

Note,
**THE INTERSECTION OF SHARIA AND
FAMILY LAW: A POLICY AND CASE
SUMMARY**

by
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Introduction

A panic is taking hold in some circles: Sharia law is coming to the United States.¹ In response to this panic, according to the

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¹ See Aymann Ismail & Jeffrey Bloomer, *Sharia Has Come to Texas*, SLATE MAG., Oct. 13, 2017, http://www.slate.com/articles/video/whos_afraid_of_aymann_ismail/2017/10/inside_a_sharia_law_court_in_texas.html (reporting by certain news sources that “an Islamic court had been established there to decree medieval justice in America”). According to one scholar:

[L]inguistically, “sharia” means “way” or “road.” As a legal term, “sharia” refers to “God’s Way” or “God’s Law,” a divine exhortation to all Muslims about the ideal way to behave in this world. Muslims have two tangible sources of information about this Law of God. The first is the Quran, which Muslims believe is the actual word of God, revealed to the last prophet, Mohammad. The second is the lived example (“sunna”) of Prophet Mohammed. Muslim scholars engaged—and continue to engage—in rigorous interpretation of these sources to extrapolate detailed legal rules covering many aspects of Muslim life, from how to pray and avoid sin to making contracts and writing a will. Muslims refer to these rules every day in order to live a Muslim life. These rules are called fiqh.

The use of the term “fiqh,” and not “sharia,” for these rules is significant. Fiqh literally means “understanding,” reflecting the fundamental epistemological premise of Islamic jurisprudence: fiqh is fallible. That is, Muslim fiqh scholars undertook the work of interpreting divine texts with a conscious awareness of their own human potential to err. They thus recognized that their extrapolations of fiqh rules were at best only probable articulations of God’s Law, and that no one could be certain to have the “right answer.” In other words, divine law (sharia) represents absolute truth, but all human attempts to understand and elaborate that truth are necessarily imperfect and poten-

Southern Poverty Law Center, over one-hundred twenty anti-Sharia law bills have been introduced in 42 states since 2010.² This year alone, 13 states have introduced an anti-Sharia law bill.³ Professors, attorneys, judges, and legislators have denounced the anti-Sharia movement, with the American Bar Association taking a prominent position:

RESOLVED, That the American Bar Association opposes federal or state laws that impose blanket prohibitions on consideration or use by courts or arbitral tribunals of foreign or international law.

FURTHER RESOLVED, That the American Bar Association opposes federal or state laws that impose blanket prohibitions on consideration or use by courts or arbitral tribunals of the entire body of law or doctrine of a particular religion.⁴

That the American Bar Association would have to come out with such a resolution is a sad commentary on our times, for it betrays not only a current anti-Muslim sentiment, it reveals some of the public's misunderstanding of how the courts apply the law, whether statutory or case law, to the facts of a given case and always within a constitutional framework.⁵ The reality is that

tially flawed. Fiqh scholars have always been acutely aware that, although the object of their work is God's Law, they do not—and cannot—speak for God.

Asifa Quraishi-Landes, *The Sharia Problem with Sharia Legislation*, 41 OHIO N.U. L. REV. 545, 547-48 (2015).

² For a summary, see *Anti-Sharia Law Bills in the United States*, <https://www.splcenter.org/hatewatch/2017/08/08/anti-sharia-law-bills-united-states> (last visited Oct. 15, 2017). See also Muhammad Elsayed, Note and Comment, *Contracting into Religious Law: Anti-sharia Enactments and the Establishment and Free Exercise Clauses*, 20 GEO. MASON L. REV. 937, 942-48 (2013); Bradford J. Kelley, Comment, *Bad Moon Rising: The Sharia Law Bans*, 73 LA. L. REV. 601, 613-15 (2013); Asma T. Uddin & Dave Pantzer, *A First Amendment Analysis of Anti-sharia Initiatives*, 10 FIRST AMEND. L. REV. 363 (2012).

³ *Anti-Sharia Law Bills in the United States*, *supra* note 2.

⁴ American Bar Association, Resolution dated Aug. 8-9, 2011, https://www.americanbar.org/content/dam/aba/directories/policy/2011_am_113a.auth_checkdam.pdf (last visited Oct. 15, 2017). The Resolution contains an excellent summary of anti-Sharia legislation through 2011.

⁵ For example, in *Levay v. United States*, No. 17-cv-10517, 2017 WL 2953046 (E.D. Mich., July 11, 2017), Levay sought a “formal declaration of incompatibility between Koranic Sharia Law . . . and US Constitutional Law.” He also asked that the court direct Congress to take action by outlawing certain passages of the *Quran*, issue a federally sanctioned and edited Koran, and with-

this latest focus on using legislation to bind the courts against a group based upon religion or culture or race is not new in the United States.⁶

Without delving into the origins of the causes and rise of the anti-Sharia law movement,⁷ this article seeks to digest the actual current use of Sharia law in the courts, focusing exclusively on divorce and custody cases.⁸ First, the article examines the appli-

draw tax-exempt status from mosques which do not adopt the new *Quran*, and institute a “National Islamic Registry Program.” Not surprisingly, the court denied the request. Moreover, the court found in a subsequent decision that the suit was frivolous and awarded attorney’s fees. *See* *Levay v. United States*, 2017 WL 3499962 (E.D. Mich., Aug. 16, 2017); *see also* *Awad v. Ziriax*, 670 F.3d 1111, 1120–24 (10th Cir. 2012) (analyzing a “proposed constitutional amendment that would prevent Oklahoma state courts from considering or using Sharia law,” and concluding that when balancing Oklahomans’ fundamental right to vote against the plaintiff’s constitutional rights, enjoining the amendment was not adverse to the public interest).

⁶ *See* William N. Eskridge Jr., *A Jurisprudence of Coming Out: Religion, Homosexuality, and Collisions of Liberty and Equality in American Public Law*, 106 *YALE L.J.* 2411, 2411 (1996) (“Conflicts among religious and ethnic groups have scored American cultural and political history. Some of these conflicts have involved campaigns of suppression against deviant religious and minority ethnic groups by the mainstream.”); Stephen M. Feldman, *Religious Minorities and the First Amendment: The History, the Doctrine, and the Future*, 6 *U. PA. J. CONST. L.* 222, 227 (2003) (“The true measure of a nation’s commitment to religious freedom, it would seem, lies in its treatment of religious minorities or outgroups”); *see generally* SIDNEY E. AHLSTROM, *A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE* (2d ed. 2004).

⁷ *See Fresh Air: Who’s Behind the Movement to Ban Sharia Law?* (WHYY radio broadcast Aug. 9, 2011), <http://www.npr.org/2011/08/09/139168699/whos-behind-the-movement-to-ban-shariah-law> (last visited October 15, 2017); *see also* Andrea Elliott, *The Man Behind the Anti-Sharia Movement*, *N.Y. TIMES* (July 30, 2011), <http://www.nytimes.com/2011/07/31/us/31-shariah.html>.

⁸ *See* Karen Lugo, *American Family Law and Sharia-compliant Marriages*, 13 *ENGAGE: J. FEDERALIST SOC’Y PRAC. GROUPS* 65 (July 2012); Mervate Mohammad, *The Evolution of Sharia Divorce Law: Its Interpretation and Effect on a Woman’s Right to Divorce*, 7 *ALB. GOV’T L. REV.* 420, 439-444 (2014); Asifa Quraishi & Najeeba Syeed-Miller, *No Altars: A Survey of Islamic Family Law in the United States*, <http://www.law.emory.edu/IFL/cases/USA.htm> (last visited Nov. 14, 2017); Asifa Quraishi-Landes, *Rumors of the Sharia Threat Are Greatly Exaggerated: What American Judges Really Do with Islamic Family Law in Their Courtrooms*, 57 *N.Y.L. SCH. L. REV.* 245 (2012/2013); James A. Sonne, *Domestic Applications of Sharia and the Exercise of Ordered Liberty*, 45 *SETON HALL L. REV.* 717, 730-735 (2011).

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cation of Sharia law in divorce and property division. It then discusses the application of Sharia law in child custody and finally sums up the latest trends regarding whether the U.S. state court will grant comity to Sharia law.

I. Divorce/Property Division

In analyzing whether to grant comity to a Sharia Court's final divorce judgment, the court may review (a) whether the divorce was approved by the religious court, (b) whether the divorce was approved by the foreign civil or secular court, and (c) whether the foreign jurisdiction requires confirmation of the divorce by the civil court. To accomplish that task, the court may give comity to the intent of the parties to be divorced, as evidenced by the religious court divorce judgment, but still maintain local jurisdiction in the civil court to address ancillary matters such as to divide assets and grant spousal support.

In *Falah v. Falah*,⁹ the husband argued that the Ohio court although exercising jurisdiction over the parties for ancillary matters, and despite granting comity to the divorce they obtained in Israel during the pendency of these proceedings, should have dismissed the case for lack of jurisdiction. He argued that once the Ohio court decided to give effect to the Sharia Court's decision, it should have dismissed the matter instead of addressing issues of spousal support, asset distribution, and debt division. The Ohio court disagreed.

The Ohio court first noted that while the court spoke in terms of "comity," it merely used the Sharia Court's decision as additional evidence that the parties had decided to terminate their marriage and that the husband had already paid the wife a certain sum of money as a result of that decision (i.e., her dowry). The court independently (1) granted the wife a divorce on the grounds of incompatibility, (2) divided the parties' assets and

The use of Muslim premarital agreements is beyond the scope of this article. See Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women*, 76 SOUTHERN CAL. L. REV. 189, 202-209 (2002); Ghada G. Qaisi, Note, *Religious Marriage Contracts: Judicial Enforcement of Mahr Agreements in American Courts*, 15 J. L. & REL. 67 (2000).

⁹ 2017-Ohio-1087, ___ N.E.3d ___, 2017 WL 1148603 (Ohio Ct. App. Mar. 27, 2017).

debts, and (3) fashioned a spousal support order. Thus, the court entered judgment independently of the Sharia Court's decision.¹⁰

More significantly, however, was the Ohio court's dicta in footnote 2, which is worthy of lengthy quotation:

We note that, had the court actually given comity to the Sharia Court's decision, its decision would have been in error. At the final divorce hearing, both parties testified that the Sharia Court is separate from the civil courts in Israel. Wife described the Sharia Court as offering a religious divorce akin to an annulment rather than a civil divorce. Meanwhile, Husband testified that, following an order from the Sharia Court, it would be necessary for him to obtain a certificate from the Israel Ministry of Interior, which was a civil court. No such certificate was ever entered into evidence. The record only contains a copy of the Sharia Court's decision, which is in Arabic, and a purported translation of that decision. It is entirely unclear from the record what legal effect, if any, the Sharia Court decision has. Accordingly, absent additional information, it would have been error for the trial court to give full force and effect to the decision under the principles of comity. Because the court entered judgment independently of the Sharia Court, however, its error would have been harmless.¹¹

Thus, according to this Ohio decision, a purely religious divorce cannot be granted "comity" because it is not a secular divorce, the prerequisite to comity.

The same principle, that marriage and divorce must be secular as well as religious in order to be afforded comity, was applied in *Elahham v. Al-Jabban*.¹² A core issue in that case was whether the wife had remarried in Egypt. The trial court entered an order, in which it explained that although there was a strong argument that the wife was married under Sharia law, the court was not bound by the religious law in Egypt. The court explained that husband did not produce evidence or testimony that the religious law of marriage was also the secular law of marriage in Egypt. The court noted that there was no evidence the plaintiff had recorded the marriage with the Egyptian government. The court, therefore, declined to find that the wife had remarried. The appellate court affirmed.¹³

¹⁰ 2017 WL 1148603, *5.

¹¹ *Id.*

¹² 899 N.W.2d 768 (Mich. Ct. App. 2017).

¹³ 899 N.W.2d at 785-86. *See also* Ahmad v. Khalil, 51 Misc.3d 1212(A), 37 N.Y.S.3d 206 (Table), 2016 WL 1590938, 2016 N.Y. Slip Op. 50632(U) (al-

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The secular nature of marriage and divorce was also recognized in *Garba v. Ndiaye*.¹⁴ In its decision, the appellate court analyzed the relevance of Sharia law in the context of a state divorce proceeding:

The potential applicability of Sharia—Islamic law—ultimately is irrelevant. But although we don't purport to have conducted a thorough analysis of Ethiopian law, Father's claim that family law matters can only be decided in religious courts in Ethiopia appears on its face to be wrong. His own source, an introduction to the Ethiopian legal system, recognizes that there is "formal legal pluralism" between civil and religious courts in family law matters. That overview does not say, however, that religious courts have exclusive jurisdiction. And, to the contrary, the Ethiopian federal legislature passed a civil Family Code in 2000 that recognizes civil and religious marriages (as well as "irregular unions") and, among other things, provides that "[f]rom the time the petition for divorce is brought before it, the court shall forthwith give appropriate order regarding the maintenance of the spouses, the custody and maintenance of their children and the management of their property."¹⁵

At least to date, the lesson is clear: purely religious divorces are not recognized by states because states claim exclusive subject matter jurisdiction over divorce. A divorce may be valid under Islamic law, but if it does not comport with state law, the divorce will not be recognized.¹⁶ To reach this conclusion, courts have not had to decide the more complex constitutional issue of religious freedom and family law. The court may utilize evidence of a religious divorce to confirm the parties' intent to end the marriage. Further, additional evidence of religious and economic intentions during the marriage may be given credence by the court when determining the division of marital assets and debts

though parties were "divorced" by Sharia court in Lebanon, wife still had the right to equitable distribution in New York).

¹⁴ 132 A.3d 908 (Md. Ct. Spec. App. 2016).

¹⁵ *Id.* at 912 n.15.

¹⁶ See *Aleem v. Aleem*, 947 A.2d 489, 502 (Md. 2008) (holding that a talaq that was allowed in Pakistan was unenforceable in Maryland because, by being accessible only to men and not to women, talaq was against public policy under the Equal Rights Amendment of the Maryland Constitution, and also deprived women of the due process they would be entitled to when they initiate a divorce in Maryland); *Mussa v. Palmer-Mussa*, 719 S.E.2d 192, 194-95 (N.C. Ct. App. 2011) (court recognized a couple's Muslim marriage, but not their Muslim religious divorce).

but it is not binding as a matter of law on a divorce court applying state law.

In *Yehia v. Goma*,¹⁷ the court declined to recognize the Sharia based divorce, but nonetheless used that divorce as evidence of the end of the marital partnership. The court described the parties' Sharia-based marriage, as follows: "The parties are both Egyptian citizens. They led a devout life and marriage in accordance with Islamic Law. Both parties' actions are consistent with their religious and/or cultural traditions."¹⁸ The husband then testified that, according to the tenets of Islamic faith, he is fully responsible to satisfy all the family's needs, and once he does so, the remainder of his income is his. At the same time, whatever the wife earns, according to testimony concerning the Islamic faith, is hers, and she has no obligation to contribute her earnings to the marriage. The court concluded that these "beliefs guided their economic activities."¹⁹

The court used this testimony and record to find there was little if no economic partnership between the parties, and divided the property accordingly. For whatever tactical reason, the trial court "neither received any expert testimony in the Islamic faith, nor is it applying any provisions of Sharia Law. Instead, it is acknowledging the manner in which the parties defined their marital relation."²⁰ This case presents an example of a point of best practice given that the evidentiary record may influence the court's finding on economic intent even if the religious foundation is not accorded weight.

The use of Sharia law to determine a marriage was also employed in *Al-Mubarak v. Chraibi*.²¹ On August 25, 2001, the husband and the wife, along with the wife's family, went to a New York City mosque to get married. The imam took personal information from the parties as part of the marriage ceremony, but stopped the ceremony upon learning that the parties did not have a New York state marriage license. A Sharia marriage contract

¹⁷ 55 Misc.3d 1201(A), 55 N.Y.S.3d 695 (Table), 2017 WL 1052251, 2017 N.Y. Slip Op. 50327(U) (N.Y. Sup. Ct., Mar. 20, 2017).

¹⁸ *Id.* at *2.

¹⁹ *Id.*

²⁰ *Id.* at n.3.

²¹ No. 101392, 2015 WL 1255794, 2015-Ohio-1018 (Ohio Ct. App., Mar. 19, 2015).

used for documenting Muslim marriages was introduced into evidence, but it lacked the parties' signatures.

Additionally, photographs admitted into evidence purportedly depicted the husband registering the parties' names in a book at the mosque, as would be customary for a Muslim marriage. The wife's eldest brother who lived in New York was also present, and under Sharia law he was to authorize the marriage of his sister in the absence of their father. The appellate court held that the trial court's use of proof of the husband and wife's cohabitation and reputation as being married, as determined under Sharia law, was evidence of marriage for the purpose of later equitably determining marital property.

The court may also use evidence of a religious divorce to determine whether a new marriage is valid. In *Aqel v. Aqel*,²² the court was called upon "to interpret and apply Islamic domestic relations law in determining whether Mohammad's marriage to Marie, which took place after he had divorced his Jordanian wife, but prior to the expiration of the three-month idda period, was valid under Kentucky law."²³ The court applied Sharia in this context to determine whether the trial court's findings of fact regarding the interpretation of Islamic law were supported by substantial evidence, and held that there was substantial evidence in the record from the testimony of both Mohammad and his expert witness to support the finding that the Jordanian divorce was final, at least as to Mohammad, as of the date it was filed.

If a Sharia/secular divorce is alleged, it must be proved. This was the lesson in *In re Marriage of Elgammal and Aboutaleb*.²⁴ "Aboutaleb claimed that he divorced Elgammal "in a customary way" in Egypt "according to the Law and Sharia."²⁵ This claim was apparently made in an effort to challenge the validity of the current proceedings and the orders made. Aboutaleb cited no legal authority for his claim. Aboutaleb also failed to mention that he submitted to the jurisdiction of the superior court by filing a response to the dissolution petition filed by Elgammal. As such

²² No. 2004-CA-001531-MR, 2005 WL 564191 (Ky. Ct. App., Mar. 11, 2005).

²³ *Id.* at *1.

²⁴ 2010 WL 4970224 (Cal. Ct. App., Dec. 8, 2010).

²⁵ *Id.* at *7.

the court held that, “We see no merit to his claim.”²⁶ Therefore, the Court denied Aboutaleb’s claim to challenge the validity of the proceedings.

II. Child Custody

When considering whether to accept registration of a foreign judgment, the court will review the principles of comity and analyze whether the foreign order complies with the State’s fundamental public policy. A court may reject the foreign custody order if it does not comply.

In *H.L.K. v. F.A.A.*,²⁷ a UCCJEA case, the court found that it had jurisdiction over the mother’s complaint for custody, and it declined registration of a Saudi Arabia custody order of court under the principles of comity. It found that the custody order violated its fundamental public policy:

These provisions, which appear to be the basis for the Saudi Court’s award of sole custody to Father (“On all of the above mentioned . . .”), clearly do not reflect public policy in Pennsylvania. Therefore, even if Saudi Arabia did have jurisdiction in this custody matter, this Court declines to register the July 17, 2014 Order of Court under principles of comity.²⁸

Conversely, if the court finds that applying foreign law will not violate public policy, then comity will be granted. At times this may mean declining accepting jurisdiction and deferring to the foreign Sharia court.

²⁶ *Id.*

²⁷ No. 1831 WDA 2014, 2015 WL 5971123 (Pa. Super. Aug. 28, 2015).

²⁸ 2015 WL 5971123, *13. The court further cited other jurisdictions where the trial courts have refused to recognize Sharia child custody orders on the principle of comity: *Amin v. Bakhaty*, 812 So.2d 12, 23 (La. Ct. App. 2001) (declining to extend comity toward the Egyptian/Islamic legal system in custody proceeding); *Charara v. Yatim*, 937 N.E.2d 490, 497–99 (Mass. App. Ct. 2010) (child custody determination by the Lebanese Jaafarite court was not decided under law in substantial conformity with Massachusetts law governing child custody cases, and thus was not entitled to comity); *Ali v. Ali*, 652 A.2d 253, 260 (N.J. Super. 1994) (refusing to recognize and enforce a Gaza court custody decree based in Islamic/Sharia law); *Tataragasi v. Tataragasi*, 477 S.E.2d 239, 246 (N.C. Ct. App. 1996) (finding Turkish/Islamic law not in conformity with North Carolina law in custody proceeding).

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In *Souratgar v. Fair*,²⁹ a Hague convention case, the mother argued that returning the child to Singapore was not permitted by the fundamental principles of the United States because the custody determination in Singapore will be made in a Sharia Court. The court noted that while the Administration of Muslim Law Act (AMLA) grants the Sharia courts in Singapore considerable discretion in considering evidence from non-Muslims, there was testimony that a woman's testimony is worth less than a man's in the Sharia courts.

Moreover, Sharia law applies presumptions favoring fathers and disfavoring non-Muslim parents in custody determinations. These rules, the mother argued, ought to shock the conscience and offend notions of due process.

The Court concluded, however, that it need not reach the issue of whether the procedural and substantive rules in Sharia Courts "shock the conscience" or "offend all notions of due process" because the Court finds that respondent has failed to prove that it is more likely than not that the Sharia Court will make a final custody determination in this case.³⁰

"[C]ircumstances have evolved which make it likely that the Singapore family court where respondent's original custody petition and petitioner's cross-petition remain pending will exercise jurisdiction over the custody dispute."³¹

In the same vein, in *S.B. v. W.A.*,³² the wife moved for an order to show cause recognizing, registering, and allowing entry of a judgment of divorce and order of custody entered in Abu Dhabi, a member of the United Arab Emirates (UAE). The husband moved for summary judgment, for an order awarding him physical custody of the parties' children, and for an order directing the wife to file an action for divorce in New York. The court refused to find that the custody order would violate the public policy of the state of New York by virtue of the fact that the laws of the UAE are based upon Sharia law:

Although the Shari'a may serve as the primary source for the laws of the UAE, the plaintiff is entitled to more than a visceral review of the judgment of divorce by this Court to determine if any of its provisions

²⁹ No. 12 Civ. 7797(PKC), 2012 WL 6700214 (S.D.N.Y. Dec. 26, 2012).

³⁰ 2012 WL 6700214, *15.

³¹ *Id.* at *16.

³² 38 Misc. 3d 780, 959 N.Y.S.2d 802 (N.Y. Sup. Ct. 2012).

violate our domestic public policy. While parts of Sharia Law governing personal status would indeed violate our domestic policy, such as laws allowing husbands to practice polygyny and use of physical force to discipline their wives, or laws prohibiting Muslim women from marrying non-Muslims, the Abu Dhabi judgment of divorce does not regulate the parties' conduct, but determines the financial issues between the parties, which include spousal and child support, and a distributive award based upon the Mahr agreement, and child custody. None of the principles used by the Abu Dhabi courts in the parties' divorce action may be considered violative of our public policy.³³

When analyzing whether to apply the foreign law, the court may generally consider whether the law is all-encompassing in every case, i.e. applied without consideration to the unique facts of the case, and if so, how that application will affect the case at hand.

In *Ali v. Ali*,³⁴ the court found that the Sharia custody law employed in a Gaza child custody decree was not entitled to comity. In a decision with significant import to these cases, the court analyzed an effort to apply Sharia law to a trial court's discretion under state law:

[I]t is revealing that the defendant submitted proof in support of his request for comity which indicates that under Muslim law, a father is automatically entitled to custody when a boy is seven (Article 391 of Islamic Sharia Law); the mother can apply to prolong custody until the boy is nine (Article 118 of the Law of Family Rights), however, at that time, the father or the paternal grandfather are irrefutably entitled to custody. Such presumptions in law cannot be said by any stretch of the imagination to comport with the law of New Jersey whereby custody determinations are made based upon the "best interests" of the child and not some mechanical formula.³⁵

To the contrary, in *In re Makhlouf*,³⁶ the court gave comity to an order of child custody entered in Jordan pursuant to Sharia law, in spite of the presumptions in favor of the father as noted above. The court seemed particularly put out by the mother's repeated attempts to deny the father any custody at all. "Manal's conduct shows a pattern of lies and deception consistently pervasive. She has exhibited contempt for the rule of law, be it in Jor-

³³ *Id.*, 959 N.Y.S.2d at 810.

³⁴ 652 A.2d 253 (N.J. Super. Ct. Ch. Div. 1994).

³⁵ *Id.* at 259.

³⁶ 695 N.W.2d 503 (Table), 2005 WL 159159 (Iowa Ct. App., Jan. 26, 2005) (unreported).

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dan or Iowa.”³⁷ Based on the authority of the Iowa Code, the court affirmed the decision of the district court “declining to exercise its jurisdiction and granting respondent Ahmad’s motion to dismiss the petitioner Manal’s application to modify the custody decision placing Samantha’s custody with Ahmad.”³⁸ Based on the facts in this case, the court granted comity due to acts of bad faith by the mother and refused to entertain a modification of the Sharia law order.

The court may also require additional information in order to make an informed ruling as to whether to grant comity. In *Tazziz v. Tazziz*,³⁹ the court held it did not have enough information to determine whether the trial court erred in granting comity to a Sharia court custody decision:

We remand the case to the Probate Court (for further consideration, if possible, by the same probate judge, after such additional evidentiary inquiry as she shall determine to be appropriate) on at least the following matters: (a) the date when proceedings were commenced in Israel and the nature and content of any pleadings there filed; (b) the nature and the composition of the Sharia Court and of the substantive law and principles which would be applied in Israel in that court *816 to family custody disputes between Moslems having the nationalities of each of the parties to this case and of their minor children; (c) whether and to what extent the law which the Sharia Court should apply is consistent with Massachusetts law in respects already discussed; (d) the wishes, intentions, and purposes of each of the parties and of each of their minor children with respect to their continued residence in Massachusetts and in the United States (*see Murphy v. Murphy*, 380 Mass. 454, 458, 404 N.E.2d 69 [1980], with recognition that the case deals with a situation prior to the enactment of c. 209B); (e) the economic circumstances of each of the parties, at least so far as these circumstances may affect the financial ability of the mother and each minor child to remain in the United States, including consideration of the opportunities of the mother for employment and support of herself and family both in Israel and in the United States (including the possibility of assistance from the mother’s father); (f) the probable physical safety of each of the minor children and the opportunities for education, if they are ordered to return to Israel now; (g) whether any obstacles will or may exist to continuing in the future the privileges of the minor children to enter and live in the United States as citizens if they and their mother are obliged now to return to Israel and live there until the minor children, respectively, become of full age; and

³⁷ *Id.* at *4

³⁸ *Id.*

³⁹ 533 N.E.2d 202 (Mass. App. Ct. 1988).

(h) whether the preference of the minors (already indicated to the judge) to live with the mother (rather than the father) because of alleged conduct of the father (or for other reasons) has any bearing on the exercise of the judge's discretion or justifies or explains the method adopted by the mother in bringing three of the minors to Massachusetts.⁴⁰

This specific list of cases from appellate courts indicates a clear intent to analyze each case individually as to whether comity should be granted to Sharia law without having to entangle the court in constitutional issues or pejorative descriptions of any religion or faith. State law sets forth the factors for deciding property or custody and any law inconsistent with those policies will not be accorded comity in most cases.

III. Conclusion

In this area of practice, the recurring theme is that the application of "Sharia law" is no different from the application of any foreign nation's law. Its applicability will depend on well settled principles of comity. The case law supports this with recurring analyzation of issues such as the validity of Islamic marriages and divorces. Further, public policy also guides consideration of child custody within the "best interest of the child" standard. There is nothing that makes Sharia law a special class of law that must be avoided.

⁴⁰ *Id.* at 505-06.

