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PERSPECTIVE

CULTURALLY SPEAKING

Cultural Divorce: Time to retool your dowry ware

By Abbas Hadjian

California family law practitioners are behind the rest of the country in dealing with cultural marital agreements. In the *Marriage of Alulddin and Alfartous* (Filed June 27, 2023), the Arizona court ruled that religious premarital agreements, such as dowry, are enforceable as a contract between people in confidential relationships. The case is the first in many angles, including in the Arizona decisional law and among the community property states. In what follows, I will briefly define the dowry in the global setting; then, I will look at the history of dowry in California courts, and finally, the fact and legal grounds, and lessons from the Arizona Case.

Dowry *(Mahr)*

Worldwide, marital gifts are divided into two groups: benefiting the parties or their families. *Mahr*, an Arabic word for dowry, is in the first group. A gift from husband to wife. It is usually in two parts, present and deferred portions. Both must be valuable and identifiable. Ambiguous, damaged, defective, destroyed, non-existent, or omitted dowries must be replaced by agreement or by the court. It may be a gift of livestock, seeds, trees, or working on the bride's family land in agricultural economies. In some countries, the dowry is a gift by the bride and her family to the groom or family.

Two universal rules apply: A higher amount of present dowry reveals the groom's and his family's wealth and financial status. A higher deferred dowry reflects the bride's higher economic or social value of the bride in the eyes of the groom and his family. The other universal understanding is that dowry is symbolic in nature. In Iran, the land of high-figure dowries, one supporting saying is *"No one ever asks for, no one ever pays."*

Procedures for recording the dowry differ from one country to another. In less educated communities, it is confirmed by a handshake. In more developed areas, by filling blank spaces in marriage certificates. In more sophisticated jurisdictions, such as Iran, a particular page in the Marital Booklet is dedicated to a detailed entry of the present and deferred dowry, with no time limit payable upon demand or ability.

Four California opinions

Four cases constitute the California universe of judicial opinion about Mahr in the past 40 years.

IRMO Noghrey (1985) 169 Cal. App.3d, 326: The marriage was between two Iranian Jewish people in San Jose, California. At the wedding ceremony, the Husband's brother wrote behind the Ketubah that the Husband would settle his house in Sunnyvale and $500,000 or one-half of his assets, whichever is greater, in the event of a divorce. During the trial, Wife explained that the Mahr was in exchange for assurance and proof of her virginity. The trial Court found the agreement valid, binding, and enforceable. The appellate court reversed based on public policy that premarital agreements should not promote or encourage divorce or profiteering by divorce. The appellate court noticed that the trial court focused on the Husband's voluntary signing of the agreement, rather than public policy and Wife's wealth.

IRMO Dajani (1988), 204 Cal App. 3d 1387, Jordanian Husband and Wife married by proxy in Jordan. The dowry was 5,000 Jordanian Dinar, equivalent to $1,700.00, in cash and furniture. A token of one Dinar (+/- 30 cents) paid. The trial court found a valid agreement but denied it due to the commencement of the case by Wife. The appellate court affirmed but followed *Noghrey's* finding that the Mahr was unenforceable as a matter of public policy. The validity of this ruling is in question. Fifteen years later, *In IRMO Bellio* (2003), 105 Cal. App.4th 630, the court opined *"...[W]e believe that Dajani was wrongly decided. A dowry worth only $1,700, payable upon dissolution, is insufficient to seriously jeopardize a viable marriage."*

IRMO Shaban (2001), 88 Cal. App.4th, 398, involved an Islamic marriage between two Egyptians. The form certificate of marriage had language that the division of property was "... governed by Islamic law." For the dowry, it included 500 Egyptian pounds, and 25 piasters paid. The trial court did not allow Husband's expert testimony to define Islamic law. The appellate court affirmed. *"...[B] ecause the requirement that prenuptial agreements be in writing under California law is a statute of frauds provision, and to satisfy the statute of frauds, a writing must state with reasonable certainty what the terms and conditions of the contract are. An agreement whose only substantive term in any language is that the marriage has been made in accordance with "Islamic law" is hopelessly uncertain as to its terms and conditions. Had the trial judge allowed the expert to testify, the expert in effect would have written a contract for the parties."*

IRMO Turfe, (2018), 23 Cal. App.5th 1118, is the fourth reported Dowry opinion in 40 years. It was between two Lebanese spouses, married in California. The husband

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claimed to have been defrauded by Wife, who agreed to limit her financial expectation to the dowry provision, i.e. five gold coins paid and a copy of the Quran upon divorce. The trial court found that Husband failed to prove fraud by clear and convincing evidence, and the appellate court affirmed.

Arizona case

In the *Marriage of Alulddin and Alfartous*, the spouses are of Arab origin. Ali (Husband) and Qamar (Wife) had an engagement party, and a civil and religious marriage. During the engagement party, Ali and Qamar signed an agreement that Ali would give a $25,000 dowry, $15,000 "present," and $10,000 upon demand with no time limit. The marriage did not last long. A week after the religious marriage the parties separated, and Wife petitioned to dissolve the marriage. As part of the divorce, Qamar requested the $25,000 dowry, but Ali claimed none was owed: he had already paid $15,000 (for the "present") and was responsible for the $10,000 "postponed" dowry only if he initiated the divorce. The trial court found the agreement enforceable and ordered Ali to pay $25,000, plus attorney's fees.

The Arizona court found that by applying neutral principles of law, most of the U.S. courts held financial provisions in religious marriage contracts enforceable. It noted that Florida, Massachusetts, New Jersey, and Maryland enforced it. It found that in California, religious dowries are "not in itself illegal or void" but unenforceable as against public policy or statute of frauds. In Washington and Ohio, "...they did not determine that the ecclesiastical abstention doctrine, as a matter of law, precludes the legal enforcement of religious marital contracts." The court relied on the approach adopted in two consolidated cases in Maryland, *Nouri v. Dadgar* (2020) 226 A.3d 797, which found "religious premarital agreements enforceable in divorce cases if the agreements meet the requirements applicable to premarital agreements, and other contracts between people in confidential relationships.":

A premarital agreement is "an agreement between prospective spouses that is made in contemplation of marriage and that is effective on marriage." A.R.S. ' 25-201(1). To be valid, it "must be in writing and signed by both parties." A.R.S. ' 25-202(A). It "is enforceable without consideration." Id...Based on the record, we discern no error in the superior court's finding that the parties executed the Agreement in contemplation of marriage. ...Next, Husband asserts that he did not sign the Agreement voluntarily because it was a compulsory religious act.... He did not present any evidence to suggest that his religion "mandated" or "compelled" him to sign the Agreement. ...Additionally, the Agreement states the dowry provisions were "completed by the acceptance and approval of both sides[.]"

Conclusion

California has poor laws addressing cultural/religious marriage gifts. *IRMO Noghrey (1985)* correctly found that exorbitant gifts in a short-term marriage may be promotive of divorce, however *Noghrey* is a California case that does not represent a cultural marriage based on foreign jurisprudence.

California is home to an increasing number of Asians, Middle Eastern, Africans, and East Europeans requiring exchange of gifts upon marriage. It is common among those who have arrived, were born, converted, immigrated, or were raised or die here. It is rooted in their cultural, familial, moral, religious or social values. For many brides and grooms, and their families, marital gifts are the most significant obligation assumed and entitled during life.

Nearly 170 years into the statehood, California remains at odds with the most important agreement of its inhabitants. Arizona, another community property state under Uniform Premarital Agreement Act (UPAA), opened the door for recognizing the traditional marriage gifts. There is an opportunity for change. California family law practitioners need to retool their legal wares.

Culturally Speaking: Provides a step-by-step blueprint for more tolerable and lasting cultural divorces. It benefits partially from more than five decades of studies by its author in two legal systems.

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