

Cruel complications over custody when mixed marriages crumble

by Chibll Mallat
Law editor

If two Druze marry in Lebanon, they marry according to Druze custom and personal law. If two Shias marry, they marry under Shia family law. But what happens if a Druze marries a Shia? And what happens if they later want to separate? What happens to the children?

Very complex legal issues and problems can result from so-called mixed, or inter-marriages: marriages between a man and a woman who belong to different countries, or different religions, or different communities within one religion, or different schools of law, as is the case within Islam.

Mixed marriages touch upon a raw nerve in the public sphere, especially in the Middle East. In the repeated discussions on the impossibility of 'civil marriage' in Lebanon, the issue becomes rapidly fraught with political overtones.

Nor is Lebanon special in this case. In Iraq, for instance, the norm used to be that Iraqi Shi'is would not marry Iraqi Sunnis (and vice-versa), and that Iraqi Kurds would not be married to Iraqi Arabs. This changed slowly in the course of the century. Increased inter-communitarian marriage, as Hanna Batawa showed in his masterful book on *The Old Social Classes and the Revolutionary Movements in Iraq* (Princeton University Press 1978), was a sign in the 1950s that Iraq was

becoming a more integrated country.

Today's law page examines some live issues of mixed marriages in the Middle East, focusing on custody of the children in mixed unions which fall apart. The case investigated by Reem Haddad expresses some of the most cruel dimensions imposed by legal systems and procedures on an inter-state and inter-community marriage.

Because he is Lebanese and his wife is American, a father is denied access to his three-year old son, who was taken to the US by his mother.

The case reported from the United Arab Emirates shows another angle to a similar problem, which concerns custody over a child whose parents belong to different nationalities, but who are both Muslim.

Basem Ajami explains the importance in this context of different Sunni schools of law in cases of custody in the Gulf, and the law report shows a unique jurisprudential development in the United Arab Emirates, where the law of a foreign father is applied to a domestic case in Dubai. This is a rare instance of intermarriage involving Muslims from different schools of law in an international context.

Had the Court of Cassation of Dubai applied the Malaki law of the land, the daughter over whom guardianship is disputed would have remained under the custody of her mother until marriage.

Also included is a decision pronounced

last week on a related case by the House of Lords, the highest court in Britain. The case is particularly relevant for Lebanon and the Arab and Muslim world, as Jewish law as applied in Israel is close in matters of custody to Islamic law as applied in the region.

The opening sentence of Lord Browne-Wilkinson will sound particularly relevant to the Fooz case.

"In this appeal three young children were removed by their mother, the respondent, from their home in Israel and brought to England without the consent of the appellant, their father.

"Some six months after the date of such removal, the father applied to the courts in England for an order directing the summary return of the children to Israel under the Hague Convention on the Civil Aspects of International Child Abduction, 1980.

"Under the convention, the English court was bound to order such summary return unless the father had 'acquiesced' in the removal of the children."

The trial judge, Sumner, held that the father had not so acquiesced. The Court of Appeal reversed that decision, holding that the father had acquiesced.

In November 1996 the House of Lords, Britain's highest court, reversed the decision of the Court of Appeal, and ordered the immediate return of the children to their father in Israel.

Earlier this month, the written 'reasons' for the decision were published.



Imad and Thibault when a baby. Anne Marie has taken all family photographs so friends searched through their albums for this

Son taken by wife

By Reem Haddad