

Tying the knot: a Feminist/Womanist guide to Muslim marriage in America

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TYING THE KNOT

A FEMINIST/WOMANIST
GUIDE TO MUSLIM
MARRIAGE IN AMERICA

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A FEMINIST/WOMANIST GUIDE TO
MUSLIM MARRIAGE IN AMERICA

Kecia Ali (editor)
Aminah Beverly Al-Deen
Zahra Ayubi
Juliane Hammer
Shehnaz Haqqani
Debra Majeed
Asifa Quraishi-Landes
Zaynab Shahar
Shereen Yousuf
Nousheen Yousuf-Sadiq

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Contents

1 Introduction

7 Intercultural/Interethnic/Interracial Marriages (and Weddings):
Reflections and Considerations

JULIANE HAMMER

17 A Guide for Muslim Women’s Marriage to Non-Muslim Men

SHEHNAZ HAQQANI

31 LGBTQ Muslim Marriage Praxis and Queer Ethics of Relation

ZAYNAB SHAHAR

43 Temporary Pleasure, Permanent Effects: Practical Advice on
Mut’a Marriage

SHEREEN YOUSUF & NOUSHEEN YOUSUF-SADIQ

55 Pre-Marital Counseling and Nikah Contract Writing Guide

ZAHRA AYUBI

67 Drafting a Muslim Marriage Contract: A Summary of
Mandatory and Optional Clauses

ASIFA QURAIISHI-LANDES

97 Making it Official: A Guide to Officiating at Muslim
American Weddings

KECIA ALI

107 Wish I Had Known

AMINAH BEVERLY AL-DEEN

117 “We Can Be Our Own Survivors”: African American Muslim
Women on Love, Loss, and Life Following the Death of a Spouse

DEBRA MAJEED

129 About the Contributors

Drafting a Muslim Marriage Contract: A Summary of Mandatory and Optional Clauses

ASIFA QURAI SHI-LANDES

Please note that the recommendations in this chapter are not professional legal advice. Such advice, whether Islamic or secular, must be tailored to each individual and situation. The information contained in this chapter is meant only for general informational and educational use. Actual contract drafting should be done with the advice of a qualified expert with whom you have shared your specific situation and needs.

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Drafting a marriage contract probably sounds like a boring legal job. It is certainly not as much fun as ordering a wedding cake. But when done right, it can be a valuable opportunity for you to gain a deeper understanding of your future spouse, what you value most in a relationship, and even some new insights about yourself, such as what you want to keep in your life and what you could change.

The kinds of things that a couple has to talk about in order to draft a detailed Muslim marriage contract force discussion and introspection about each person's core values, desires, and expectations. It can also reveal unexpected conflicts in a calm space when the couple is most disposed to work them out, and before they become too entrenched and intense. These conversations can be like therapy, where each party finds ways to be vulnerable enough to really explain what makes them the happiest and most fulfilled. In other words, drafting your Muslim marriage contract can be the time that you sit down as a couple (with or without your family advisors) and really, seriously, lovingly, and pragmatically plan out what you want your life together to look and feel like.

Is it enforceable?

Not all of the things you write down in your contract are going to be enforceable by a judge if, for some reason, you end up in a secular court. That is because the state courts in places like the United States are not set up to enforce Muslim marriage rules. True, sometimes these provisions—especially things like *mahr*—have sometimes been honored by American judges presiding over Muslim divorce cases. But whether this happens is highly unpredictable and varies widely with the state and the judge.¹ (Some Muslims mistakenly think that calling their Muslim marriage contract a “prenuptial agreement” will ensure its enforceability, but they are painfully surprised when they find out that they did not follow their state’s requirements for valid prenuptial agreements, such as mutual full disclosure of assets, waiting period between drafting and signing, and advice of counsel.) To know what parts of your Muslim marriage

1 For more detail on what happens in Muslim divorce cases in American courts, see Asifa Quraishi-Landes and Najeeba Syeed, “No Altars: An Introduction to Islamic Family Law in the United State,” in Kecia Ali, ed., *Half of Faith: American Muslim Marriage and Divorce in the Twenty-First Century* (OpenBU, 2021), url: <https://hdl.handle.net/2144/42505>. It was originally published in 2004, so newer legal developments aren’t covered. For a more recent exploration, you can [watch my Kamel Lecture](#), “Islamic Law in American Courts,” delivered at Yale Law School in 2018.

contract can be enforced by a state court, and how to do so, you should consult a lawyer with expertise in the family law of your state.²

One more note on enforceability: many Muslims seek out non-state resolution of their marital disputes, such as community elders and trusted family and friends. Sometimes local religious scholars operate as mediators and arbitrators, and the Muslim legal community has long been interested in seeking out ways to give state legal recognition to religious tribunals within the alternative dispute resolution systems that have benefitted many people, including other religious minorities. Thus, separate from state court review, you might find your marriage contract referenced by any of these other authorities in your life; therefore, it makes sense to make it as clear and complete as possible.

Is it worth it?

If it is not enforceable by a state court, does that make this a waste of time? Of course not. As Muslims in the United States, we are quite used to following all sorts of rules (*fiqh*) that are not enforced by state law — from what we eat to how we pray to what we wear. These rules are how we know how to live as Muslims. The fact that the state doesn't recognize them doesn't make them any less important to us. Similarly, entering into a Muslim marriage contract is the way that a Muslim gets married in the eyes of God — and that is the primary reason that we do it.

But you will soon discover a second reason: it is very useful. Islam is very practical when it comes to marriage. The rules of *fiqh* take seriously the idea that a marriage puts individuals, their families, wealth, and children into new configurations and connections. Through the marriage contract, Islam provides multiple avenues to work out all those details in writing, for use now and in the future. If you take the process of drafting your marriage contract as seriously as you take signing it, you will probably be glad you did. And you will have one more thing to celebrate with that cake.

2 To connect with Muslim lawyers who have this expertise, you can try reaching out to NAML (National Association of Muslim Lawyers), founded in the 1990s, and led by representatives of the many regional Muslim bar associations around the country. See www.naml.info.

Is it complicated?

Your Muslim marriage contract can be as simple or complex as you want it to be. To help you navigate the drafting process, this chapter explains the mandatory and optional clauses, including some samples from the past and present.³ This is not a template or model contract, but rather a springboard to help you generate your own unique marriage contract. Use as much or as little of this as you like, and in whatever order works for you. Just be sure to keep in mind the mandatory clauses and have some version of those in your contract. The rest is completely up to you — and your fiancé!

MANDATORY CLAUSES**Agreement by Husband and Wife to Marry**

The contract must clearly indicate the names of the husband and wife freely entering the contract. Some *madhhabs* (schools of *fiqh*) hold that the bride should have a representative (*wali*) assisting in the negotiation and formalization of the contract, but all agreements entered on her behalf must be authorized by her clear consent. In the Hanafi school, a mature bride may conclude her own marriage contract without a *wali*. If the parties do choose to involve a *wali*, the contract might also include the *wali*'s name and signature.

Examples:

“_____ (hereafter “the Wife”) and _____ (hereafter “the Husband”) have agreed to enter into an Islamic marriage contract, based upon the Qur’an and Sunnah and according to the teachings of the Qur’an and the Sharia of Islam.”

- draft contract, Azizah al-Hibri, on file with author

3 These sample clauses included below are from a variety of sources (all on file with the author): 1) materials produced by Azizah al-Hibri for a project of Karamah: Muslim Women Lawyers for Human Rights in the 1990s, 2) *Islamic Marriage Contracts: A Resource Guide for Legal Professionals, Advocates, Imams, and Communities* (Maha AlKhateeb for Peaceful Families Project 2012), 3) Sherifa al-Khateeb, *Islamic Prenuptial Agreements* (Sisters! Magazine), 4) two chapters in *The Islamic Marriage Contract: Case Studies in Islamic Family Law* (Frank Vogel and Asifa Quraishi, eds., Cambridge, MA: Harvard University Press, 2008): Amira Sonbol, “A History of Marriage Contracts in Egypt,” and Amalia Zomeño, “The Islamic Marriage Contract in al-Andalus (10th—16th Centuries),” 5) actual contract templates by various mosques and Muslim organizations in the US, and 6) actual private marriage contracts by contemporary Muslims shared with the author.

“On this day of _____ in the month of _____ in the year _____ in the city of _____ in the state of _____ in the country of _____, I (name of Groom), age _____, make this offer of marriage to (name of Bride), age ____.”

- actual American Muslim marriage contract, 20th century, on file with author
.....

“This is to certify that in the City of _____, State of _____, I, _____ Imam of _____, by virtue of the power vested in me on [day, month, year] A.H., [day, month, year] A.D., united in marriage Mr. _____, born on [day, month, year], of [country] citizenship, of [groom’s street address, city, state & zip], son of _____ and Ms. _____, born on [day, month, year], of [country] citizenship, of [bride’s street address, city, state & zip], daughter of _____.”

- [sample marriage contract, Peaceful Families Project, 2012](#)
.....

“I _____ solemnly offer to marry _____ and take her as my wife, in accordance with the Islamic Shariah, the teachings of the Quran, and the Sunnah of the Prophet Muhammad Ibn Abdullah (PBUH), and for the dowry of _____. I declare this solemn offer before the present witnesses, praying to Almighty Allah to be my witness; Allah is the Best of Witnesses.

“I _____ accept the solemn offer of _____ and honor and agree with the action of my heart in concluding this marriage contract in accordance with the Islamic Shariah, the teachings of the Quran, and the Sunnah of the Prophet Muhammad ibn Abdullah (PBUH) and for the dowry of _____.”

“I accept this solemn offer before the present witnesses, praying Almighty Allah to be my witness; Allah is the Best of Witnesses.”

- form contract, Islamic Society of North America, 20th century, on file with author
.....

“In consideration of the mutual agreements herein contained and with the intent to be legally bound hereby, (_____), the Husband, and (_____), the Wife, agree as follows:”

- actual American Muslim marriage contract, 20th century, on file with author

Mahr/Dower

The contract must include some provision regarding the marriage gift (*mahr/sadaq/dower*) from the groom (or on behalf of the groom) to the bride. The *mahr* is anything of value agreed upon by the couple, and it can be as large or small as the parties agree. The *mahr* can be made payable immediately at the time of the contract execution, continuously payable (in specified installments throughout the marriage), or deferred to a specified time (such as upon divorce of the parties or death of the husband).

Some examples of actual *mahrs* agreed to in American Muslim marriage contracts in recent years include:

- \$35,000
- \$10.00
- \$1.00 immediate, and \$100,000 deferred to be paid in the event of divorce
- a new car and \$20,000
- an Islamic law library
- a Qur'an and a set of hadith
- a wedding ring
- shahada of the Groom
- a promise to teach the Wife Juz 'Amma and Juz Tabarak
- a promise to teach the Wife how to play the guitar
- a furnished villa, a matching diamond ring, necklace, bracelet, and earring set
- 3 Pakistani bridal outfits, \$25,000, jewelry set with pearls and precious stones
- Arabic lessons, a computer, and a home gym

- a trip around the world including stops in Makkah, Medinah, and Jerusalem
- gold ring as immediate mahr, one year’s rent for deferred mahr

If the parties want to include a clause indicating that the *mahr* is not to be treated as community/marital property (giving her husband half ownership) by a secular court, it is advisable to include a sentence specifying that the *mahr* (whether advanced or postponed) is and will remain the separate property of the wife, and that the husband has no rights in such *mahr* whether during the marriage or upon divorce. Language to this effect might look like:

“The Husband understands and agrees that in accordance with Islamic law, such mahr whether advanced or postponed is and shall remain, so long as the Wife has not disposed of it, the personal and separate property of the Wife and that the Husband has no rights in such mahr whether during the marriage or upon divorce.”

- draft contract, Azizah al-Hibri, on file with author

(Note: If the couple wishes to opt out of community/marital property more generally, see below.)

Examples of *mahr* clauses:

“The Husband has offered and the Wife has accepted a *mahr* (dower) of _____ of which/\$ _____ is due at the time this contract is executed (and the balance of \$ _____ shall be postponed and becomes due and payable upon death or divorce), in accordance with the provisions of this Marriage Contract and established Hanafi jurisprudence.”

- draft contract, Azizah al-Hibri, on file with author

.....

“The Husband has offered and the Wife has accepted a *mahr* (dower) of _____ and _____. This *mahr* is due in two parts: advanced and deferred. The advanced *mahr* is _____ and is due at the time this contract is executed. The deferred *mahr* is _____ and is due and payable only in the event that: (1) the Husband and Wife divorce, or (2) the Husband dies before the Wife. If either event occurs, the Husband will provide the Wife with _____.”

- actual American Muslim marriage contract, 20th century, on file with author

“The dower, being a requirement for a marriage to be recognized as legal according to Islam, _____ give and _____ accepts a dower amounting to _____.”

- actual American Muslim marriage contract, 20th century, on file with author

“I offer as my gift to her, which may not be disposed of by anyone else, the following:

[If amount, specify currency. If objects, give description.]

- 1) the Immediate *Mahr* is _____
- 2) the Continuous *Mahr* is _____ paid weekly () monthly () yearly ()
- 3) the Deferred *Mahr* is _____ to be paid upon divorce or death of the husband.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

OPTIONAL CLAUSES

Joint Statements of Love, Commitment, Spirit of the New Union

Statements describing the nature of the emotional and spiritual union solemnized in the contract are not necessary to a marriage contract and do not constitute enforceable clauses; but couples often like to include them to show the special nature of their particular union, to eloquently articulate their commitment to each other and to God, and to add to the overall beauty of the contract. Such clauses are also not just found in modern marriages today — as can be seen from the centuries-old examples below.

Examples:

“[The Husband] promises his Wife (name of Wife) to fear God & treat her well and provide them with a good life as ordered by God and according to the Sunnah of the Prophet to hold with good treatment or let her go in peace.”

- Egyptian Marriage contract, 259 Hijra, cited in Sonbol, “History of Marriage Contracts in Egypt”

“He is married to her by the word of Allah subhana wa ta’ala and according to the Sunna of His prophet Muhammad (May God’s prayers be on him). She is to be with him under the trust of Allah

subhana wa ta'ala in accordance with what God has commanded that husbands should take good care of their wives or leave them, by divorce, smoothly.”

- Andalusian model marriage contract, 11th century, cited in Zomeño, “The Islamic Marriage Contract in al-Andalus”

.....

“While Islam is quite clear that marriage is a contract or agreement between two people, it is distinguished in that it is a contract whose necessary component is love. We pray that our marriage will be blessed by the “love and mercy” of Allah, and we commit ourselves to constantly striving to ensure that love and caring are strong pillars of our relationship.”

- actual South African Muslim marriage contract, 20th century, on file with author

.....

“Having both descended from the first human created by Allah, we acknowledge the basic equality of all people, and especially of each other insofar as our respective rights and responsibilities in our marriage are concerned.”

- actual American Muslim marriage contract, 20th century, on file with author

.....

“Besides love and caring, the marriages of our Nabi Muhammad (peace be upon him) were characterized by mutual respect, appreciation, support, cooperation, and loyalty between the spouses. These, we believe, will be essential for the success of our marriage and we commit ourselves to upholding these values as determining factors in our dealings with each other.”

- actual American Muslim marriage contract, 20th century, on file with author

.....

“We recognize that without a spirit of openness, trust, strong communication and mutual consultation, our marriage will not be blessed by Allah with His Mercy. We thus commit ourselves to such a spirit between ourselves.”

- actual American Muslim marriage contract, 20th century, on file with author

.....

“We agree to prioritize time for play and recreation, as well as time for worship, work, and study.”

- actual American Muslim marriage contract, 20th century, on file with author

“We both enter this marriage with the intention of a permanent union, with respect for each other, in hopes of pleasing Allah. Through it we will recognize Allah as the only owner of our ultimate obedience and pledge ourselves to actively creating a life for each other that is full of love, mercy, kindness, tranquility, peace, security, and consideration. We further commit ourselves to promoting equity and harmony between us and in the entire extended family, to being mutually supportive, to leading each other to the path of Allah, to protecting each other from all that is wrong and harmful, and to never abusing each other mentally, emotionally, verbally, or physically.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

Sexual Relations

Some couples choose to document their recognition that both have an Islamic right to personal satisfaction in marital intimate relations.¹ A specific provision requiring consent of both spouses to every sexual encounter might be useful to clarify that the couple wishes to reject the classical *fiqh* position that does not recognize a wife’s right to refuse sex, or that penalizes her financially for doing so.

Example:

“As with all relations in our marriage, sexual relations will be based on mutual respect and trust. Thus, we accept that the time at which sexual relations take place and the kind of such relations depends on the agreement of both of us. And neither of us would have the right to force sexual relations of any kind or at any time on the other.”

- actual South African Muslim marriage contract, 20th century, on file with author

Preserving Monogamy

A very popular topic throughout the history of Islamic marriage contracts is whether or not the marriage would include polygyny. This is not a new phenomenon, as evidenced by the fact that the marriage contract of Prophet Muhammad’s great-granddaughter Sukayna bint

1 For more information on mutually-respectful intimate relations for Muslims, see *The Sex Talk* published by HEART Women & Girls (2022).

Husayn included a stipulation requiring her husband not marry any other women.

If the couple wants to take steps to keep their marriage monogamous, there are two primary methods of doing so. First, they could include a condition to the marriage indicating that if the husband marries a second wife, his action would give the first wife grounds for a judicial divorce. (Just putting a condition in the contract that says the husband will take no other wives has, historically, generally been held to be unenforceable or, in other views—i.e., the Hanbali school—it has the same effect as the condition just described: it gives the wife this right to a judicial divorce based on the husband breaching the stipulation.) This could also be accomplished by using the mechanism of a “delegated divorce” in which the husband “delegates” his unconditional right of *talaq* to his wife, to be used to divorce herself whenever she wishes. The legal language used to indicate this delegation was typically that the wife holds “the bond of marriage (*isma*) in her hand.”

Alternatively, where divorce is not the desired outcome for a wife whose husband has married another, there is another way to delegate the husband’s unconditional *talaq* right — namely, to give it to his first wife, to be used on any other wives that he may decide to marry. This would be a “conditional delegated divorce” and there is historical evidence that many Muslim women insisted on such clauses in their marriage contracts. (See examples below.)

If you are drafting a monogamy/polygamy clause, keep in mind the relevance of state law where you live. If you live in a place, like the United States, where polygamy is not recognized by the state, then these provisions are largely irrelevant. On the other hand, illegal polygamous relationships exist even in countries where polygamy is not recognized, in which case it is wise to be sure you have some non-state authority who recognizes your Islamic polygynous rights, and then write your marriage contract with them in mind. (For example, find out if they recognize delegated and conditionally delegated divorces.)

For spouses in the United States intending a monogamous marriage, it is unadvisable to rely on the current federal prohibition of polygamy, because (a) that prohibition may change and (b) the couple may end up living in a country that does not prohibit polygamy. Moreover, this is one of those topics that is crucial for a couple to be very clear about with each other, regardless of what the state has to say about it.

Examples:

“The Husband voluntarily on his own free will, in order to please his future wife and to enjoy her affection, commits himself not to marry another wife, nor to have a child-mother, or to enjoy himself with a female-slave. In case he does, she takes the decision in her hands [i.e. the first wife decides whether:] The second wife is to be divorced; the child-mother is to be free for the sake of God; and for the female-slave the wife has the choice either to sell her, to keep her as her property, or to set her free.”

- Andalusian model marriage contract, 11th century, cited in Zomeño, “The Islamic Marriage Contract in al-Andalus”
.....

“The Husband will not marry another woman other than (name of Wife), and if he attempts to do so, such marriage will be immediately null and void.”

- model historical Egyptian contract, cited in Sonbol, “History of Marriage Contracts in Egypt”
.....

“[The Husband] promises [the Wife] to fear God and treat her well and provide her with a good life with him, as ordered by God and according to the sunnah of the Prophet, to hold with good treatment or let her go in peace. And also promises that if he were to take any other wife, then [the new wife’s] marriage would be in the hands of the [the first wife] to divorce her whenever she wished her to be divorced.”

- Egyptian marriage contract, 259 Hijra, cited in Sonbol, “History of Marriage Contracts in Egypt”
.....

“If the husband concludes a marriage contract with another woman, the husband transfers to the current wife the right of divorce without recourse to a judge.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author
.....

“(the Husband) shall not have the automatic right to marry any other wife. Such a marriage may only take place if (the Wife) grants her express permission in writing.”

- actual South African Muslim marriage contract, 20th century, on file with author

“The husband shall not marry another woman without the wife’s knowledge and consent.”

- Egyptian model marriage contract, 20th century, cited in Sonbol, “History of Marriage Contracts in Egypt”

.....

“The Husband, _____, agrees that he shall not marry another wife during this marriage without the permission of (bride’s name) _____, unless she is mentally incapacitated or missing.”

- actual American Muslim marriage contract, 20th century, on file with author

.....

“Neither spouse may initiate sexual or marital relations with a third party within or outside these United States. The Wife hereby declares that the practice of polygamy is not an accepted custom within her family or social circle, and the Husband hereby expressly agrees not to engage in such practice while in this marriage. A violation of this covenant shall constitute a fundamental breach of this Marriage Contract. If the Wife decides to exercise her right to divorce the Husband as a result of such breach, any deferred *mahr* would accrue to her in full upon divorce.”

- draft contract, Azizah al-Hibri, on file with author

Spouses’ Continuing Education

A popular provision in Islamic marriage contracts throughout history has been one specifying the right of the wife to complete her education.

Examples:

“The wife shall be entitled to exercise her right to education and to work outside the home.”

- Egyptian model marriage contract, 20th century, cited in Sonbol, “History of Marriage Contracts in Egypt”

.....

“[The Husband] agrees that he will encourage [the Wife’s] pursuit of education, both religious and secular, emotionally, practically, and financially.”

- actual American Muslim marriage contract, 20th century, on file with author

“Husband and Wife agree that each may pursue formal studies in any chosen field for as long as they like.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

Career Pursuits

As education and career paths of couples become longer and more complex, two-career couples often choose to include provisions regarding their career expectations.

Examples:

“[The Husband] will allow [the Wife] to work or to leave my work, for money or as a volunteer at her own discretion.”

- actual American Muslim marriage contract, 20th century, on file with author

.....

“The Wife reserves the right to work outside the home and to keep all money made.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

.....

“The Husband reserves the right to approve of any workplace the Wife might choose before she accepts a job.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

Relationship with Extended Family

A common provision in Islamic marriage contracts throughout history has been one regarding the ongoing access of spouses (especially wives) to their families.

Examples:

“[The Husband] agrees to show respect, tolerance and obedience to wife’s parents. In the event of her disability, to consult with them in matters of her wellbeing.”

- actual American Muslim marriage contract, 20th century, on file with author

“We understand that as a result of our marriage we will each have a new family structure to relate to. We commit ourselves to dealing with our respective spouse’s families with respect. Any decision regarding the living together of us with any member of the family of the husband or wife will only be arrived at if both parties agree to such a decision.”

- actual South African Muslim marriage contract, 20th century, on file with author
.....

“The Wife may visit her parents whenever she likes.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author
.....

“[The Husband] will not prevent [the Wife] from visiting all her family members, women or close-relative men, neither to prevent them from visiting her in the permissible manner between family members. If he does any of these things, she takes “the ‘*ismah* [bond of marriage] in her hands.”

- Andalusian Model marriage contract, 11th century, cited in Zomeño, “The Islamic Marriage Contract in al-Andalus”
.....

“The Husband and Wife mutually agree that if either of them dies or becomes seriously ill, the other will encourage visitation and communication between their children and the family of the ill or dead spouse.”

- actual American Muslim marriage contract, 20th century, on file with author
.....

“The Husband agrees that he will not prevent the Wife from visiting her family if it is financially feasible. The Wife agrees that she will not prevent the Husband from visiting his family if it is financially feasible.”

- actual American Muslim marriage contract, 20th century, on file with author

Travel Away from Marital Home

There are multiple reasons a spouse might be pulled away from the home and family, and this can often cause stress on relationships and child-rearing, so some couples put boundaries and limits on spousal travel away from the marital home.

Examples:

“[The Husband] is not allowed to leave her for a long period whether his travel destination is close or far away. He is allowed no more than six months leave unless he is going to perform the Hajj for himself. In such a case he is allowed no more than three years leave. He should explicitly mention his intention and leave enough money to her for expenses and accommodation. In case he exceeds the defined period she takes “the *‘ismah* [right of divorce] in her hands.” It will be absolutely her decision after she swears in the presence of two honest witnesses who will take her oath by the name of God that her husband has been absent over the defined period. She has the right to blame him as much as she would without losing her right to decide for herself whatever she wants.”

- Andalusian Model marriage contract, 11th century, cited in Zomeño, “The Islamic Marriage Contract in al-Andalus”
.....

“The Husband and Wife mutually agree that neither will leave the home residence for more than one month without the permission of the other.”

- actual American Muslim marriage contract, 20th century, on file with author

Location of Marital Home

A common provision in Islamic marriage contracts throughout history has been one regarding the location of the marital home, and especially its distance from the wife’s family.

Examples:

“[The Husband] will not force her to move from her neighborhood in such and such area without her permission and/or her agreement. If he does, she is free to take “the *‘ismah* [right of divorce] in her hands.” If she obeys him to move and after she moved she asked him to return her back, and he did not do so during thirty days, she is then free to take “the *‘ismah* [right of divorce] in her hands.” The husband should pay all the expenses of departure and returning.”

- Andalusian Model marriage contract, 11th century, cited in Zomeño, “The Islamic Marriage Contract in al-Andalus”

“The Husband will not require the Wife to move out of her hometown.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

Specifying Household Responsibilities (Financial/Physical)

Under classical *fiqh*, there is a presumption that a husband must financially support his wife and their children. This presumption is understood by Muslim jurists without specification in the marriage contract, but if the spouses (who choose to follow this arrangement) want it clearly spelled out that this is their understanding (in case the issue is brought before a tribunal, such as a state court, who might not make this presumption), they might spell it out in their contract.

If, on the other hand, they choose to alter the default arrangement (husband’s obligation to financially support the family), it is important to specify the details clearly. Some schools of Islamic thought (e.g., Maliki) will not recognize a waiver of the husband’s right to maintenance. The Hanbali school does allow this. This should be kept in mind as the couple sets up their alternative arrangement, in case the contract ends up under review by a Muslim authority — whether a formal qadi or an informal community mediator.

Also, under most classical *fiqh*, the wife is not obligated to perform any household responsibilities (such as cleaning, cooking, etc.) simply by virtue of her status as the wife. Some Muslim jurists (classical and modern) thus hold that if she does perform such work, she is entitled to compensation at fair market value for this work. Although a US court is unlikely to interfere to enforce agreements between spouses during an ongoing marriage, specification of such an understanding of these sorts of financial arrangements between husband and wife might be useful as a guide to third party arbitration (short of the courts), or as an element for a court to consider should the marriage end in divorce.

Examples:

“The Husband thereby agrees to provide maintenance for the Wife and their issue in a manner befitting their social station and his financial condition, and to financially support the Wife under the conditions specified herein.”

- draft contract, Azizah al-Hibri, on file with author

“[The Husband] has been informed that his wife is not from those who serve themselves; she is to be served in accordance with her position and social status. He, therefore, took the responsibility that he can provide her with a servant and that he has enough money to do this.”

- Andalusian model marriage contract, 11th century, cited in Zomeño, “The Islamic Marriage Contract in al-Andalus”

.....

“The Husband agrees: to take responsibility for the protection, happiness and maintenance of the household. This responsibility includes but is not limited to the cost of food, clothing, and an independent dwelling which should be comfortably furnished, free from the burden or embarrassment caused by the continual presence of another adult in the household.”

- actual American Muslim marriage contract, 20th century, on file with author

.....

“The husband shall be bound to provide for his wife and family at a standard conforming to the standard of living of the families of the spouses at the time of the marriage.”

- Egyptian model marriage contract, 20th century, cited in Sonbol, “History of Marriage Contracts in Egypt”

.....

“The wife — especially the working wife — shall be bound to contribute to the living expenses of the family, without harm to the husband’s obligation to provide for his wife and family.”

- Egyptian model marriage contract, 20th century, cited in Sonbol, “History of Marriage Contracts in Egypt”

.....

“As was the example of our Noble Leader, Muhammad (saw), we both accept the responsibility to share in ensuring the well-being of the family unit physically, financially and psychologically. We accept that for biological reasons our roles cannot be all equal. Thus the Wife accepts for child-bearing and breast-feeding of our children. And, in this period, the Husband will be responsible for the maintenance of the family and household. Other than that, we accept joint responsibility for all the other requirements for the proper functioning of our marriage. This includes childcare, various aspects of housework, and the financial stability of the family.”

- actual South African Muslim marriage contract, 20th century, on file with author

“The husband will continuously hire a maid. If he cannot afford this, the husband and wife will equally share household cleaning duties.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

.....

“The husband will share home management, child care, child rearing, and cleaning, whether or not the wife works outside the home.”

- actual American Muslim marriage contract, 20th century, on file with author

.....

“As was the example of Prophet Muhammad (saw), we both accept the responsibility to share in ensuring the well-being of the family unit physically, financially and psychologically. We accept that for biological reasons our roles cannot be all equal. Thus the Wife accepts for child-bearing and breast-feeding of our children. And, in this period, the Husband will be responsible for the maintenance of the family and household. Other than that, we accept joint responsibility for all the other requirements for the proper functioning of our marriage. This includes childcare, various aspects of housework, and the financial stability of the family.”

- actual American Muslim marriage contract, 20th century, on file with author

Specifying Wife’s Property/Financial Independence

It might be useful to include a statement in the contract emphasizing that any separate accounting of the wife’s property should not be taken as evidence against her commitment to the marriage. This provision is important because some state courts have taken the existence of a wife’s separate bank account as evidence weighing against the wife’s marital commitment in a putative marriage case. Because Islamic law specifically guarantees women full financial independence to their property, but state laws in the United States do not (and might misunderstand her exercise of this right), it is important to clarify the impact of this right in her regular use of property in her marriage.

Example:

“The Parties affirm their mutual understanding and agreement that, in accordance with Islamic law, the Wife shall be entitled to full financial independence with respect to her property. Such independence may be manifested in various forms, such as having

separate bank accounts and formulating independent financial decisions on matters involving solely the property of the Wife. The Wife's manifestation of her financial independence shall not be construed as evidencing a lack of commitment on her part to the marriage, nor shall it relieve the Husband from supporting the Wife. The Husband hereby agrees to provide maintenance for the Wife and their issue in a manner befitting their social station and his financial condition, and to financially support the Wife under the conditions specified herein.”

- draft contract, Azizah al-Hibri, on file with author

Opting out of Community Property

In community/marital property states, both spouses are automatically deemed to own 50% of all property acquired by either spouse during the course of the marriage (excluding gifts and inheritance), and it is so divided upon divorce. [As of the date of this writing, the states and territories that presume community property include: California, Arizona, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Puerto Rico.] This is quite different from the default *fiqh* rules in which women have exclusive ownership of all their property and income whereas men have a financial obligation to financially provide for their family.

If the couple does not want to follow a community property arrangement, they could try to opt-out of it via their marriage contract, with a clause specifying that the wife's property is her own separate property and is not to become marital property owned by both spouses in common. It is risky to rely only on this clause, however, because of the unpredictability of when a state will recognize the validity of a Muslim marriage contract.

The most secure way to opt out of community property is to draft a separate legal document, following the laws of the state where the couple resides, to that effect. If they want to rely only on such a clause in their Muslim marriage contract, then it is advisable to make sure the marriage contract follows the state's rules for a valid prenuptial agreement. Beyond this, even if it is not enforced by a judge in a court decision, clarity on this financial arrangement might prove quite useful in arbitration and/or mediation as a clear declaration of the parties' mutual understanding at the time they entered into the marriage.

Examples:

“We affirm that all money and property of the wife which she brings with her at the time of marriage or that she earns after marriage is her own personal property requiring no consultation with anyone else concerning its disposal. This marriage contract will remain in force for the entire length of this marriage including periods of separation whether the husband and wife are in the same or different localities or countries.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

.....

“The matrimonial Property Regime that will govern our marriage is the Community of Property regime according to present South African law. The following property will, however, be excluded from joint ownership and control of the partners, and will belong only to the partner to whom it accrues: the dower, any gifts received from one month before the marriage, and any inheritance received during the marriage.”

- actual South African Muslim marriage contract, 20th century, on file with author

.....

“The Husband and Wife agree that any property earned during the marriage by the Wife will be deemed her own separate property, and not community property, in the event of a divorce.”

- actual American Muslim marriage contract, 20th century, on file with author

Provisions Regarding Children During Marriage

Clauses regarding the bearing and rearing of children (e.g., process of decision-making, religion of the children, etc.) are historically popular in Muslim marriage contracts throughout history, though they are rarely enforced in state courts in the United States. Nevertheless, discussion and mutual understanding on this important topic can be useful to the health of the marriage by working out these sensitive topics ahead of time rather than at a point of crisis.

Examples:

“Children will be verbally disciplined and never beaten.”

- actual American Muslim marriage contract, 20th century, on file with author

“The Husband and Wife mutually agree that they will together share decisions regarding the management of the household and the upbringing of the children, regardless of the employment status or income of the Wife.”

- actual American Muslim marriage contract, 20th century, on file with author
.....

“As of the date of this Marriage Contract, recognizes that both the Wife and Husband are Muslims and any children who may be born or shall otherwise issue from this Marriage shall be raised as Muslims to the best of their ability.”

- actual American Muslim marriage contract, 20th century, on file with author
.....

“The Parties declare their adherence to Islam, and each Party agrees to raise the issue of this marriage as Muslim.”

- actual American Muslim marriage contract, 20th century, on file with author
.....

“The Wife will not become pregnant until she completes high school/college/MA/PhD.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

Obligations to former spouses

To be clear about the nature of maintaining relations and obligations to any former spouses and children from former marriages, it is sometimes useful to include a provision documenting these expectations.

Example:

“In that the Wife/Husband is a/are both divorced person(s), nothing in this Marriage Contract shall conflict with nor shall otherwise affect the validity or enforceability of any divorce-related agreement(s) executed by the Wife or the Husband with a former spouse.”

- actual American Muslim marriage contract, 20th century, on file with author

Decision-making and Conflict Resolution

Provisions regarding an agreed manner of decision-making and dispute resolution are especially useful to assist a couple in articulating their

positions well in advance of the marriage (before marital conflicts arise) and for record-keeping of such agreements should they or a third-party arbitrator wish to refer to it during times of counseling and informal conflict resolution.

Examples:

“Both the Wife and Husband agree to discuss all issues that arise in their marriage and arrive at mutually agreeable conclusions. Differences of opinion concerning a point of Islamic practice will be referred to the Quran and Hadith. Both will admit if they are simply expressing personal opinions, which will not be binding.”

- actual American Muslim marriage contract, 20th century, on file with author
.....

“Under no circumstances will either Husband or Wife interpret the Quran to mean the husband can physically hurt his wife, whether with his hand or any object. We both commit to peaceful relations with each other and we pledge to avoid curses, recriminations, and any means of annoyance to the other.”

- actual American Muslim marriage contract, 20th century, on file with author
.....

“[The Husband] agrees that he will include [the Wife] in the process of discussion and decision making with regard to those things which affect the family.”

- actual American Muslim marriage contract, 20th century
.....

“[The Husband] agrees that he will seek out whatever means is necessary to preserve, strengthen or reconcile the marital relations if necessary.”

- actual American Muslim marriage contract, 20th century, on file with author
.....

“A dispute will be deemed to have resulted if any of the two partners declares it to be so. In the event of such a dispute resulting, the husband and wife will be bound to go to arbitration. Both parties must appoint and agree on an arbitrator or arbitrators that will be just and fair. The arbitrator or arbitrators will hear the arguments of both parties and then make a decision. Both parties commit themselves to accepting the decision of any such arbitration.”

- actual South African Muslim marriage contract, 20th century, on file with author

“Respect is an essential ingredient of any marriage. We will also at all times endeavor to respect each other’s humanity, intelligence and our family. We will thus give serious consideration to the words and actions of each other. Neither of us will have the right to physically, mentally or psychologically abuse the other, no matter what justification could be given for such action.”

- actual South African Muslim marriage contract, 20th century, on file with author

“The Husband and Wife mutually agree that they will consult each other when making major decisions affecting the family, especially decisions regarding the location of the family home, choice of employment, and decisions regarding the future of their children.”

- actual American Muslim marriage contract, 20th century, on file with author

Access to Divorce

Classical *fiqh* rules of all *madhhabs* give the husband — and only the husband — an automatic right to declare a unilateral divorce (*talaq*) unless there is a stipulation in the marriage contract altering this default rule. A typical way to do this is for the husband to delegate his *talaq* right to the wife (historically described as taking the “*‘ismah* in her hand”). Another popular stipulation delegates the *talaq* right to the wife, conditional upon the occurrence of some event, such as some breach by the husband, like taking a second wife or engaging in any physical abuse.

Without some reservation of a *talaq* right held by the wife in the marriage contract, a wife desiring to unilaterally initiate no-fault divorce (i.e., without proof of harm by the husband) is limited to *khul’* divorce which, for most schools, usually means that she forfeits her *mahr* or pays other compensation. If the parties want to be sure the wife will retain her *mahr* in the event she initiates divorce, it is advisable to include details about the status of the *mahr* in such an event.

Of course, giving a wife access to unilateral *talaq* doesn’t protect her from unexpected divorce — which many see as the real danger of *talaq* for Muslim women. Modern relationship norms about communication and mutual agreement have caused many American Muslims to want to opt out of *talaq* altogether. After all, to dissolve their secular marriage, they will have to go through legal proceedings anyway, so many of them add a clause to their Muslim marriage contract that indicates that

the husband promises not to end the divorce unilaterally, or that both husband and wife agree to initiate divorce only by going to a third party. This framing is a bit unusual from a classical *fiqh* perspective, but it is not contrary to the purpose of marriage, so it might be considered valid as an oath taken by the husband.

Examples:

“The Parties hereby agree that the Wife shall “retain her *‘ismah* in her own hand,” meaning that she shall have the right to initiate divorce proceedings and terminate the marriage without the consent of the Husband. The Husband has similar rights.”

- draft contract, Azizah al-Hibri, on file with author

.....

“The wife shall have the right to divorce herself, especially if the husband takes another wife without her knowledge and consent, if he mistreats her or their children, if she declares that cohabitation between them has become impracticable or if he deserts her for a period of not less than eight months.”

- Egyptian Model Marriage Contract, 20th Century, cited in Sonbol, “History of Marriage Contracts in Egypt”

.....

“The husband transfers to the wife the right of divorce without recourse to a judge.”

- draft contract, Sherifa Al-Khateeb, *Sisters Magazine*, on file with author

.....

“Each party may initiate and complete divorce proceedings on its own.”

- draft contract, Azizah al-Hibri, on file with author

.....

“The Husband and Wife agree that if either initiate divorce, it shall be pursued only through a third party mutually agreed by them.”

- actual American Muslim marriage contract, 20th century, on file with author

.....

“We pray that our marriage does not reach a stage where either of us will consider divorce as an option. However both parties will have a right to initiate divorce proceedings. Whether such proceedings

are initiated by the husband or the wife, a procedure of three repudiations will require to be followed as described in the Quran in Surah Baqarah verses 228-232.”

- actual American Muslim marriage contract, 20th century, on file with author

.....
“The Wife and Husband both shall have the right to request a divorce.”

- actual American Muslim marriage contract, 20th century, on file with author

.....
“The Husband hereby delegates to the Wife an irrevocable authorization to appoint an agent (*wakīl*) for divorcing her on behalf of the Husband after giving a Shī’a Ithnā-Ashari religious authority (the Resident *‘Ālim* or the *wakīl* of the *marja’* or the *marja’*) reason to believe the occurrence of any one of the following:

- a. if the Husband solemnizes a “religious marriage” with another woman without permission of the Wife named in this contract; (“Religious marriage” a marriage that has been solemnized only basis of Islamic laws which allows polygyny, a practice which is not legal in Canadian family law.)
- b. if the Husband ill treats or physically abuses the Wife;
- c. if the Husband abandons the Wife and does not provide for her for more than three months continuously;
- d. if the Husband divorces the Wife in a secular court, but does not give her the religious divorce; or
- e. if the Wife obtains a divorce in a secular court, but the Husband does not give the Wife a religious divorce.”

- [Model Contract, Shīa Ithna-Asheri Jamaat of Toronto](#)

Provisions Regarding Children After Divorce (Custody, etc.)

Custody decisions in U.S. courts are based on the “best interest of the child” and it is unlikely that a provision in a Muslim marriage contract would take precedence over this principle. However, provisions short of custody-assignment might be helpful to include if the parties feel strongly about the issue. If the parties are in alternative dispute resolution, documentation of their early meeting of the minds might be useful to the negotiation.

Examples:

“The issue of custody of any children from the marriage will be decided by an arbitrator or arbitrators appointed and agreed on

by both husband and wife. The arbitrator or arbitrators are bound not to automatically assume the right of either parent to custody, but will have to decide in the best interest of the child or children. Irrespective of the decision of the arbitrator or arbitrators on who gets custody, there shall be no denial of visitation right to the parent that is not granted custody, providing that such visitation rights so not infringe on the privacy of the parent granted custody.”

- actual American Muslim marriage contract, 20th century, on file with author

“If the marriage ends in divorce and a child or children have resulted from the marriage, both parents will be responsible for the financial maintenance of the child or children in the proportions of their respective incomes at the time of the divorce.”

- actual South African Muslim marriage contract, 20th century, on file with author

“The Husband and Wife mutually agree that, in the event of divorce, they will both be financially responsible for raising their children, in proportion to their respective incomes.”

- actual American Muslim marriage contract, 20th century, on file with author

Specification of a General *Madhhab* (School of Law) for the Governing Family Law

To offer guidance if any issue regarding the marriage/dissolution of marriage arises and is not specifically addressed in the contract (e.g., the right of the wife to contract her own marriage, the right of the wife to initiate divorce, etc.), some couples like to include an introductory paragraph specifying that the contract will be interpreted according to a particular school of Islamic jurisprudence. For example, in the Hanafi school it is easier for a woman to include a contract clause specifying the wife’s right to initiate divorce; in contrast, the Maliki school makes this more difficult.

Examples:

“Whereas, the Parties have agreed that this Marriage Contract shall be interpreted in accordance with the Hanafi School of thought, provided that any express provisions herein which conflict with such interpretation shall be controlling.”

- draft contract, Azizah al-Hibri, on file with author

“Whereas, the Parties have accepted such Hanafi interpretation as articulated by the well-known jurist Abu Hanifah and his followers, to the extent it is consistent with the laws of the State of _____ and the provisions herein.”

- draft contract, Azizah al-Hibri, on file with author

Specification of Hanbali Madhhab for Enforceability of Special Stipulations

Optional contractual stipulations (like those above, and many more) are generally allowed — and often quite common — in a Muslim marriage contract. In fact, as we have seen, they can be quite creative and specific to the needs of each couple. These stipulations are generally allowed by all *madhhabs* as long as they do not contradict the purpose and goals of marriage, and do not contravene Islam. There is some disagreement among the schools about exactly what this means, so sometimes it is useful to specify the Hanbali *madhhab* which is the most generous on contractual stipulations, finding most to be both valid and enforceable.

Maliki scholars, for example, disallow conditions in the contract which eliminate the husband’s duty to support the wife or that the couple will not have children, based on their view that reproduction and maintenance of economically dependent women are the primary goals of marriage, and hence any condition contradicting those goals would be void. Similarly, Hanafi scholars hold that conditions preventing polygamy are void because such conditions, they reason, encroach upon a right of the husband. And even if a contractual stipulation is recognized as valid, a school may not recognize it as enforceable by the parties. For example, a stipulation preventing the husband from taking another wife is considered valid by most schools (other than the Hanafi), but the remedy if the husband breaks this stipulation may be limited simply to damages or grounds for the first wife to get a divorce (rather than nullifying a second marriage).

Generally, for the non-Hanbali schools, if a marriage contract contains a stipulation that is not accepted in their school, the marriage is still valid, but the stipulation in question is considered null and void (or the breach is punished with a simple fine). These schools created many legal devices to find ways to validate the spirit of common stipulations (such as giving the wife easy access to divorce if the husband marries a second wife). Because such adjustments cannot be guaranteed for

marriages under non-Muslim legal jurisdictions, it is advisable, if the spouses desire enforceable stipulations to their contract, to specify that the enforceability of their stipulations is to be interpreted under the Hanbali school of thought.

Examples:

“The Parties hereby agree to be bound by Hanbali jurisprudence, to the extent such jurisprudence recognizes conditions in the Marriage Contract as valid and binding unless such conditions are in clear contravention of the Qur’an.”

- draft contract, Azizah al-Hibri, on file with author