

DOWER PAYMENT TO A WIFE (MAHR) BY HER HUSBAND UNDER THE SYRIAN PERSONAL STATUS LAW OF 1953 AND SOME OTHER FAMILY LAWS IN ARAB COUNTRIES

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Abstract: The article considers the issue of dower, which is paid by the husband to his wife and appears as one of the husband's liabilities according to the provisions of the Syrian Personal Status Law of 1953, as well as under some other Arab family laws. The presented study examines the views of known Islamic jurisprudence schools on this issue, given that the 1953 Syrian family law, along with most of the Arab family laws, were acquired from Islamic Sharia law. The author also analyzes some decisions regarding the dower ruled by the Sharia Chamber of the Syrian Court of Cassation. The article also reviews the provisions of valid and invalid marriages in order to determine the amount of the marriage portion payment that a husband is liable to pay.

Keywords: Mahr, dower, Islamic school, marriage, waiting period, invalid marriage, Mahr-al-Misl.

1. Introduction

1953 Syrian Personal Status Law (SPSL)² and most of the Arab family laws on personal status, taken from Islamic Sharia in most of their provisions, bind the husband to fulfill all the family's financial obligations. All the liabilities within the matrimonial relationships governed by Syrian laws on personal status are represented by the husband's obligations to his wife. At the same time, the laws do not contain anything on a similar wife's obligations towards the husband.

Under the SPSL, the husband's liabilities are:

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² SPSL is the Syrian Personal Status Law of 1953 and its amendments. It should be noted that besides the SPSL, Syria has several other laws on marriage and the family that regulate some family relations of persons who do not consider themselves belonging to Islam.

- marriage payment to the wife (Mahr); provision of the conjugal residence; maintenance of the wife/family (nafkah).

The presented article reviews one of these obligations, which is the obligation imposed upon husband to dower the prospective spouse.

2. Materials and methods

The Syrian legislators did not define the concept of dower in the Personal Status Law of 1953, although scholars from different Islamic schools provided for its various legal frames. Nevertheless, clear definitions of the dower could be located in some Arab family laws.

The author is entitled to the opinion that dower is a payment, in the form of money or possessions, paid by the husband to the wife after the marriage is consumed, regardless of whether it is indicated in the marriage contract or not.

Russian academician Rustam Nurgaleev defined the dower as ‘a mandatory wedding gift presented by a husband to his wife’.³

Islam considers the dower not one of the conditions for marriage, but one of the consequences of a prenuptial agreement,⁴ and if the condition of non-payment of the dower by the husband was agreed upon at the conclusion of the marriage, then the marriage is considered valid, and the condition is void.⁵

The Maliki School of jurisprudence is the only one to believe that dower is considered a condition of a marriage contract, and not a consequence. Scholars attribute this to the fact that spouses do not have the right to agree that the dower is not mandated for the husband, that is, the wife does not have the right to renounce her right to the dower, and therefore this represents a necessary condition.⁶

³ Nurgaleev, R.M. Classical Islamic family law: a tutorial. 5th Ed., Kazan: RIU, 2016. – P. 25.

⁴ Noteworthy is the meaning that the SPSL attributes to the marriage and the marriage contract. Thus, Article 1 of this Law defines marriage as follows: “Marriage is a contract between a man and a woman who is lawfully permissible to him, the purpose of which is to found a bond to procreate and live together”

⁵ Al-Shāfi‘, Muhammad ibn Idrīs. Kitab al-Umm, part 6 / Ed. by Abdul Mutaleb; al-Mansura (Egypt) al-Wafa Publishing House, 2001, Pp. 149-150

⁶ Al-Bagha, Mohammed Hassan. Justification of Syrian Personal Status Law (marriage and divorce) / Damascus: Publishing House of Damascus University, 2006, P. 290

We agree with the opinion of other Islamic schools considering the dower as a consequence of marriage and not as a condition. Syrian legislators seem to share this opinion since they placed the legal provisions on the dower in the section on the consequences of a marriage of the 1953 SPSL, and not in the section on conditions.

Reviewing the family laws in Arab countries, it becomes apparent that Oman, Morocco, Mauritania, Tunisia, and Algeria consider the dower a condition to contract marriage; some other countries consider it a consequence.

The 1997 Omani Law on Personal Status considers dower one of the main conditions to contract marriage; the set of these conditions is called **arkan**⁷ (Art. 16 of the Law).

Also, according to Article 21 of the named Law, a dower is all the property that is provided by the husband to complement his intention to enter into a marriage.⁸

⁷ *The foundational elements or pillars (arkan) of the marriage contract* are mandatory conditions, in the absence of which the contract is considered to be non-concluded; they are of particular importance, and therefore Islamic, as well as Syrian, scholars used the concept of *ruhn* (one of them) to denote these conditions

The 2001 Personal Status Code of Mauritania also considers dower one of the conditions (**arkan**) to the marriage contract.⁹ The same is true for the Algerian family law of 1984.¹⁰

Establishing the conditions for the validity of the marriage contract in the family law of 2004, the Moroccan legislators considered, as one of such conditions, the presence of an agreement between spouses in the contract on the release of the husband from his obligation to provide a dower (Art. 13).¹¹

According to Article 26 of the same Law, a dower is what the husband offers to the prospective wife while announcing his intention to enter into a marriage, create a stable family, and establish the foundations of love and lifelong relations between spouses. Thus, the legal basis of dower in this context is largely relying on moral and symbolic values, rather than material ones.¹²

One of the conditions for the validity of the marriage contract in

⁸ See Art. 21 of Omani Personal Status Law of 1997

⁹ See Art. 8 of Personal Status Code of Mauritania of 2001

¹⁰ See Art. 5 of Algerian family law of 1984

¹¹ See Art. 13 of Moroccan family law of 2004

¹² See Art. 26 of Moroccan family law of 2004

Tunisia is also the contract provision of dower to the wife (Art. 3 of 1956 Tunisian Personal Status Code).

According to Article 53 of the SPSL, a wife deserves a dower at the conclusion of a valid marriage contract regardless of the parties' agreement on its value. Therefore, even if the wife releases her husband from this obligation; still, she will not lose her right to receive a suitable dower.

Any unprohibited asset (that is, not forbidden by the provisions of Islamic law and Sharia) that can be used or sold is permissible to be presented to the prospective wife as a dower: property, or the cash money that a woman can spend on her needs such as purchasing a house, a land plot, a car, etc. (clause 2 of Article 54 of the SPSL).

Consequently, a dower cannot contain pork, alcohol, and drugs, because they are prohibited by Sharia. However, it is permissible to use gold as a dower, because it is allowed under Islamic law. Still, a great deal of confusion may be caused by the fact that the Syrian law

prohibits buying, selling, and conducting financial transactions or price setting on gold contracts since 1940.

Nevertheless, the Shariah Chamber of the Syrian Court of Cassation in its resolution No. 885/848 of 11/28/2016 had confirmed the possibility that the agreed dower may consist of gold: "The gold can be used as a dower, because it is allowed under Islamic law, and although the law prohibits the conclusion of contracts as well as commercial and civil transactions with gold (all contracts must be valued in Syrian currency), this is allowed in marriage contracts".¹³

The Syrian legislators did not define the minimum or maximum amount of the dower in the SPSL; therefore spouses are free to negotiate it among themselves (Art. 54.1 of SPSL). Syrian legislation has inherited this rule from two traditional Islamic jurisprudence schools: Hanbali¹⁴ and Shafi'i.¹⁵

The Hanafi School defines the amount of dower as at least ten dirhams

¹³ The ruling of the Sharia Chamber of the Syrian Court of Cassation № 885/848 of 28.11.2016 // Al-Qanun Journal, Proceedings of the Syrian Court of Cassation, Sharia Chamber 2014 – 2016. – Damascus: Syrian Ministry of Justice, P. 280

¹⁴ Majd ad-Dīn ibn Taymiyyah. Al-Muharrar, part 2 / Cairo: Assuna Almuhammadiyah, 1950, P. 31

¹⁵ Al-Ramli, Shamsuddin. Nihayat al-Muhtaj, part 6. // Beirut: Dar Al- Kutub Al-Ilmiyyah, 2003, pp. 336-337

of silver or its equivalent (one dirham of silver equals 3.77 grams). If spouses agree to less, then the husband has to make up for the shortfall.¹⁶

Dowries under the Maliki School have to contain at least 3 dirhams of silver or its equivalent (local dirham equals 25.4 grams).¹⁷

When the amount of dower is fixed between the two parties, it is called 'specified' (mahr musamma), and the husband is obliged to pay his wife only the amount that was indicated in the marriage contract.

According to Article 61 of the SPSL, if the spouses do not determine the amount of the dower, or agree that the husband is not obligated to pay at whole, or if the subject of the dower appears illegitimate, then, in all these cases, the husband has to provide his wife with the special type of dower that the law calls mahr almisl.

Mahr-al-Misl is the dower received by the paternal relatives of the bride.

Just as important is when the dower is fully or partially transferred, its purchasing power is respected at the cost

at the time of the prenuptial agreement, and not at the time of contractual performance, provided that its value does not exceed the amount of mahr almisl on the day of contractual performance unless there are other conditions or customs (Art. 54.3). This rule was added to Article 54 of the Law No. 4 in 2019.

The reason why the legislators added this clause was a significant reduction in the value of the Syrian currency in recent years resulted from the political and economic crisis in the country. At the beginning of 2019, the fall of the Syrian pound against the US dollar reached an unprecedented 95 %. A rate of about 50 pounds to one dollar was usual in the early 2000s; it became almost 1000 pounds per dollar after the crisis of 2011. So, the previously agreed dower now also has a much lower purchasing value. For example, if a couple agreed to the dower of 1,000,000 Syrian pounds at the time of their marriage in 2010, then this amount, which was equivalent to a cost of approximately \$ 20 000 at the consummation of marriage, is now worse around one thousand dollars. Thus, the

¹⁶ Ibn Abidin. Radd al-Muhtar, part 4 // Ed. by Ali Muavad. Beirut: Dar al-Fikr, 2003, P. 230

¹⁷ Addusuki, Muhammad. Hashiyat addusuki, part 2 // Cairo: Dar Ihya' al-Kutub al-'Arabiya, 2005, P. 302

new amendment was consistent with large-scale economic changes that significantly reduced the value of the Syrian currency.

Also, SPSL Article 55 provides either for the immediate payment of dower in full upon marriage or the postponement of payment in full or in part until the termination of the marriage, or on contract-specified terms.

In the absence of an agreement on the payment of a dower, spouses must follow the local custom peculiar to their place of residence.

People in Syria have long been accustomed to split this process into two stages: the first part is called a 'prompt' dower, and the second is a 'deferred' dower.

According to SPSL Article 56, if the contract does not specify anything about the time of receipt of the deferred dower, the wife has the right to demand it from the day when the divorce is considered final, or from the day of the husband's death.

Syrian Court of Cassation defined¹⁸ that the wife has the right to receive a deferred dower after the revocable divorce (*raja'ii*)¹⁹ on the last day of her waiting period.²⁰

Following the provisions of SPSL Article 57.1, each increase or decrease in the amount of the dower, as well as husband's exemption from the obligation to pay the contracted dower, have to be negotiated in the presence of a judge during the waiting period or resumption of the marriage; these amendments are to be attached to the marriage contract with the spouse's consent.

However, according to clause 2 of the same Article, which was added to by law No. 4 of 2019, the wife has the right to refuse her release and demand the court to receive the dower if her husband divorced her arbitrarily, that is, without grave causes.

Given the importance of the mahr in marital relations, the Syrian legislators considered the unpaid dower as the preferential debt, which

¹⁸ Al-Bagha, Mohammed Hassan. Justification of Syrian Personal Status Law (marriage and divorce) // Damascus University publishers, 2006, P. 299.

¹⁹ Divorce is considered revocable (*raja'ii*) if the husband divorces his wife for the first or second time, and she is still in the waiting period.

²⁰ Waiting period (*iddah*) is the time established by law until the end of which a divorced woman or widow cannot marry another man other than ex-husband

supersedes the other ordinary debts (Art. 54.4 of the SPSL and Art. 1120 of the Syrian Civil Code of 1494).²¹

Also, the ruling of the Shariah Chamber of the Syrian Court of Cassation No. 831/805 of 12/01/2014 proclaims the dower as the duty of the deceased husband; it is to be collected from the inheritance before the latter is transferred to the heirs.²²

In the event of the dissolution of a valid marriage before the spouses entered into a sexual relationship, the wife receives only half of the contracted dower (SPSL Art. 58).

According to the SPSL Article 59.1, in the event of the dissolution of the marriage through the fault of the wife and before the spouses enter into a sexual relationship; the husband is not obligated to pay the dower. The woman also loses her right to the full extent of the dower if she kills her husband; in this case, she has to return everything previously received from her husband as well (Art. 59.2).

Sui juris wife has the exclusive right to a dower; however, she may also

delegate the right to receive a dower to a third party with the condition that this power of attorney should be noted in the marriage contract. Whether the wife was declared a person with diminished capacity, then her legal representative has the right to receive a dower (clause 1 of SPSL Art. 60).

Article 63 of the SPSL states that the wife does not receive any dower if the marriage declared invalid (fasid) and if the couple did not enter into the sexual relationship; however, if they already had a sexual relationship and the amount of the dower was not determined by the marriage contract, then the wife receives dower in the amount of mahr almisl.

If in a similar case (invalid marriage (fasid) after entering into sexual relations), but when the dower was determined by the spouses in the contract, then the amount of the indicated dower is to be compared with mahr almisl, and the wife is paid the minimum of these dowries.

The significant importance in determining the amount of the dower

²¹ See Art. 54.4 of 1953 Syrian Personal Status Law and Art. 1120 of 1494 Syrian Civil Code

²² The ruling of the Sharia Chamber of the Syrian Court of Cassation № 831/805 of

01.12.2014 // Al-Qanun Journal, Proceedings of the Syrian Court of Cassation, Sharia Chamber 2014 – 2016. – Damascus: Syrian Ministry of Justice, P. 63.

imposed upon husband is represented by the provisions of a valid and invalid marriage (or prenuptial agreement).

Due to the presence of the conditions of a marriage contract or the absence of one or more of such conditions, the Syrian lawmakers identified three types of marriage:

- Valid marriage contract: Saheeh;
- Invalid marriage contract: 1- Batil; 2- Fasid.

If the entire necessary conditions and procedures (arkan) provided for by the SPSL are met, then the marriage is considered valid (Art. 47).

Whether one of the arkan foundational elements or pillars for marriage is absent, then the agreement shall be considered invalid from the very beginning (batil) (clause 1 of SPSL Art. 50), and this agreement does not entail any consequences (clause 2 of SPSL Art. 50).

Pursuant to the new amendment to clause 2 of Article 50 under Law No. 4 of 2109, if the marriage was considered batil, and the spouses already had a sexual relationship, or they had an opportunity to be in such a relationship,

and it was also proved that one of the parties did not learn about the invalidity of the marriage at the conclusion of the contract, then there are legal consequences from this marriage, as in the case of fasid marriage.

The SPSL provides only one example of an invalid marriage contract (batil) in clause 2 of Article 48; it is a marriage between a Muslim and a non-Muslim.

If all the conditions for marriage (arkan) were met, but some other conditions were not, then the marriage is considered irregular (fasid) (clause 1 of SPSL Article 48). This could be, for example, if the marriage contract was concluded without witnesses.

An irregular marriage (fasid) (in the absence of the sexual relationship between alleged husband and wife) is considered invalid, and the contract does not entail any consequences (clause 1 of SPSL Article 51). But in the case when the spouses already engaged in the sexual relationship, then an irregular marriage will be followed by several complications (clause 2 of SPSL Article 51).

Thus, such irregular marriage entails quite certain legal consequences (clause 2 of SPSL Art. 51), namely:

- A certain specified portion of the dower must be paid (either a proper dower or, if indicated, the amount should not be lower than the generally accepted minimum dower);
- Children born from such a marriage receive father's surname;
- Ban on marriage consummation due to intermarriages;
- A wife must undergo iddah waiting period after the dissolution of the marriage (fasid) by consent of the spouses or by a court decision, and also in the case of the husband's death;
- A wife should receive alimony for the waiting period (nafkah iddah);
- A wife who has entered into an irregular marriage of her own free will has the right to family support (nafkah) as long as she is unaware of the invalidity of the marriage (clause 3 of SPSL Art. 51).

The legal consequences will also not follow if it was not proved that the spouses already had engaged in a sexual relationship, even if they had an

opportunity to be in such a relationship (hulva shariia) before the dissolution of the marriage (fasid). This opinion is shared by most scholars of law and sharia; it was also confirmed by the decisions of the Shariah Chamber of Syrian Court of Cassation.²³

Following the established litigation practice of the Syrian Court of Cassation, the court has to decide on the marriage termination (faskh) if the marriage is invalid, even if the family did not request that.²⁴ The invalidity of a marriage in which one of the spouses is Muslim and the second is a supporter of some other faith is also decided in a Sharia court.

There are many cases in which a marriage is considered to be invalid (batil), but unfortunately, SPSL indicated only one of them (marriage between a Muslim and a non-Muslim), therefore, we believe that there is a need to amend and clarify the law, in particular, concerning the precise

²³ The ruling of the Sharia Chamber of the Syrian Court of Cassation № 41/25 of 08.27.1973. Justification of Syrian Personal Status Law (marriage and divorce) / al Bughah, Mohammed Hassan, Damascus University publishers, 2006: P. 284

²⁴ The ruling of the Sharia Chamber of the Syrian Court of Cassation № 853/134 of 22.03.1983. Justification of Syrian Personal Status Law (marriage and divorce) / al Bughah, Mohammed Hassan, Damascus University publishers, 2006: P. 284

determination of cases of marriage invalidity, including:²⁵

- Marriage between a man and a female-hermaphrodite;
- Marriage between a man and a woman, if one of them is forbidden for another;
- Marriage between a man and a woman who is already married to another man;
- Marriage between a man and a woman if the man has already divorced the same woman three times;
- Fifth marriage of a man.

Examining the legal provisions relating to the validity of marriage contained in the Arab family laws, reveals the difference of various laws in some details and consistency in others, especially with regard to the separation of fasid and batil invalid marriages.

Kuwaiti Personal Status Act of 1984 provides for two types of marriage: valid and invalid (clause 1 of Article 43). A marriage is considered valid when all of its arkan conditions of validity are present in accordance with the law; all

the remaining marriages are also considered valid and divided into batil and fasid (clause 2, Art. 43).²⁶

Contrary to Syrian law, Kuwaiti lawmakers clearly defined cases where marriages were considered invalid (batil) in Article 49:

- If the contract formula was incorrect (in exchange for the offer and acceptance) or the legal capacity of one of the parties did not exist, then this marriage contract cannot be considered concluded (batil). It should be noted here that, unfortunately, according to the Kuwaiti laws on the personal statuses, the parties to the prenuptial agreement that conclude it are the husband and wife's legal guardian; the wife is also considered a party to the agreement but does not have the right to conclude it.²⁷ Although, it seems quite logical that baron et feme should be the only parties to this agreement, and only they should have the only right to conclude or refuse it;

- Marriage between a man and a woman who is forbidden for him;

- Marriage between a man and women who is already married to another man,

²⁵ Al-Sabuni, Abdul-Rahman. Justification of Syrian Personal Status Law (marriage and divorce), part 1 / Damascus: El Jadida, 1978: P. 261.

²⁶ See Article 43 of Kuwaiti Personal Status Act of 1984

²⁷ See Article 8 of Kuwaiti Personal Status Act of 1984

or while a woman undergoes the waiting period;

- Marriage between a man and a woman if the man has already divorced the same woman three times;
- Marriage to a woman who does not follow any of the monotheistic religions;
- If one of the spouses renounces Islam;
- Marriage between a Muslim and non-Muslim.

According to Article 50 of this Law, any invalid marriage that is not provided for in the previous article (49) is considered fasid.²⁸ This marriage may have some legal consequences only if the spouses had a sexual relationship after the marriage was consumed. Whether they did not have such a relationship, then there will be no consequences, and both fasid and batil marriages are considered to be invalid from the very beginning.

In the same way, as Syrian and Kuwaiti, the legislators of Jordan in the Law on Personal Status of 2010 considered fasid and batil types of an invalid marriage. They also did not

provide for any legal consequences for batil marriage, while fasid type may have certain legal consequences, but only in the event of established sexual relations between spouses after marriage was consumed.²⁹ However, they not only revealed cases of batil marriage but also identified specific cases in which marriage is considered fasid.

The marriage considered batil in the following cases:³⁰

- marriage between a man and a woman who is forbidden for him because of the kinship or due to a relationship resulting from the conclusion of this marriage;
- marriage between a man and a woman who is already married to another man, or while a woman undergoes the waiting period;
- marriage to a woman who does not follow any of the monotheistic religions;
- marriage between a Muslim and non-Muslim.

²⁸ See Articles 50- 51 of Kuwaiti Personal Status Act of 1984

²⁹ See Art. 34 of Jordanian Law on Personal Status of 2010; also see Al Quda, Muhammad Ahmad. al-Wafi in justification of new Jordanian

Personal Status Law № 36 of 2010, Vol. 1: The University of Jordan-Faculty of Shariah // Amman, 2012: Pp. 130-132

³⁰ See Article 30 of Jordanian Law on Personal Status of 2010

The marriage is considered fasid in the following cases:³¹

- marriage between a man and a woman who is forbidden for him because of the breastfeeding issues;
- marriage of a person with two such women at a time who are related with each other in such a way that had any of these two women been a man, marriage between them would not have been possible. This simply means that a man cannot marry his sister-in-law (wife's sister) during his wife's lifetime;
- fifth marriage of a man; marriage between a man and a woman if the man has already divorced the same woman three times;
- absence of witnesses at the time of making or accepting the proposal;
- temporary marriage and mutah "pleasure marriage"³²;

- when one or both parties to the contract do not possess the legal capacity to enter into marriage at the time of the consummation or were forced to enter into marriage.

It should be noted that the Jordanian legislators also used (but only once) the term arkan against the prenuptial agreement to distinguish the essential terms of the contract from other conditions. Article 29 of Jordanian personal status law provides as follows: "A prenuptial agreement is considered valid when all its arkan conditions correspond to reality". Legislators of Mauritania, when considering the issue of the invalidity of a marriage contract in the Law of 2001, did not use the term batil marriage, but considered each invalid marriage fasid.

According to the provisions of Article 49 of this Law, marriage is considered fasid if it has lost one of its arkan elements, or was concluded between a man and forbidden woman; or was accompanied by a condition that is contrary to its purpose, or when one of

contract without the need for a divorce and does not require the husband to support his wife or provide a conjugal residence. A wife in such a marriage is not an heiress in the event of the death of her husband

³¹ See Article 31 of Jordanian Law on Personal Status of 2010

³² Temporary marriage in Arab countries is a marriage between a woman and a man for a certain period of time with a dower agreement. It ends at the end of the period specified in the

the conditions was not fulfilled in reality.

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Following Article 5 of the 2001 Mauritanian Personal Status Code, arkan of a marriage contract should involve spouses, legal guardian(s), dower, and wording of the contract (which includes the exchange of a valid offer and acceptance between the parties in the presence of two witnesses).³⁴

Mauritania legislation requires in Article 9 of the same Law the consent of the bride and her guardian for the invalidity of the marriage (even if the bride has reached the legal age), otherwise, the contract is considered invalid (fasid); the Law also provides for the silent consent to the marriage.

3. Conclusion

The author tends to believe that bride's silent consent is not sufficient for marriage, which generally requires explicit consent to be valid, since the marriage contract is very important and has legal consequences for spouses and their children in the future, and therefore

it should not be based on doubts or probabilities.

Along with the Mauritians, Tunisian legislators did not use the term *batil* in their Personal Status Code of 1956 but considered each invalid marriage *fasid*.³⁵ However, the Code provided for criminal penalties for spouses still proceeding with engagement even after they realized that their marriage is invalid (*fasid*); the punishment for this offense is up to six months of imprisonment (Art. 21 of Tunisian Personal Status Code of 1956).

Although Yemen's Personal Status Act of 1992 has clearly defined the arkan of the marriage contract (Article 8) and showed their difference from the terms of the contract (Article 7), still, Yemeni legislators did not use the term *fasid*, rather considering each invalid marriage *batil*. Therefore, if the contract does not satisfy all the arkan conditions and all other circumstances, then it is considered *batil*.³⁶

Article 31 states that a marriage in which all of its arkan and other conditions were not fulfilled is

³³ See Article 49 of Mauritania's Personal Status Code of 2001

³⁴ See Article 5 of Mauritania's Personal Status Code of 2001

³⁵ Article 21 of the Tunisian Personal Status Code of 1956. As mentioned above in the presented

study, the Court, which decides on the invalidity of a marriage, rules on imposing criminal punishment as well

³⁶ See Articles 7 and 8 of Yemen's Personal Status Act of 1992

considered invalid (batil) and have no legal consequences unless it is proved that the sexual relationship between the spouses was committed before annulment. Article 31 also provides that a marriage in which all of its elements and conditions have not been fulfilled shall be deemed invalid and carries no legal weight unless it has been proven that sexual relations between spouses have been established before annulment. Therefore, this marriage should be dissolved by the court, if the couple does not dissolve it by mutual agreement.³⁷

The Muslim Personal Law Act of Sudan of 1991,³⁸ along with Moroccan Family Law of 2004,³⁹ Omani Personal Status Law of 1997,⁴⁰ UAE Personal Status Law of 2005,⁴¹ and Qatari Family Law of 2006⁴² are separating invalid marriages into batil and fasid. However, these laws differ in some details on the invalidity of marriage.

According to the SPSL Article 64.1, if a man, being terminally ill, entered into a marriage contract under which he was liable to provide his wife

with a dower, the cost of which is higher than mahr almisl, then the provisions of the SPSL on the last will and testament will apply to the part of the dower that exceeds mahr almisl.

At the same time, the clause 2 of the very same Article specifies that if a woman marries, being terminally ill, and agrees to a dower valued less than average, her heirs may ask her husband to increase the amount of dower to level it with mahr almisl.

It should be also noted that under the judicial practice of the Court of Cassation, the judge handling the dowry cases has the right, under the circumstances, to allow prospective husbands to pay the dower by installments when they are not able to pay it in full and provided that this would not inflict serious harm to their wives.

The ruling of the Shariah Chamber of the Syrian Court of Cassation No. 16/36 of February 3, 2014, reads: 'Installment is one of the issues determined by the court of the first instance, and its legal basis is represented by the wording of Article

³⁷ See Article 31 of Yemen's Personal Status Act of 1992

³⁸ See Article 59 of the Muslim Personal Law Act of Sudan of 1991

³⁹ See Articles 57-59 of Moroccan Family Law of 2004

⁴⁰ See Article 39 of Omani Personal Status Law of 1997

⁴¹ See Article 57 of UAE Personal Status Law of 2005

⁴² See Article 49 of Qatari Family Law of 2006.

344.2 of the Civil Code, which allows a judge to grant a debtor an extension (if this is required by debtor's financial status, and the lender does not suffer serious damage from the delay).⁴³

Noteworthy that some families of several Arab societies, including Syria, even require the prospective husband to purchase gold jewelry for the bride. These gold pieces of jewelry are not considered a dower, even if they are very expensive. The same rule applies to the money that the bridegroom gives the bride to buy gold. It was also confirmed by the Syrian Court of Cassation by its Sharia Chamber ruling № 1918 from 5-9-1964, which states: "The amount offered to the wife as the price of gold jewelry at marriage is not included in the dower, because it is considered a gift".⁴⁴

Maliki School does not agree with this and considers gold jewelry to be part of the dower. Dr. Muhammad Al-Hassan Mustafa Al-Bagha believes that gold jewelry should be considered a dower if a divorce occurs before engaging in sexual relations.

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is of the opinion that when a dispute arises between spouses regarding gifts (especially gold jewelry), and the wife says that the gold jewelry is not a dower, and the husband says that it is, and none of them can prove their claim - this situation should be settled by following the custom.⁴⁵

We believe that in all cases, gold jewelry should be considered part of the dower, and therefore, the legislators should amend the Personal Status Law of 1953 so it would be expressly stated. The reason to adhere to this point of view is that Islamic law does not recall any texts in the Qur'an or in the Hadith that would oblige the groom to purchase the gold jewelry to the prospective spouse in addition to the dower.

It must be admitted that many families of Syrian society may quite exaggerate and overestimate their financial demands from the groom and demand an expensive amount of gold jewelry for the bride in exchange for accepting the proposal. This grassroots

⁴³ The ruling of the Sharia Chamber of the Syrian Court of Cassation № 16/36 of 03.02.2014 / Al-Qanun Journal, Proceedings of the Syrian Court of Cassation, Sharia Chamber 2014 – 2016. – Damascus: Syrian Ministry of Justice, P. 13

⁴⁴ The ruling of the Sharia Chamber of the Syrian Court of Cassation № 1918 of 5-9-1964 / Justification of Syrian Personal Status Law

(marriage and divorce) / al Bughah, Mohammed Hassan. — Damascus University publishers, 2006, P. 329

⁴⁵ Al-Sabuni, Abdul-Rahman. Justification of Syrian Personal Status Law (marriage and divorce), part 1 / Damascus: El Jadida, 1978, P. 294.

phenomenon caused many young people to postpone or even turn down their proposals. Therefore, it is essential to come up with a new legal text which will consider the values (especially gold) canonically presented by the groom to his bride as part of the dower; that, in turn, will affect this trend and lead to an improvement in the situation of Syrian youth.

Another debatable issue apart from the dower and gold is represented by the assets provided to the prospective family by the bride; these assets are often a gift from her family for her wedding. They are called *jhaz*.

The Syrian legislators did not establish a provision on these assets, nor did specify which things are considered *jhaz* and which are not. As there was much debate on this matter, the Court of Cassation had to seriously weigh the options on this issue.

It was established earlier by the Shariah Chamber in the ruling Nº 436/462 of 07.24.1978 that *jhaz* consists of a number of things that a wife brings

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to her husband's house after the marriage; as regards to the things and/or assets brought to the house while acquiring a home and family, these are not part of *jhaz*, and disputes related to them fall under the jurisdiction of the sharia court.⁴⁶

Later, the Court of Cassation changed its mind and ruled in the Shariah Chamber decree Nº 1831 of 12/30/1995 that *jhaz* is all that a wife brings to the house from the very beginning of the marriage and during the cohabitation until she leaves the family home, regardless of the origin of these things/assets.⁴⁷

The Jordanian Personal Status Law of 2010 directly regulates this issue in Article 57, which states: 'The dower belongs to the wife and she is not obliged to provide or purchase *jhaz* as part of her contribution'.

Jhaz includes pretty much everything the wife brings to the new family home, and it doesn't matter whether she paid for it with her own money, or she was given or presented

⁴⁶ The ruling of the Sharia Chamber of the Syrian Court of Cassation Nº 436/462 of 24.07.1978. Justification of Syrian Personal Status Law (marriage and divorce) / Al-Bagha, Mohammed Hassan; Damascus university publishers, 2006: P. 322

⁴⁷ The ruling of the Sharia Chamber of the Syrian Court of Cassation Nº 1831 of 30.12.1995. Justification of Syrian Personal Status Law (marriage and divorce) / Al-Bagha, Mohammed Hassan; Damascus University publishers, 2006: P. 323

these things, or her husband bought them with her permission or using her money.

The husband may use any item from jhaz with the wife's consent, 'provided that the marital status actually exists and secured'.⁴⁸

One of the important provisions of Jordanian legislation that should be addressed is the provision of Article 54, which states: 'It is not allowed for the wife's parents or relatives to collect money or any other valuables from the groom (prospective husband) in exchange for marriage with the bride of their family. The husband may return what was taken from him in non-monetary terms if it exists, or its value if it was forfeited'.⁴⁹

This rule in Jordanian law is of exceptional significance; it could be only suggested that the Syrian legislators add a similar text to the Personal Status Law, with the possibility of imposing criminal penalties on those who exploit their daughters agreeing to their marriages in exchange for money. The presence of such a provision would give pause for thought for the followers of obsolete customs before pulling money from the groom in exchange for marriage.

⁴⁸ See Article 57 of Jordanian Personal Status Law of 2010

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Tunisian Personal Status Code of 1956, published in the Official Gazette of Tunisia, № 66, August 17, 1956.

⁴⁹ See Article 54 of Jordanian Personal Status Law of 2010

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