Publisher page limitations in the second edition restricted the amount of material and number of problems that we could share with student readers. However, the web provides us with the opportunity to provide more expansive explanations of the law to in the chapters and to add more problems for review and reflection. We believe that the additional explanatory material and problems will further enhance a student’s ability to master family law and provide an added intellectual boost when preparing for final family law examinations.

Note: This material is available only to a student who has purchased the first or second edition of the Family Law Examples and Explanations book or a member of the faculty. It may not be copied or reproduced in any form without the express written consent of authors. Students who have purchased the second edition may, of course, download and print out this supplemental material for their individual use.

Chapter 14, Section 22: (New Section) Dowries and Religious Marriage Contracts

In *Odatalla v. Odatalla*, 810 A.2d 93 (N.J. Super. Ch. 2002), the Plaintiff and defendant were married in a religious ceremony by an Islamic Imam. Two years after the marriage, the wife brought a divorce action. She sought specific performance on a provision in a Mahr contract requiring the husband to pay her $10,000.

Evidence was produced at trial showing that before the actual marriage ceremony, the plaintiff and the defendant’s families negotiated the terms and conditions of the Mahr Contract. A videotape showed the families sitting on separate couches in the living room negotiating the terms and conditions of the entire Islamic marriage license, including those of the Mahr Contract. After the negotiations were completed, and a sum of money was determined for the Mahr Contract, both families went to a table where the Imam prepared the written Islamic marriage license including the Mahr Contract. The Islamic marriage license, including the Mahr, was presented to each party by the Imam for their signature. Each party read and signed the entire license and Mahr Contract. The Mahr Contract was contained in a section of the Islamic marriage license and read:

“According to Islamic Law Dower is:

- Prompt One golden pound coin
- Postponed Ten Thousand U.S. Dollars
The signatures were witnessed and the Imam continued performing the remaining parts of the Islamic marriage ceremony. During the ceremony, the defendant handed the plaintiff the one golden pound coin as called for in the Mahr Contract.

The defendant opposed the Court ordering specific performance of the Mahr Contract and in particular the payment of the ten thousand dollars on two grounds: (1) the First Amendment to the Constitution precluded the court's authority to review the Mahr Contract under the separation of Church and State Doctrine and (2) the contract was not a valid contract under New Jersey law.

The court upheld the contract. It said that the First Amendment did not preclude the court's authority in a dissolution proceeding to enforce a Mahr Contract. It viewed the contract enforceable based upon neutral principles of law. The court observed that “A contract is against public policy if it is injurious to interest of the public, contravenes some established interest of society, violates some public statute, is against good morals, tends to interfere with public welfare or safety, or if it is at war with interests of society and is in conflict with public morals.”

The “neutral principles of law” theory used by the court was explained in Jones v. Wolf, 443 U.S. 595 (1979). The Jones case involved a dispute over the ownership of church property. A church congregation had divided into two groups and they disputed which group controlled the ownership of the church building and grounds. One of the factions took the issue of ownership to a civil court in Georgia. The other faction objected to the civil court hearing the case on the doctrinal grounds of separation of Church and State and contended that the decision should be made by the hierarchy of the Presbyterian Church of America. In deciding that the courts of Georgia had jurisdiction to hear the disputed matter, the Supreme Court set aside the First Amendment argument by indicating that the dispute could be settled by the lower court applying the “neutral principles of law” doctrine. The Court reasoned that the dispute over ownership of the church property could be determined by recourse to deeds, trust law and state statutes; thus, making the court in Georgia capable of deciding the church related property issues based upon these “neutral principles of law” and not upon religious beliefs or policies. Id.

The New Jersey court found that a logical extension of the “neutral principles of law doctrine” applied to the enforcement of a Mahr Contract contained within an Islamic marriage license. As in Jones, supra, the court found that no doctrinal religious issue was involved-hence, no constitutional infringement.

The court stated that enforcement of the secular parts of a written contract is consistent with the constitutional mandate for a “free exercise” of religious beliefs. If a court can apply “neutral principles of law” to the enforcement of a Mahr Contract, though religious in appearance, then the Mahr Contract survives any constitutional implications. The primary advantages of the neutral principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity.

The “neutral principles of law doctrine” has been applied in other jurisdictions. For example, in New York, the court specifically enforced a Ketubah, which is a marriage contract in the Jewish faith. Hurwitz
v. Hurwitz, 216 A.D. 362 (1926). In Avitzur v. Avitzur, 446 N.E.2d 136 (N.Y. 1983), the “neutral principles of law” theory was also used to order the specific performance of a Ketubah. Similarly, the Superior Court of New Jersey specifically enforced a Ketubah, as it related to the husband securing a Jewish “Get” as provided for in the Ketubah. Minkin v. Minkin, 434 A.2d 665 (N.J. Ch. Div. 1981).

In Akileh v. Elchahal, 666 So.2d 246 (Fla. App. 2 Dist. 1996), the court upheld an Islamic antenuptial contract known as a sadaq. It rejected the arguments that it was unenforceable for lack of consideration and because the parties did not have a “meeting of the minds.” The sadaq was to be paid in two parts, with an immediate payment of $1 when the couple married and a deferred payment of $50,000. The certification of marriage incorporated the sadaq, which provided, “The sadaq being fifty thousand and one dollars of which one U.S. dollar advanced and fifty thousand dollars postponed.” The certificate of marriage was executed by the bride, the bridedgroom, two witnesses, and the Imam of the Islamic Center of Tampa Bay. When the wife later brought an action for a divorce she asked the court to enforce the sadaq agreement that the husband pay her the fifty thousand dollars.

The Florida court held that the contract was an antenuptial contract, executed in contemplation of a forthcoming marriage. It found that the parties understood that a sadaq was to protect the wife in the event of a divorce. The wife performed under the contract by entering into the marriage and the marriage was sufficient consideration for the contract.

Only one trial court ruling could be found that supported rejecting enforcement of a religious dowry. The case was reported in the Columbus Dispatch, October 20, 2007, in an article by Meredith Heagney. The Ohio Common Pleas Court, Domestic Relations, held the contract requiring the husband to pay $25,000 should the couple divorce unenforceable. The husband’s lawyer had argued that the husband didn't understand what he was doing, thinking the contract was just a formality before marriage. According to the lawyer, his client “wouldn't have seen much different from $25,000 or 25 cents or $25 million.”

The Common Pleas Court judge rested her ruling in part on her view that the contract was “rooted in a religious practice,” therefore, the dowry is the product of a religious act, not a legal contract. The judge also rejected the argument that the contract should be viewed as a traditional prenuptial contract. She said that because the contract was made just a few minutes before the wedding ceremony, and the husband did not have time to consult with an attorney, it was the product of duress and coercion.

EXAMPLE: Assume the following hypothetical facts. Assume that Ms. Alwater and Mr. Tara are devout Muslims. Assume Ms. Alwater is a graduate student in biology and Mr. Tara is a successful businessperson. Generally, Muslims do not date and Mr. Tara was introduced to Ms. Alwater on a visit to the University where she is employed as a graduate student. He was immediately enamored with her and she accepted his marriage proposal about a month after he and his mother visited her and her family to discuss the possibility of marriage. Before marriage, Ms. Alwater made several phone calls to learn about her prospective husband’s personality and values. She then accepted his offer of marriage.

About two hours before the marriage, the two met with the Imam and their families who was to perform the ceremony. He informed Mr. Tara that he must promise to pay Ms. Alwater one golden
pound coin, postponed payment of twenty-five thousand U.S. Dollars (a dowry), and both must agree that the couple will raise Muslim children. They also agreed that the twenty-five thousand dollars would be paid in case of a divorce or the husband’s death. Both signed the contract without consulting a lawyer with the parents of both parties present and witnessing the signing.

After three years of marriage, the wife (Ms. Alwater) filed for divorce and asked the court to enforce the $25,000 dowry, which had never been paid.

Mr. Tara’s attorney argued that the dowry was rooted in a religious practice and should be considered a religious act, not a legal contract. She also contended that there was not sufficient consideration for the contract and that it was entered into under duress or coercion. She contended that a court would not uphold such an agreement where there was not a religious ceremony attached to it. Most likely, how will a court rule?

**EXPLANATION.** The court will most likely enforce the contract. The court will reject the argument that the contract is a part of a religious act, and not a legal contract. In doing so, it will rest on the reasoning of the New Jersey and New York courts, and the decision by the United States Supreme Court in *Jones v. Wolf*, 443 U.S. 595 (1979), discussed above. The court will also reject the argument that there was not adequate consideration. The marriage itself is considered sufficient consideration for the contract. The most troubling aspect of the dispute between the parties has to do with the signing of the document only hours before the marriage and the absence of a lawyer to advise either party of its consequences. The argument is that the particular circumstances under which the agreement was reached involved subtle coercion or duress—the contract was not voluntarily made. It is not reasonable, goes to the argument, to believe that either party would seriously consider the consequences of the dowry with the parents present and apparently encouraging the marriage. However, most likely the court will, without more, enforce the contract.