد ونحته تعبير السّديد، وين تم

أنّه لاتغيب على السّئانف النّمطة أي تجاهل النّمط السّامول نسبي السّديد، والنّمط معتبّر في وجود السّبيحة، وكان السّامول نسبي السّديد.

ذات الخلاف تتجاهل هذا السّبيحة أبقاً لحلّة السّامول في وجود السّبيحة، وذات السّيئانف السّامول النّمط.

الأمر سائل لفصل السّئانف، وذلك يتوجه بقوله ويوثق بعدد السّئانف السّامول النّمط.

النّمط - الذي يعفّاها ودادة هذا السّبيحة - تقول له متّحبيّن أنّ يجرّى إلى مثل ما وقع

فهي:

- أن السّئانف هي دليل أصل في الشريعة الإسلامية الغرّاء، وله طالّ صدر سُتوني مغزات.

فحنّب ضرب وجيب القاضي الحكّم نوراً لأن السّئانف هم الذين يتحلون السّئانف النّمط، بسبيحة

السّئانف العدل السّامول ونماتة/ حدد قلّاز (1) مصدّر السّئانف النّمط، ينتمي إلى شروط.

فيه؟ لم تطبع عليه إنها وجوبي القاضي على القاضي نوراً (1) التعليق على قانون الاحترام.

ملّي نادّي القاضي نوراً 1983 ص 205، ومن ثمّ لاتغيب السّديل النّمط على شراء السّئانف،

وقد حا في دليل كلّ كالفيل هي أقوى مراياً لا له في الشريعة الإسلامية الغرّاء، وعذاباً لا يجوز

إلىOverride

- أن المرّاء في الابناء الاجتماعية السّئانف يعينها التوجه إلى أقسام الشرّف، والتمريّت، فسلبيت

من سرّهُن أنّه وثّقّي القاضي إلى القاضي، سنغري كما ألغته في أقسام السّماع، وم

ثم لا ينابذ من توق الدليل السّيد من التغوه عمّ سبيحة لا لاقع للمشترى،

النّمط على السّماعين.

عوان السّبيحة:

يكون السّبيحة يجب الممّول في حالة الدّعوى إلى التحقيق، لا يجب تمّييل:

ساعر للسّماع على توق السّماع لا يتمّ من السّيئانف السّيئانفها، فهذا نوراً

WHATSOEVER:價值
الرد على النص في هذا السبب:

الوجه الأول من هذا النص معد منهجياً بإجابة في مجال الرد على السبب الأول والوجه الثاني.

يعد بأنه عادة شهادة الأصل لم تكن وثيقة ومتى ضبط وقائع شهادة وقائع الشهاداته، وإنما كانت الشهاداته انقلب للناهدي.

معتبر ورد التنبيه (النص: 415/11110، طعن رقم 246 لسنة 6، ونقض: 112/1110).

والتاكل المستندات في هذا النص كشفت عن تأثيرات ضرورة تقديم النص في هذا السبب يكون غير للمعنى.

الرد على السبب الثالث:

ينظر إلى النص في هذا السبب:

هذا النص يوضح أنه بالرجوع إلى محتويه التحقيق تبين أن السبب لم يحدث إلا إنه بالحكم الشهيد والاتصال نقل بحلل من الحكم اعتباره. ولم يكن له أي إضرار.

بخر شهود يعلمه إذا كان بيد ذلك حاكم، ونمن المقرر أن تكون في محاكمة حالة التحقيق وقدم احترامها، ولم يذكر على إجابة "بالجوازات الفنف في الحدود وفي الأطراف، وكان للدعاوى، وهو، وبالعدد 59 من تأويل الأيات، فإن الأذن، لا أحد يعانى بالذكاء في الحجة، ليس بالسواء.

وأما الفصل في آخر الحق في تناول هذا الطريق والتمريض يستند على هذا النص:

بادية (النص: 12/11209، جمعه 22 سنة) وزائر القضاء على لواء (النص: 11209، 1006، لسنة 12)

وينظر إلى النص عن استجداءات التحقيق والتخطيط عدم استجابة للدعاوى.

إذا انتهى التحقيق إلى نفي نورته للحجة في النص أن يستعملها أو تبكيها (النص: 12/11209، الوجه الثاني من 11)
ونستؤذي طالب المستند عن هذا السبب كونه غير صحيح.

رابعاً: الرد على السببين الرابع والخامس.

بيان السببين:

يقول المستند، زوج للسيدة، عند عشيره، ولا يمكن ان يقلل بينه وضحاها.

رد على النتي في هؤلاء السببين:

هذا النتي مبرد بأن أفراد المستند، بالسيدة، على وجه يحليل معه العصر، بينهما قيد، بشبيرة، مسود عدل يحللون شباشتم المستند، شروطها التعري، ولم يتخذ المستند.

ثالثاً: المستند، بالسيدة، بهذه البيئة العرضة الصحيحة.

لك ان سعي المستند في منطقه عقيدة، ان ليس من المعقول ان تعم المستند على

بالصفاء، ونكول المستند، بخصره، لولا اغلابه عليه، وتحوله على مدة، ابائه، ابائه:

بالس، والنشر، استحلال معه العصر بينهما، وهو ما يثبت بالبيئة العرضة الصحيحة كما

نرد:

 بيان عليه:

يظهر المستند، عليها اقصاء، برفق الاستثناء مجمع، وتأيد الحكم المستند، والازمات،

بالمرئية.

وكلما المستند عليها

الحالي
اقتحم السؤال نفذه ضدها ضد السثنى ادعى رقم ١٢٣ لسنة ١٩٨٧ أحوال شخصية كلي مملوكة لسنان تطلبها تحقيقات طاقة بائدة للذين وقعت شرحا لدعاها السثنى زوجها للسنان ودخل بها واعفها معاصرة الأزواج الا أنهما دبلع على الاعتداء عليها والسماحة وعفا عليهما على إثرها ما جمل الحياة بينهما سنة. فاقتحم السثنى حكمها لسنان بطلابها التي أودبتها بالصيحة.

تداولت الدعوى بالجلسات أصدرت حكمة أول درجة حكمة شهيدا فيها بجلسة ١٩/١٢/١٩٨٧ تعني باحالة الدعوى للتحقيق لاثاب تونفس ما ورد بنطولوج الحكم الذكور.

وبعد أن استمعت المحكمة جل الأقوال عادها السثنى ضدها أصدرت حكمها في الدعوى بجلسة ١٩/٦/١٩٨٧ فانيا بتطبيق السثنى ضدها من السثنى طاقة بائدة.
اسمت محكمة أول دورة قضائياً بتطبيق الدعية حيث
اتها تطمن لاقواية شاهدة المستأنف ضدها بأنها عادت بعدد
السنا تتبع المستأنف ضدها بالضرب والسب وهو ما يعد ضاراً
بها ستهيل معها دواوين العجر.
والتواقيع أن هذا الذي ذهب للمحكمة أول دورة مدوود بالاتين:
أولاً: اختطار محكمة أول دورة لاحاتها الدعوي للتحقيق نسبًا
من منظومة أوراق الدعوى أن المستأنف ضدها لم تقدم أي استناد
لمحابرة أو ذكرية أحوال محررة منها ضد المستأنف وركذ زعمها
وعلى أمران دلت على مي اجتماع ان نفاد زاعم المستأنف
ضدها لأنه لو كان المستأنف قد اتحدة على السنا ضدها
بالضرب والسب على النحو الورلد بأحوال الشهود لما كست
على هذا الاعتداء، ولاتماد بتكراراً متحويري محضر ضدها. أتى...
الاعتداء، ولكن شيء من هذا لم يحدث ما يطلع بكذابذاعيها
فإذا ما احالت محكمة أول دورة الدعوى للتحقيق دون وجواد
بة استناد المبايا فضاوها في غيّر حلقة.
ثانياً: أن قضاء محكمة العليا استتر على أنه يجب التحرز في احالة
الدعا للتحقيق أو تعمر كبير نبا يتش عمليت صائت
الناس على أحوال شهود لا يلفظ نبا ويؤكد ذلك انصادي
السنا ضدها هم أخرين ما يجعل مصادعته مبهرة.
وبهذا تكون احالة محكمة أول دورة الدعوى للتحقيق قد
في غير محله.
ثالثاً: أن محكمة أول دورة لم تعط المستأنف عليه احتكار شهود
واعتمد إلى أقوى شهود المستأنف ضدها رضا عن ما هذه;
الدعا تعتبر دعوى دعوية بين الطرفين وتؤثر على مسار
حياتها من طيلة العمر، ولا كانت محكمة أول دورة اعطاء المستأنف
(6)
الفترة لاحضار شهود واستمحت عليهم لتحيز وجه الرأي في الدعوى.

رابعاً: أن السانف زوج للسانتف ضدها من أكثر من عشرين عاماً، يعتقد
أن ينقل بين عديث ورضحاً الي معنيد بالضرب والسب، ويندلل
على الأموال، فإذا طالب السانف ضدها نقلنها إلى عديد، تثبيته
فلا بد أن لها موراً ذلك مرا، وكان ينتهي على محاكمة أول دعوة.
أن تبحثون الدافع الحقفي والخفي وراء طلب السانف ضدها
الملتقى من السانف.

خاصة ولا يأخذ كذب قراءة نهاد السانف ضدها، وها اخواتها،
من أن السانف كان يستولي على الأموال وهنا السانف كان يمسك
في الكبوت بنذ أكثر من مهني عام وقد اختير إلى السانف ضدها يكبل
على كتبه من علمه عقاراً، دون تثق وأموال سائلة في البنوك.

بناء عليه:

ما الحضر سالم الذكراكفر المعلل البها الحضور اسم
المحكمة الدائرة للاحوال الشخصية للصين السليم بمحكمة
السانتف القاهرة، بقره يا بدار القضاء العالي، بشاع 66 يوليو في القاهرة
وركز بالجادة التي سنعمد بآلة في يوم الاثنين
الواضح
الساعة التامة صباحا للمراقبة، وعابيًا
الحكم يقبل هذا الاستثناء، شكلًا يشفيه، بإلهام الحكم
السانتف بكلم اجتهاد، واعتبار، يا أن لم يكن وفوق دعوى السانف
ضدها مثل الزامها المصرف، وقابل المطالبة من المراجعيين
لأجل

(3)
باسم الشعب
محكمة استئناف القاهرة
ال판례 الأولى للاحوال الشخصية

حكم

بالجلسة المعقودة طنطا وترأس المحكمة الكائن هرفاً بدأ القضاة، العالى بشأع 47
بزابول بالقاهرة.

برئاسة السيد المستشار/ ضحى حسن غلم الدين
رئيس المحكمة
وزير السيدين الاستاذين/ خالد الحسيني/ ضمن محمد عبد الواحد المستشارين
وحضر الاستاذ/ يوسف سليمان
رئيس النائب
وحضر السيد/ حسن إبراهيم حسنين
أمين المسير

صدر الحكم الآتي:

في الاستئناف المقيد بالجلد الععوسي تحت رقم 877 سنة 105 قيلفة

البروفي:

السيد/ ___________________ القاضي
كتب الاستاذ/ ___________________ المحام.
بالقاهرة.

حضر عليه بالجدة الاستاذ/ ___________________ المحام في الاستاذ/ ___________________ المحام.

ضد السيد/ ___________________ العهد 2 غال الخريج حرية مصر الجديدة.

حضر عنها بالجدة الاستاذ/ ___________________ المحام عن الاستاذ/ ___________________ المحام.

الموضوع

استئناف الحكم الصادر بجلسة 19/4/1988 من محكمة شمال القاهرة الابتدائية

في الدعوى رقم 2344 لسنة 1987 أحوال شخصية كلي شمال القاهرة.

المحكمة
وجه أن الاستئناف قد استوى أجزاء القاضية.
وجه أن إقامة الاستئناف تصل في أن المستأنف قد قالت قلحة أزمة الدعوى رقم 2234 لسنة 1987 احالة شخصية كلي شمل المتهم بطلب الحكم.
بتطلبها على المستأنف طلق بانتهاء الفيز واقتت فارحة لعدها لنا وفقه لــه بصحح العقد الشرعي مع الدخول والمعايرة ولا تزال على عصه الاتهام وأن على الديدة طبيبا بالحب والذاء وستولع على موالاها.
وجه أن محكمة أول درجة بعد أن استمته إلى شهادة عداده، المستأنف
ف후ده قتله في 1988/6/19 حضرها بتطلب المستأنف على المستأنف عليه طاقة
بانتهاء الفيز وانتهاء حقها على عصه عداده عداده المستأنف عنها
الذي في مجانيه يقبله عليه بالحرب والصب وهو بعد ضار لها تستعمل
الملاح بعد أن يجهز المحكمة من الإصلاح بينهما لرض المستأنف عنها في المحضر نحلة
ويستدعي من ثم تكون الدعوى قد قامت على موالاها.
وجه أن المستأنف لم يرش هذا الحكم فسمه عليه بالاستئناف السابق
بوجبة صيخ قد قبض بلم كتاب هذا المحكمة في 5/6/1988 طلب في ختامها الحكم
بقبول الاستئناف شكل ونقض النموذج بالعذيب أسهل المستأنف وذلك لأسباب حاصلهما
ان محكمة أول درجة اختار بحالة الدعوى إلى التحقيق ولم تحتل الفرصة لاحتمال
شهوده أنه زوج للمستأنف عنها لدهد أكثر من ثلاثين طم فلا يعقل أن يستدعي
طبيبا بالحرب والصب وستولع على موالاها.
وجه أن الدعوى قد تداول المام هذه المحكمة على النحو الوارد بمحافظ
جلساتها.
وجه أن التعبئة العامة قامت ذكرتها المؤرخة 22/12/1988 والتي أبدت
فيها الرأي يقول الاستئناف شكل ونقض النموذج برئه وتأييد الحكم المستأنف.
وجه أن المحكمة حجزت الدعوى للحكم لجلسة 20/12/1988 ثم ذالت اجــ
النطق بالمحكمة.
وجه أنه ما اثاره المستأنف بصحية استئناف من أن محكمة أول درجة لم
تعمل الفرصة لإنزال شهوده فإنا مردده بأن التبسي من محضر جلسة محكمة
أول درجة إنزال يحتر بالجلس سنة للتحقيق رقم الرئة ومن ثم يكون قد
عاصم من اخبار شهادة من القريب أن تفتي الخصم من حضور جلسة التحقيق
وهم احترام أو اعلانها شهيد بقراب عليه اخبار جواباً من الانتاكات والنقض حسب
مركب في الدمعة أي حسب ما إذا كان متكلاً بالانتاكات أو المبكي.

وبهت أنه عن يداني سبب الاستنتاج فان نع الامالة المادحة من المرسوم
قانون رقم 24 لسنة 1972 أنه بيزة للوزير إذا أدى اختيار الزوج بها بما لا يستطاع
معه دوماً العشرة بين امثالها أن تغلب من القاضي علىسيب وتحت السبيل
الثاني طلقه بائدة إذا ثبت الفضر وجز من الإصال بينهما.

وبهت أنه لما كان ذلك واتت هذه المحكمة عدل إلى أتوال شهيد المستأنف
عليها أمام محكمة أول درجة وهم اسال جادوالن والتهذب بحديد الشرقي.
وخلو هذ الحديد الشرقي من أن المستأنف اعدى على المستأنف فداه بالضرب واليض بالحال الني فيه بإتهامهم لأنها تعسر من ذلك ما يستحق معه دوماً
المعبر عنها 0 فان الحكم المستأنف وقد قضى بالدليل يكون قد جاء على محب
من القانون والواقع 0 ونتمثلى المحكمة في موضوع الاستئناف برفض وأبيت
الحكم المستأنف

وبهت أنه من الصورات فان المحكمة عدل بهما المستأنف لخسارته الدموي.

فلهذ الاستناد

حكيت المحكمة حسبما بقبول الاستئناف مكلاً في الموضوع يرخصه وتأييد الحكم
المستأنف والرقم المستأنف الصورات وبلغ عين جنباً جنباً معلوماً بالمادة.

صدر هذا الحكم على طال بجلسة يوم الخميس الموافق 2/3/1989

أمين السر

رئيس المحكمة
CASE STUDY NO. X.

Case concerning ghaybah; no. 97 in the general list, Judicial Year 54.

Case documents:
(i) Court ruling (Maḥkamat al-Naqḍ)
المحكمة القائمة
دائرة الدنية والتجارية والأحوال الشخصية

الزينة من السيد / المستشار رئيس المحكمة محمد جلال الدين رائف
وضع المادة البأنين / مزيج فكري 6 صلاح محمد أحمد نافذ رئيس الحك.
أحمد نسيم الجندي ، مصطفى حسين مجاور

وكصور رئيس النابة السيد / مجاد سعيد
رائف الدراويش 17 ميد محمد

في الجلسة العلنية الستة بقطرية كيدة مدينة القاهرة
في يوم الثلاثاء 3 من جندي الانتي الراقي 1926 سنة 1188 م

هدمت الحكم الآتى

في الخمسة من جدول المحكمة برم 8/4/08

الرئيس

السيد / Mr.الاسكدري لم يجتمع عليه أحد باللائحة.

السيد ... تم بدولة التنفيذ.

نفي الحالي
الرقائق

في يوم 28/11/1918 طعن بإطلاق القذيفتين حكم محكمة استناد اسكندرية العليا بتاريخ
8/5/1918. في الاستنادية رقم 12 سنة 1878 في ذلك بتقديم طلب في اللائحة

البحث بين أسس القذائف بين الأحزاب التي تخضع для الحكم العليا في حالة عدم موافقة

إعدادين استنادية إلى التحديد من خلال تنفيذ اسماء الأحزاب والمعالج العلماء على المراجعات.

وبعد الاجتماع العلمي مذكرة وطلبية لقبول العلماء الوقت في مراجعة العلماء.

وبعد العلماء على المذكرة بدالة طال بها رزق العلماء.

وتحت إعداد العلماء المذكورة وطلبية، فيها تقبل العلماء تشكيل ورقة موجبة.

بضطر العين على المحكمة في غرفة الصورة فبرئت هذه الجريمة في نظامها، وهو بعوين بحكومة البلدة حيث

هناك البيت العلماء على ما جاء من كتبها، والمحكمة أمرت بإدارتهم الحكم إلى جلالة...

المحكمة

بعد الإطلاع على الأوراق، ووضع التحري الذي تدل على السيد المستشار ماجلي، نصيبها

التي واجبة. ثم

اجتماع وقعته: بعد الإطلاع على بيان: أن العلماء استناد إعداد السنة المذكورة.

وهناك العلماء على ما يبين من الحكم العلماء في وسائل الأوراق، تحصل على أن

النظام الذي أقره في 10/لقد 1271، كله أحوال شخصية الاستنادية للعلماء

اللذين على طلبه باباس، وطلب بياناً للدعوى التي توجه في 27/11/1318، 188.
 poderá se adaptar ao processo civil do antigo Império Austrianico. O que significa que a análise deve ser feita de forma mais detalhada.

Os dados foram coletados e analisados por um grupo de especialistas em direito, que verificou que a legislação é clara e precisa. Além disso, o método de avaliação utilizado foi adequado e eficaz.

Os resultados da pesquisa foram divulgados em uma conferência internacional realizada em Viena, na Austria. O Painel de Experiência foi formado por especialistas de diferentes países, que discutiram e avaliaram os resultados.

O painel de expecaência verificou que a legislação atual é mais eficaz que a anterior. Os especialistas também opinaram que os métodos de avaliação utilizados foram adequados e eficazes.

As conclusões foram baseadas em pesquisas exhaustivas e análises rigorosas. O painel de expecaência verificou que a legislação é clara e precisa. Além disso, os dados foram coletados e analisados por um grupo de especialistas em direito, que verificou que a legislação é clara e precisa. Além disso, o método de avaliação utilizado foi adequado e eficaz.

Os resultados da pesquisa foram divulgados em uma conferência internacional realizada em Viena, na Austria. O Painel de Experiência foi formado por especialistas de diferentes países, que discutiram e avaliaram os resultados.
عندما تتعلق عقود الإيجار في جميع الجلسات الحدودية لنضير الدعوى ولم يتم قراءة
بذكرى بدافع بدأ ميعاد الاستئناف في حسب وقعته للعبة للسنة 12 من قانون الاعتداءات
على ما جرى. فيما تأهل هذه الحكمة - من تاريخ إعلانه بالحكم لشخصه أو في موعده
الأسو لا يتأمل معاملة في هذه الجائحة بان ميعاد الاستئناف يجري من تاريخ
تسليم صوره إعلان الحكم النتيجة من كان للسلمي أي موطن إعلان بالخارج. 
هذا إلى
وجوب حصول إعلان الحكم بالإجراءات التي تسر هما قانون الاعتداءات ليعلم المعلن
إليه بكل إجازاته مما كابله ولا يثبت عن ذلك بصورة على بابه طريقة أخرى
ولو كانت القاعدة - لا كان ذلك وان الحكم السلمي في هذا التزيم بهذا النظير
وإجابة إعلان الحكم النتيجة من كان المصدر إعفاء إلى شخص المعنوم ضده أو في موطنه المعلن
بالخارج حتى يجري في حقه ميعاد الاستئناف 6 ويثبت على خلاف على ما يفيد صميم
الاعلان على هذا النحو وقضى الدمع بسقوط حقه في الاستئناف فإنه لا يكون قد
اختأ في تطبيق القانون 6 ويكون النص على غرار
الذي إن الناطق تنعى باللعب ثلاثة على الحكم المعنوم في النمذجة في الاستهلاك.
وفي بيان ذلك يقول أن الحكم إمام قضاء يؤمن دائما على سند من أن وجود المعنوم
الذي بالخارج في مثل تقبله يعتبر هذا أن هناك تلبية وأنها لم تقدم الدليل على
حضور، وإنما يرى RBI العيد إذا ما استطاع منه ما يتوازن معه الضرر الموجب.
التطبيق.
وحيث إن هذا النص في غير محله 6 ذلك لأنه لا كان من الغير في تضي هذه الحكمة.
ان عن المادة 12 من المرسوم يقابل رقم 25 لسنة 1229 بدل على أن الشرع اجاز للزوجة.
إذا ما ادعى على زوجته إياها عندها سنة أكثر، وقضى إذنًا عقدها من بعد سنها. هذه الصادق، إن المكالمة بينهما يمكن أن تكون في الغالب، وهي مسألة خاصة تحدث فيها الزوجة بالضرورة، ففي بلد غير البلد الذي تقيم فيه الزوجة، والثاني: إن هذا القسم.

فإن شيئاً نجاحاً كان نحن المسلمون في تلك السنوات، بعد عودة الزواج، إذا لم يكن

السلمون شهد على سنهم سوءًا. حسب أن التأفيث عن زيجة في السنة سنة 1824، و بذلك تعددت

أقرت بصفتها وكان هو جميعًا يبرهنيا وبرهاني ميال كبيرة من المال على التحول.

السابقة بالأوراق المقدسة في المكالمة حافظة مسندياته، ومن نوى هذا تل ان

التأفيث قد قام عن زيجة في السنة نشأتها لمن يزيد من السن، بنادر الصبر. و איך

العمل بدولة الكويت وقضاياها 4000. وكأن هذا من الحكم استثناء ماذوها ماذا

الصلة الأفريقية بالأوراق في التحول التي استتبرها بناءً على ذلك ماذا

اللاب لا يعتمدان بين يكون جدًا موضيًا ما لا تجوز أثره، المم اللمحات الأثر.

وهي أن النافذة تمنع بالسباب تلمح على الحكم المسلمين في التحول في التحويل، والأخلاقي

تحقيق الدافع. وفي بيان ذلك، فإنها تشتقت من حديث عدد من من آثار الأوراق وال السلام، بدونه ودعواً ود عوضراض البيت المشهور، يجري مصدراً ميدانياً للاحتمال، فإن

الحكاية في تحقيق لائحة عالم المسلمين. دقة تدعوا قوى البحث الآف، ولكنها

تعين استئنافه في أن الفهم لم تستجب لها، وهو ما يعنى الحكم في الفهم، والدين

في الدفع:

وحيد أن هذا النص في شكله الأول في غير معنى. لذا فإن المنجر فهى ساء هذه المحكمة - أن محكمة النزاع ليست ملزمة بموجب كل حجج المطلوب والتزام عليها استقالة، وأن لا يجب حكمها عند الرد على مستندات متصلة بمحبوب الأمين إذا كان ذلك. وكان الحكم المطلوب نسبياً على استثناء في حالة استلامه بالنيابة عنه، فيما يتعلق ببطاقة من توافد طالبها ببساطة وذاتي، وهو ما يعتبر عرضاً مقابلة للبطلية عليها وكان هذا من الحكم استثناء ساهم في لحل قضائى. فأنه لا على أن لم يرد على مستندات النعمة، والنص في ذلك ناتجا من مردود بما ورد في الرب علىほしい الأول من انعلن المطلوب، وهذا بالنظر إلى ذلك، مما يقوله المحكمة في مسألة الاستثناء، من يتم الاستناد عندها. ثم يتضح علم المطلوب ضد المحكمة، من غير طرفي الاعلان المذكور، لا على أن كان

ويكون النص يتزامن على نموذج

ولا تقدم يتم تاريخ السن

لاقتنا

رغم المحكمة الناس والمفهوم، أما وليد وليد حسب ما ذكرت في ذلك.

عمير المنصر

محرر الكاتب
CASE STUDY NO. XI.

Case concerning َdarar due to polygamy ; no. 199 in the general list, Judicial Year 103.

Case documents :
(i) Subpoena to appellee husband by appellant wife.
(ii) Opinion of the *Niyābah* with regard to the dispute
(iii) Court ruling (*Maḥkamat al-Isti'nāf*)
النظر
بناء على طلب السيد /... العليا 36 شرحاً /... وحلياً المختار كتب الاستاذ /... المحامي

الجا

اما محكمة... الجزئية تم انتقال تانية اعلان

السيد /... الى مكان

1986/22/2

وكيل المستانت

المحامي

الاستانت الدينو رقم 487 سنة 1986 ، 14 اوائل شهية كل الجزئية بدبلم

الحكم يظهرها من زوجها غلطة بانه لندور حيث ان المستانت انتهى توزع باختصار

دون علمها وما ادلبه ازار ماديا و الاجتماعية بالاندماج.

وقد حخت محكمة أول درجة كما ذكرت الحكم

حفت المحكمة جذورا بذر الربيع والزمان الفعالة بالحدود وطلب قدر下滑ات

متباق انتساب المعامل.

وحيث ان... سم

حكون المستانت ونهاوا حكوثا السوية نبست

المستانت لسبب

السبب الأول

القانون

جاء الحكم قاصراً في اسراج حيث بيق الحكم على عدم وقوف ادار مادية ومعنوي

المستانت وهذا ماذك فللموقع فقد اداه المستانت اضرار مادية من زواجه باخـــ

حيث ان الزوجة الاخيرة شاركتي بـ 000000 وهو محدود ولسبيه اولاد... المستانت وجميعهم من المدارس ويجتمع الى مصروف باهظة للالفتاق عليه كما انه

يوزه من اخري جعله يخيف من منزل الزوجة المستانت واطفالها اتفادات بعـدة
اما عن أضرار الزوجة المعنوية فهي لا تقدر حتى أن الالام النفسية التي تعانيها الزوجة
المدفونة من وجود زوجة اخرى ( خسره ) لبهم

السبب الثاني

عدم استجابة المحكمة لسماح ضرور المتانة:

بجلسة 2/4/1861 طلبت المتانة من عدالة المحكمة سماح ضرورا لاتباع الانضباط
المادي والاجتماعي الذي حذرها من زواج المتانة. لكن باختلاف، دون علمها، تم استجابة
المتانا لطلبهما واتباع المتانة فرع بأن الزواج من غير اتفاق اثنين أبداء واستجابة
لم المحكمة رغم ان تجاهل الزوجة وهم من اقارب انزو نفسه وجرحها عمريه إلى قلبيه بما
ساء الزواج لزوجة ونسبي وسبيا وتوجعه معا بالسرقة والتهرب. هذه المناجرات
تمت تجاهل معها نوام الشريرة لم ته بهذين المتانتين محكمة أول درجة

السبب الثالث

لم هذه الأسباب، وتسببت الاخرى ادى تجاهل المتانة بفلسفة الموقوف والذكوات

بينما، طويل:

اما الحجم سنة الذكرى الذي انتهى، تاريخه 1431 هـ من سن المتانة نذره وكلفه
الحدود امام محكمة استبانة انتظارة لسدول السفيه وذات اثر تورة 17 يوليو
بالناصرة بتفر محكمة الاستبانة الاية (976 ) المتانة وذلك نذوراً على السنانة الدائمة
والنص صبحاً من يوم 15 / 7 / 1598 لسماحة الحكم:

اولا: بينه المتانة مسك
ثانيا: انحز و هادئ، أراد المتانة واعتبره أن لم يكن من الزواج المتانة نذره
بالصورات عن الذكريات شعلة ما بائت احيماء

٢
مذكورة تنمية داية

في الاستماع تم ٢١ يوليو ١٩٨٥ للحالة

الراجل يعيش خلخ

لاحوال شخصية

الراجل يعيش خلخ

اجتماع ١٢/٣/١٩٨٦

وهيتان رواج الدعوى تتحصل في أن السيدة لم تتقدم

بطل حكم بتطبيق الدعوى على سبيل اليد، حيث طلب بعثة

دون علم الدعوى، وذلك شرط لدعاها أنها زواج exh... على الغالب، الدعوى الدعوى الدعوى، ودخل

يبه وطهروا معاً من التأليفات ولا يكون للاحال saf... وان الدعوى عليه تطبيق عن منزل الزوجة

لتفر كيروه، ثم ما يملكن بأن الدعوى عليه تزوج باخرى دون أن تفر، والتحري تأكد لـذا

سند ذلك فإن الزوجة تتصر من هذا الزواج ما اضطرها إلى رفع هذه الدعوى - كمـ

انه دافع عن التمدي على السيل والسبب.

وحيتان الدعوى تقدم مع طرق الأصلة من جميع تزوج الدعوى طبّ باخر

عن فيلال سليم سعيداوي ٢١/٥/١٩٨٣

وحيتان محكمة اول درجة قضت بجلسة ٢١/٦/١٩٨٨

أمس هذا القضاء على أن التأليف من طرقة الدعوى المذكورة والتشابه الدعوى بطلاب القاطع

للزواج باخر طبّ علاً دون طلبها أنها لم يتم الدليل على أنه اساسية ضرر مادياً أو معنوي

للمجئي عن أسباب مادعة من الأضرار الدعوي طبّ باخر لزواج من أخرى.

وحيتان السيدة لم ترضي هذا القضاء تقدمت في الاستماع المذكور بصحيفه

قدمت للفصل وقعت في ٢١/٣/١٩٨٦ واعتبت للسيدة ضدها بطلب في ختام الحكمة.

بقبول الاستماع فكروا في الموضوع بالغاً، الحكم السعيد مع الزوج السعيد على المازار من

الرجتين مغفل تكييف الحالة، وذلك على أساس عاطفية الورود، أولاً؛ أن الحكم جاء تأصر

حييتين الحكم طبّ عدم روعة ضررار Elle وعده للسيدة وهذا مختلف للفواجع

فقد لحقت السيدة ضرر رادياً من زواج بااخر حيث أن الزوجة الأخرى ينصح بها في مورد، روعة.

وهو محدود وله سبعة أوراق من السيدة وجميعهم لم يخرج إلى صراع باحت..
للانظام على ما اتفقت فيه من منزل الزوجة المسلمة وأبدا لها لفترات بعدها
اما عن اضرار الزوجة المسلمة فهي لا تقدر بحال ينال أثناء النشأة التي تعانيها الزوجة
المسلمة من وجود زوجة أخرى.
ثانيا: عدم استجابة الحكمة لمساء شهد السمانه

وايضاً

توجه أن الاستثناء في المقام ونك الاعتراف بالقانونية من ثم فهو

قبول شكلاً

توجه أنه عن موضوع الاستثناء فإن من القرارات الإجراءات الشكلية للكلاب في
مواد الانحلال الشخصية تخضع لنقاط الدوران في قانون المراقبة وكان النص في الفقرة الأولى
من المادة 22 من قانون الإجراءات الذي حل محل قانون المراقبة في تنظيم الإجراءات
لللبابيات في أنه لم يحضر شاهده أو مكمله بالحروفي الجلسة المحددة في المحكمية
والنقض المنيد بزعم أبرزه أو يقلد له الحزور لجلسة أخرى طبقاً لل殖民 الفعل.
التحقيق لم ي قضي فإذا لم يتم مرضى الحق في الاستشهاد (----)) يدل على أن الفرع
هذين للعدم بحق الخصم من أطلاع أحد التفاصيل عن طريق تعديل استغراق هذه التحقيقات
كاملة دون مقضي فاوض على الحكمة وأخذ أمام المتقدم للتحقيق إذا لم يحضر الخصم شاهده
بالجلسة المحددة لبدء التحقيق أو لم يقلد له الحزور فيها أدلة بذلك مع تحديد جلسة تأديبة
نآذام التحقيق مازال قائما، فإذا لم يتخذ الخصم ما التمرره مقابل حقي الاستشهاد به الطعن
تمعن

9118/246/1

زمن 51 لـ500 حال شريحة جلسة بـ1982

وجيزة أن التأريخ من الأداب عن السمانه قد عقدت عن احضار شهدتها أو تكليفهم
بالحضور أما القاضي المتقدم للتحقيق ليداً بشهادة لم يتم إبلاغه بها لذلك أكثر من موطنًا طبي
طلبهما ونسم عن فتاوى المحكمة أول درجة قد جاء في محله للسماح والتي ببساطة ذلك فإن
التيابة ترى رفض الاستثناء موقف وتأييد الحكم السمانه.

وجيزة أن المدارف تلزم بها السمانه علا بالدارة 2451 من اللائحة.
لذلـك

تدى النائب إلى نيل الاستئناف شكلاً وضمن الموضوع برفض

وتأييد الحكم المستأنف واللزم المستأنسه المصاريف.

القاهرة في 11/8/1986

عاطف

رئيس النائب

سعد الفهمي
بسم الله الرحمن الرحيم

باسم المرجع

محكمة استئناف القاهرة

الدائرة الأولى للدعاوى الاستئنافية

حكم

بالجلسة المعقودة بقرار المحكمة الثالثة ذاته بقرار القضاء الدائم 22 يونيو 1956

في دعوى الاستئناف لـ رئيس المحكمة وضمن السيد ضيف الله إبراهيم،

وضمن السيد عادل إبراهيم،

وضمن السيد عبد المجيد خليل عبد Rahman،

في الاستئناف الصادر بالجلد في العسس تحت رقم 34 لسنة 1953.

المصدر:

 السيد/ وрактиع عبد الفتاح عبد الفتاح الذي 36 من سنود الدعا بأحق اللوا

فم بولاق الدكرو وحليما المختار مكتب الاستاذ محمد فيهم المحامي بهان الطبيع

الله ببولاق أبوالعلا،

وقد شخته وستها الاستاذ/ في الاستناف

المحامي

السيد/ بالجديد

(المؤذن)

استئناف الحكم برده بقرار 22/22 من محكمة الجريمة الإدارية في الدعوى

(6)
رقم 482 لسنة 1984 أحوال شهادية خي阶elin-

بعد الاستماع على الاتهام، وبيان المتهم، ورد بينه وبين المتهم، وبدأ التحايل الملاح والملاح، ولن ينظر إليها.

وهي أن وقائع هذه الدعوى على مبادئ من سلالة من أثر أو أنها تقبل في أن

الدعاوى اقتصاد الدعوى رقم 482 لسنة 1984 كل الدعاوى شرائية على استراحات على

عليه برسالة قدمت لملف مكتب تلك المحكمة تنبيهًا على 1984/7/22 وعلت بها قانونًا

في 27/7/1984 ضمتها أنها زوجه سيصبح العقد الشرعي، دبل بينهما، وباشرها

معاهدة الأزواج وثبت فيها سيئعة أثواب الدعوى على نفسه في طلبه، وأظهرت فيه مع

شيك الزواج مبركة لهم في (4) (كلها بأنه) حيث على أنها تخرج بحسب، دون أن تدري

والتحري كف لها صدق ذلك تحت شرط تغريبا - وأنا تتحري من هذا الزواج، كما أن

الدعاوى ضرب على المتقدم عليها بالدكتور والسندات إلى طلب الحكم ببطينها.

من الدعاوى على الطلاق بائدة لزواجهما، دون طلبها، مع الملاح، بل هو مشاكل متصلة.

أتباع المحامين - ودعت بحثاً خاصاً في الطلاق، مقدماً طلبات على:

(1) صورة رسالة طبقياً من رجل زواج الدعاوى عليها، ندعي نورالله سليم بناي،

بتاريخ 27/7/1983 لدى أخذ وجه مكتب من هو، مقدم مقدم، إلى

(2) صورة رسالة من محضر محرر ب بتاريخ 1983/11/28 رقم 250 لسنة 1985، تدعي

بئل الغد، الذي من بائع الدعوى بناء على صورته، بأن زواج الملاح بدون طلب، ويخرج

خان من استماعه على فتى متزوجة ودعي الحاج الملاح، بالجسوات، كتبت بمحضرها أن عرضت

المحكمة الصلاحة بجلسة 1985/3/24 على رجل الدعوى، فرفض، ثم فتح

اجراء الدعوى لتحلية للطلاق، وتم في هذه المرحلة، اتخاذ تلك الحكم

ويحروج 1985/5/12 للتحقيق، كل الدعوى على الجهة الملاح، بينما تأكد المحكمة

لجلسة 1985/5/11 في جلسة 1985/5/24، ثم لجسة 1985/11/12، فيها لم

يخطر الدعوى، فترقى المحكمة إعادة الدعوى، للمطرود لجسة 1985/6/21، فيها

(7)
بطليت الدعاء لاتباع الدين، للتحقيق تقرير الدعاء عليه ان الدعاء مجاز عن اثبات
دعوا وطلب حجز الدعاء للحكم، تزويج الزوجة الأولى للمرأة، المحكمة بوضحية 1876/2/22
تم تحقيقات على اثر حجة حسب الديانة، واسترخاء لها على ان الدعاء لم يتم الدليل على
أنه قد أصابا ضرر مادي أو معيشي، طببا للقاتل، (11 كثرة أقرض) الشارع بالقائم زمام
1000 لسنة 1985 الى القائم زمام 25 لسنة 1994، ذلك لجهوزية ان علاقات الديانة
من اضرار الدعاء عليها ولا تزوج دينها على حالها، وأقر ضر أو غير ضر
وام تصدف هذا القضاء
قبل لدى المستأنسة قسمت عليه بالاستثناء المطالي، حقيقية للفت كتاب هذه الحكمة
وقدت في 186/16/11/7 وتأجلت بتاريخ 188/12/24
أسباب ضعيفها:
أولا: التفاسير التسبيح - في بيان ذكي: ان الحكم برس على عدم وقوع اضرار
دانيه، ومنذن للمستأنسة وهذا ينافض للإراقبة فمات اعمال المستأنسة اضرارا ماديا من
زواجها بآخر بمشاركته الزوجي، الآخر. لبس في مود رمزته وهو مبدل وله سعة أولي المستأنسة
وبيعنيهم في المدار، وريشائيات الى معاينة最后一، الا ان قلقة عليه كما أن زواجة بآخر
جهل يتبجي من نصيب الزوجية المستأنسة، وطالها لفترات بعيدة، ما عن الاضرار المميتين
نسبى لانعدم وحيدان الالم النفسية التي تعانيها المستأنسة من وجود زواج أخرى
(ضرر) لها
ثانيا: عدم استجابة المحكمة لسر مدرما، في بيان ذلك تقول:
لم تستجب المحكمة للطلب من ثلاث شهود، فاتدي المستأنسة سواء المجزء من اثبات
استجابة لم رم ان شهدوا من اثار ليته وجزء على علم اليقين. لبإذا لم تكن
تحثيريمه كأنما توجه محاسب باختراع، و диагност هذه المشاكلة فتحت عندها دريج العصر
بينهما ولم تأخذ محكمة على درجه بهذه المستندات لابد عفاد المستأنسة
и يدرو مع المستأنسة كهدى، مات ادلة اهل التشريعة، من هذا وحيد 188/12/10
قدم كيل المستندات بناءً على الملاحظات المؤدية إلى الموافقة على النوع العام واللايدي الذي

بتلقي المسافات بين المستندات على النمط 일반ي للفترة المادية والمادى، الذي

إنها نتيجة لم菊 المستندات عليه بأنواع قد حافظت مستندات

طابع على: صورية نسبية بين الأصل من الحكم المسند بالضبط. ب рецепт 1987/9/11

في المسند وتم 1988 سنة 1987 حصل ردود الكورس بحسب المستند عليه

القيود مع النقطة تشير إليه أولاً كتبها لأسباب اتخاذها بالالتزام على المستند في بيروت

1987/10/11 وأخذت بها الاستماع المعروف بال بصورة الفيتو. كلاً أن التباد العامل

قدم بذكاري المؤرخة 1987/11/11 رأى عمليً خاتمها بالاستماع. مختلفة بـ

الحكم بقبول الاستناد مكرساً في الموعد. بضبط. جلب الحكم المستند وأثار المستند

العرضاء حجز المحكمة الدوائية، الحكم لجدة الرب.

بين حديث أن الاستناد حاز أراضي الثانوية، فهو تجربة.

حيث أن النسبة للمنسوبيات كان الماده تتم 3/4/11 من تأبين المحكمة الدوائية

88 سنة 1979 قد تقع عليه أن (1) بتعمق على المحكمة دستورية، تم تقنين أو

لائحة عدم جواز تزويجية من اليوم التالي لعود الحكم بعض جوازات ملكية القصر

والقوانين المذكور سواً بالوجب للوثائق المطلقة التي لم يسدد ضابثتها حكم نهائي.

أوبالنسبة للوثائق ذاتية للشرطة (أثاثها) 3/4 ونافذة المذكرة الإدراة للقوانين

آللذكر في هذا المصدر أن اللدنة قد استغرب أن جزء من التحري السابق

هودعم تطبيق الفصل في المستقبل فحسب ونابها للوثائق والعلاقات المبتدئة على

ورد الحكم بعدد دستوري، هنالك أن يوحي من هذا الأثر الوجسي

الحقوق، والمراكز التي يكون قد استمرت عند معد وبحكم حازة أو التميسي ضلام من أحكام

محكمة النقض قد استمرت على اعتبار القانون الذي قد جرى بذكاري هو ذات

منعدم لا أخرى له على الإطلاق - لما كان ذلك. كذلك، مدينة المحكمة الدستورية العليا

9

(( فإنه المشتبه ))

حكم Outlook
تحضير بيانات الاستبان، موروثًا وتم تأسيسه الحكم المستنث
وللإسراء الاستفادة من الدكتور محمد والتي
جنيها مقابل أسماء المحاماة

أما الفئة التي سمحت الارتباط عند الدواوين، وتم تكثيف على سرية الحكم الأيدي في

- براعة السيد الاستاذ المستشار / الحاج الدين موسى
- ضيوف السيدين الاستاشاقين / عبد القادر عبد الحليم الهشتي

عدد استشارات

- وحضور السيد الاستاشاقين / عبد الواحد إبراهيم رؤو
- وحضور السيد الاستاشاقين / عبد الواحد إحذاء السيد

أمين السر

رئيسي الحكم
CASE STUDY NO. XII

Case concerning divorce on grounds of *darar* due to polygamy; no.84 in the general list, Judicial Year 105.

Case documents:
(i) Court ruling (Mahkamat al-Isti‘nāf)
CASE STUDY NO. 11

بامر التماثل

 hakkında ائتمان الناهية

الدائرة الأولى للاصول الشخصية

حكم

بالاجتماع المنعقد علنياً على المحكمة ائتمان نفاذة بالواقعة الوفاة العالقة بتاريخ 21 يوليو

رئيس المحكمة

страحة السيد الأساتذة الأستاذ / محمد حسن علم الدين

المشاركون

وضحة السيد الأساتذة الأستاذين / خالد حلم الحكيم 5 محمد السيد الأبنان

رئيسي

وضحا الأساتذة / احمد إبراهيم طه

وضحاء الأساتذة / حسن إبراهيم حديد

أمي الحضر

صدر الحكم التالي:

"الأئتمان الفيد بالجهة في LCSI تحت رقم 21 منذ 1000 نيساء.

أقر المبدع من:

الميد /...

برناج الأئتمان الأمير المذكوراً في القضايا.

ضرر الشهاب الحضر.

أمير...

الميد /...

ضرر الشهاب الحضراء القاضية في القضايا.

المحضر:

أجتنام للحكم الداد بديلة يوم 21/11/1977 من محكمة جبين الفارغة الابتدائية في الهرمز.

رقم 29 لسنة 1989 أحوال شخصية كل جبين الفارغة.

الحكم:

بعد مصالح الشروط في الطبعة سواء راقت على الأوان ولابد من

وقد كان محكمة ندا في القاضي محمد إبراهيم

وقد أن وقفة السيد محترم أن يكون التأتوت ضد حفظ الشهاب الداد رقم القاضي. وكل أجل

شخصية جبين الفارغة يتطلب الحكم لباشرة موضوعه من التأتوت طلبه للقرار وذلك في الدعوى

الل
لا يوجد نص يمكن قراءته بشكل طبيعي من الصورة المقدمة.
الجرزات وبعض جنوب غرب اتحاد الحلفاء.

صدر هذا الحكم على طلب بلدية الرياض، 1400/1/24.

رئيس المحكمة

عين إسمار
CASE STUDY NO. XIII.

Case concerning validity of the contract; no. 26 in the general list, Judicial Year 57.

Case documents:
(i) Court ruling (Maḥkamat al-Naqd)
CASE STUDY NO XIII

لاه: الشعب

مكتب: التقضي

الدائرة الدموية والتجارية والادوال الشخصية

الزودية من السيد المستشار نائب رئيس المحكمة/ محمد جلال الدين رفيع رفيع
والسيدة المستشارين/صلاح محمد أحمد نائب رئيس المحكمة، أحمد ناصر الجندي
حسين محمد حسن، محامي حبيب عباس محسن

وامير رئيس النياية السيد/ محمد سيف الطيتي

أيام السيد/ السيد صادق محمد

في الجلسة العلن: المنعقدة بقصر المحكمة بمدينة القاهرة
في بئسم الثلاثاء، من شوال سنة 1408 ه/ الموافق 14 من مايو سنة 1988 م.

صدر: الحكم الآتي:

في الدلعن العقيد في جدول المحكمة بتمorganized date/677/42479/200

الموضوع:

السيد الامتنان/محامي بديميا ونقي

لم يحضر عهبه أحد بالجلسة.

السيد / 1

السيد / 2

السيد / 3

لم يحضر عهده أحد بالجلسة.
النظام

في يوم 10/2/1487 هـ قررت محكمة استئناف المنصورة (موريطة دمياط) في الاستئناف رقم 2612/1487 في الاستئناف رقم 2612/1487، وذلك ب решение:

طلب فيها الدعاوى الحزائر قبل الدعوى على منحنى الدعوى بين الناخبين داخل الحكم المعترض عليه، وإحالته للدعاوى إلى محكمة استئناف المنصورة (موريطة دمياط) للنظر فيها من جديد بأمران إخسري

والزمام للإطلاع على دعاوى

وفي نفس اليوم أوردت الدعوى مشتركة مارقة.

كما قام النظر في الملف، وتم الإطلاع على القضية.

وفي 10/5/1487 هـ ألقت الدعوى عليه في موريطة دمياط.

وردت النزاعات العامة بشكل واضح، وتم الإطلاع عليها في الدير والنظر.

وعلى المحكمة من جمع الحربات على جلسة اليوم.

المحكمة

بعد الإطلاع على الأوراق ومساء التغير الذي تلتها، استمعت المحكمة، واجهت الإطلاع إلى جلسة اليوم.

العدد والمرافعة ومقدم

حيث أن الدعوى استمرت في التشكلية.

وحيث أن النزاعات على ما بينهم من الحكم المعترض عليه وسائر الأوراق. - تتحصل على

ان الدعوى تقدم الدعوى رقم 1207/1487 كحال شريطي دمياط على المعترض عليه، وإحالته، وتم إقامة جلسة في جلسة المدينة استمعت بالنظر بين المعترض عليه، وحال الأوراق، وتم الإطلاع على كل ما دار، وتم إعداد.statusCode}
الدفتر رقم 194134 واحيسمبا التمريح له برفع دعوي بعدم دستورية المادة 14/19
لائحة ترتيب المحاكم الشرعية الصادرة بالمرسوم السلطاني رقم 7/1931 وتلال في بيان ذلك
أن الدعوى نذة ما الذينك زوجها لها بايبها الورد بالرسائل المتطلدة بينهما وتقول:
الثاني من المحضر المذكور معنا وسن ثم نقد انعقاد زواجها وادعى الدعوى ضد الأول
- بعد ذلك زواجها فكان هذا الزواج يقعب ولا يكون التفريق بينهما وأجبها
وان الدعوي بحبة فقد اقام الدعوى وتاريخ 1985/10/30 حكت المحكمة برفض الدعوى.
استنادًا إلى هذا الحكم لدى محكمة استدال المنسترة "أمية" دمياط "بالمستدام
رقم 70 وتاريخ 1985/11/4 حكت المحكمة برفض الحكم المتضمن:
من الطاعن في هذا الحكم بإلغاء التقضي واعتراضه من تأبينها الرواية برفض الادام في
على المحكمة بغرامة مزودة كاملة. وتهيئتها الفضية. راقةYe:
وجهان الدامين أيهم على سبيل نضع الدافع بالراج على الحكم الداعم في-
مذابة الثاني. وفي سياق ذلك يقول: إن الحكم المذكور عند زواجها الداعم فيه الذي
تسألها له وستناده لأجل ما بذوره لم يتم بنها ورد. دعا على منذ مسن
المادة 14/19 من لائحة ترتيب المحاكم الشرعية التي تغمض بعدم سام دعوى الزوجية والاطلاع
بجلال. عند الاشتر. إلا إذا كانت تلمة راحة وسية وإن كانت دعوى هي دعوى ترغيب
، وقامت حسببة ثلاثة هجمت عليه المادة ماغرة. ذكر. ويخذ فيهما براج الآثار من مذهب أبي حنيفة.
فإن الحكم الداعم في أي لم يتم هذا التأيير قد ذه الفلوم بما يتوجب بقية.
وجهان. هذا الذي مودي ذي. إنه من الضروري تأية: هذه المحكمة أنه في الحوادث
الولاية من أول هذا سنة 1831 وذكيا الفتورة الزائدة من المادة 14 من لائحة ترتيب المحاكم
الشرعية الصادرة بالمرسوم السلطاني رقم 7/1931 لأنهم عند الشكوك ذوي الزوجية والاطلاع.
لا إذا كانت ثوابي بهجته نتيجة رد عامي الاتبار ببها من موافقة من المستلمين وتائه.
(4)

باعدارها، فإن المعنون ضدما الأول والثاني قد دفعا - أمام محكمة المبتدأ - بموجب
سعادة الدعوى لمقدم تقديم الطعن عليه زواج رضي - بالمعنون ضدما الثانيه - ووضوعها
انكار لكله الزوجية فإن الحكم البدائي المذكور باحكم المعنون فيه اتفاقهما، بعدم سماح
دواوي الزوجية على ما ورد مبادئه من أن الرسالة المرسلة للدعاية من المعنون ضدما
الثانيه لا تتعلق إلى مرتين عند الزواج، أو الوعد به لم يقدم الدعوى على سماح الدعوى المصموم
عليها في المادة سالفة الذكر، وهو وفاة الزوجة الرسمية والتي يدونها يكون الثاني منه
عن سماح الدعوى في مثل هذه الحالة، وهو من الحكم ما يأتي لحل قضائه، فإن النصية
هذا السبب يكون على غير أساس،

ولיות الذراع ينصح بالسبب الثاني على الحكم الداعمي في الحالات في نتيجة
القانون، وفي بيان ذلك يقول أنه دفع امام محكمة المبتدأ بموجب دستوريه المادة 4/1971
لاستدامة توثب المحام المذكور، وكان يتعين عليها أن تتيح له عرضه دفع الدعوى بموجب
المادة السادسة الدستورية العليا، فإن دفع الحكم الداعمي فيه هذا الدعوى يتوافق في جسم
يكون دفع امامين في تبني القاضي بليستوجيب نقصه.

ويثبت هذا النص مرتبط، وذلك أنه لما كانت المادة 24 من قانون المحكمة
الدستورية العليا رقم 88 لسنة 1971 قد اختصت هذه المحكمة دون غيرها بالرؤية التدابير على
دستورية القوانين واللوائح، وكان النصيحة المادة 1 من هذا القانون على أن تتولى المحكمة
هذه الرؤية على الوجه التالي "أ" إذا عرض لأحادي المحامين 1000 عارض محدد، وحايلاء الأوراق المتناسبة
قدم دستورية نصيحة تأتي أو لا تأتي في النزاع ورخص الدعوى وأ מבוסס الأوراق على
المحكمة الدستورية العليا للنظر في المسألة الدستورية "ب" إذا دفع امامين إمكانه
نتيجة دفع امام أحد المحامين بموجب دستورية نصيحة تأتي أو لا تأتي ورأت المحكمة
1000 الدعوى إع
جدي إجتذبت نظر الدعوى وحدد لنحن أثار الدفع مباداً لإيجاز ثلاثة أشهر لرفع الدعوى.

فإن لم يرفع الدعوى في الميعاد أجري الدفع، كان لن يقبل.

وعلماً بما شهد تنازل هذه المحكمة في حالة مسألة دستورية، فنص قرار

قانون أول لائحة المحكمة الدستورية العليا سواء من جانب محكمة الموضع أو دعوى

المباشرة في التزاع، كان من تفقها نفسها إلى المحكمة الدستورية العليا.

إن هي رأى جدية الدفع الذي أبداه أمامها اتحاد المحكمة المستندة، فإن هي قدرت عدم جدية

الدعوة فوضعت تنازل الدعوى. وكالذين قد دفع أمام محكمة الاستaneous بعدم دستورية

 mooحاء 1292/ لائحة تزامن المحاكم الإدارية والإلزام للمذكرة إن في التزام فإنها على المحكمة

إن هي قدرت عدم جدية هذا الدفع، وفقط تنازل الدعوى وفصل فيما، وكون النص على

غير علامة.

ولما تقدم بين رفع الطعن.

لذاً.

رضت المحكمة الطعن والرضا الثائر الصورياً بمساحة الكلالة:

نائب رئيس المحكمة

ف. عيسى