

Conditions, Not Conflict :
Model Marriage Contract

MODEL MARRIAGE CONTRACT¹

In accordance with (insert the relevant article from the Family/Personal Status Code) which provides that spouses may stipulate negotiated clauses and conditions into their marriage contract, (insert the spouse's names and any other required personal information) hereby agree as follows:

I. General Provisions²

Article 1: Definition and purpose of marriage³

Marriage is a legal contract by which spouses mutually consent to unite in a common and enduring conjugal life. Its purpose is fidelity, virtue and the creation of a stable family (Moroccan Family Code).

Marriage is a consensual contract concluded between spouses in accordance with the law. Its objectives among others are to found a family based on affection, goodwill and mutual assistance, morally protect the two spouses, and preserve family ties (Algerian Family Code).

Article 2: Mutual Rights and Obligations⁴

The spouses mutually undertake to:

- Maintain good conjugal relations, mutual respect, benevolence, affection, assistance, support and harmony, and refrain from causing harm to the other;

¹ This model is intended to guide future spouses as they draft their marriage contract by providing suggestions for topics to discuss as well as examples of clauses to stipulate. It is designed to remind women in particular of their rights, facilitate negotiation of the contract between spouses, and provide public officials and private professionals involved in drawing up marriage contracts with a wide range of clauses to propose to couples. The most appropriate and advantageous solutions for each couple will depend on their individual situation. As a result, spouses are encouraged to choose and write clauses that will best meet their needs, while still respecting the goal of creating a contract with rights protective clauses for women and promoting equality within marriage. Couples may also add to this model any additional clause that they consider useful, as well as modify their contract at any point during the marriage to account for changes in circumstances. This model contract is only an example and does not constitute professional legal advice. Future spouses are encouraged to consult the appropriate public authorities or a private legal professional to verify the legal validity of clauses stipulated into their actual marriage contract.

² The first two provisions are stipulated in order to set the general framework of marriage, orient the relationship between spouses and serve as the basis for interpretation of the contract terms and conditions.

³ This provision may be taken directly from the relevant provisions in the Family/Personal Status Code.

⁴ This provision is intended to serve as a reminder of the general principles governing the relationship between future spouses, and may be inspired by but not necessarily limited to those contained in the relevant provisions of the Family/Personal Status Code.

- Collaborate on family management, contribute to the preservation and development of the family's material and moral interests, and equally share the chores and responsibilities necessary to do so ;
- Consult with the other on decisions concerning the management of the family's material and moral affairs.

Article 3: Dower⁵

In accordance with (insert the relevant article from the Family/Personal Status Code), the husband agrees to give his wife a dower of (stipulate the form of the dower, whether in cash, in kind, real or movable property, etc.), of a total amount or value of _____. This dower is given to the wife for its moral and symbolic value only, as an expression of his desire to marry her and to build a stable family based on affection and good amicable relations.

The wife hereby declares that she has personally received _____. The balance of _____ will be paid immediately and unconditionally upon the wife's request.

The entirety of the dower is the exclusive property of the wife. She may use it at her discretion and the husband may not ask her for anything in return.

II. Provisions on personal rights

Article 4: Monogamy⁶

As provided for by (insert the relevant article from the Family/Personal Status Code), the spouses hereby agree that their marriage will be monogamous. The husband hereby commits not to take another wife for the duration of the present marriage.

Article 5: Marital home

The two spouses agree that the marital home will be chosen by mutual agreement and that they will reside in independent and separate accommodation.

The two spouses agree that they will not individually without the consent of the other dispose of the rights by which the family lodging or its furnishings are ensured, and this irrespective of who has legal title to the property in question.

⁵ The dower is included in this preliminary section of the contract in order to clearly situate its symbolic nature as the consideration necessary for the contract's validity. Provisions related to financial relations between spouses during marriage and upon its dissolution may be found below in a separate section of the contract.

⁶ This clause may be useful not only for couples in countries like Morocco and Algeria where polygamy is still legal, but also in cases of mixed marriages where the husband comes from a country where polygamy is legal as well as in cases where a couple from a country where polygamy is prohibited relocates to a country where it is permitted.

Article 6: Right of the wife to work

The husband undertakes not to interfere in any way with the wife's exercise of her fundamental right to work, including in her decisions to start, continue or cease working as well as in her choice of profession, hours, place or conditions of work.

Article 7: Right of the wife to education

The husband undertakes not to interfere in any way with the wife's exercise of her fundamental right to education or training, including in her decisions to start, continue or cease studies as well as in her choice of subjects, type of training, hours or location.

Any costs associated with the wife's education or training will be paid by (specify if these costs will be shared between the spouses and if so according to which %, or if these costs will be covered entirely by one of the spouses).

Article 8: Right of the wife to freedom of movement

The husband undertakes not to interfere in any way with the wife's exercise of her fundamental right to move about freely and unconditionally, including her right to travel within the country or abroad and to visit her friends and relatives.

Article 9: Family planning

In accordance with (insert the relevant article from the Family/Personal Status Code), the spouses hereby agree that all decisions related to family planning shall be made by mutual consent, including those related to the spacing and timing of any pregnancy as well as the number of children to be born.

Article 10: Right to physical and moral integrity

In accordance with the definition and purpose of marriage as well as with the above-mentioned mutual rights and obligations, each spouse hereby undertakes not to abuse the other or any children, whether verbally, emotionally, physically or sexually.

Article 11: Children*On Child Custody:*

Custody of any children shall be shared jointly by the spouses for the duration of the marriage and in order to protect the children's interests and attend to their upbringing.

In the event that the present marriage is dissolved, the father hereby undertakes not to take legal action to have child custody removed from the mother on the grounds of (insert grounds in the national laws according fathers the right to have child custody automatically removed from the mother, such as her remarriage or relocation far from the father), but to base any such legal action solely on other objective grounds related to the best interests of the child.

The husband hereby undertakes to continue to provide for their children's accommodation expenses even in the event that the mother remarries.

On Child Guardianship:

Legal guardianship of any children shall be shared jointly by the spouses for the duration of the marriage as well as following its dissolution. The husband hereby designates the wife as the testamentary guardian of any children.

On children born from a previous relationship:

Here one may think about stipulating clauses in the event that either or both spouses already have children from a previous relationship. Among the topics that might be considered, kind treatment and responsibilities of the non-biological parent towards his/her stepchildren (support, financial maintenance, accommodation, etc.).

These questions are even more relevant for marriages of single mothers with children born outside of wedlock from a previous relationship, where the latter do not have any legal rights vis à vis their biological father. In this case the new husband might consider committing to designate the child as a beneficiary of his will, as an heir at law (tanzil), as beneficiary of a gift, or any other mechanism provided for in national laws to provide for the child financially and protect his rights like any other child.

Article 12: Divorce⁷

Option 1: Commitment by husband not to repudiate his wife

The husband hereby undertakes not to resort to the repudiation procedure provided for (in Morocco, by articles 78 and subsequent of the Family Code, in Algeria by articles 48 and subsequent of the Family Code).

Should despite this clause the husband resort to the repudiation procedure and the repudiation is authorized by the competent authority, the husband will immediately give his wife (insert the form – cash, in kind, transfer of property – as well as the method for fixing the amount or value) solely as a penalty for violation of this contractual obligation. This penalty is separate and in addition to any damages due for harm caused and the Consolation Gift, these two legal indemnities paid to the wife provided for by the law and their amounts fixed by the competent authorities.

Option 2: Delegation of the husband's right of repudiation to the wife (*tamleeq*)

The husband hereby delegates his right of repudiation to his wife (*tamleeq*) as provided for by (insert the relevant articles of the Family Code, Muslim law), who may exercise this right

⁷ As is the case for polygamy, this clause may be useful not only in cases where repudiation is still legal such as in Morocco and Algeria, but in mixed marriages where the husband comes from a country where repudiation is legal, as well as in cases where a couple from a country where repudiation is forbidden relocates to a country where it is permitted. In an egalitarian approach to family matters, there is no reason for repudiation, whether by the husband or by the wife by *tamleeq* or by *khula*, given the other existing legal options provided for divorce to spouses (mutual consent, irreconcilable differences, or for fault, which includes non respect of contractual obligations). We have nonetheless included the former options above given that the law provides for them and in order to inform and present all possible options to the concerned parties.

unconditionally and without prejudice to the other personal or material rights to which she is entitled according to the law or this contract.

Option 3: Conditions for a compensatory divorce by the wife (*khula*)

In accordance with (articles 115 and subsequent of the Moroccan Family Code, article 54 of the Algerian Family Code), the two spouses hereby agree that the wife may obtain a compensatory divorce without the husband's authorization in exchange for which the husband will receive (insert the form – cash, in kind, transfer of property – as well as the method for fixing the amount or value),⁸ and this without prejudice to the other personal or material rights to which the wife is entitled according to the law or this contract.

III. Provisions on property rights and financial relations

In terms of the spouse's financial relations, each couple will need to draw up marriage contract clauses according to their own specific circumstances in order to most equitably promote the family's materials interests as well as to protect each spouse's rights. For this reason, the following articles are not intended to be set in stone or a standard model for all couples. Rather, they are proposed as tools to help women take all possible factors into consideration and to effectively negotiate a contract that will guarantee their rights during marriage and after its dissolution.

A. Potential topics for consideration

Spouses may consider establishing an equitable and rights protective framework for their financial relations in the marriage contract on the following issues:

- *Contribution to household obligations:* The contribution of each spouse in money, property and/or efforts to household obligations, and clarification of all costs considered household expenses;
- *Financial maintenance:* The husband's financial obligations towards his wife and children after dissolution of the marriage;
- *Property ownership and division:* Definition of personal property and joint property (money, movable property, real estate), ownership of assets during marriage, powers to use, manage and dispose of personal and/or joint property during marriage, and division of property upon dissolution of the marriage.

Note: On this last point, couples may want to reflect on how to establish a framework for ownership of, powers over, and division of the following types of property:

- Assets acquired by each spouse individually prior to the marriage;
- Assets acquired jointly by the spouses during the marriage;
- Assets acquired by one spouse alone during the marriage.

⁸ Clearly it is preferable to stipulate a minimal, or even symbolic, compensation.

B. Criteria to guide decision-making

Spouses may take many different factors into consideration to establish an equitable and rights protective framework for their financial relations and draw up a marital property contract that best takes into account their circumstances, including the following:

- What is each spouse's respective revenue (salaried employment, private or unearned income and rents, retirement plans, other revenue)?
- What is each spouse's respective contribution in money, property and efforts to a family enterprise (business, company, farm, etc.)?
- What is each spouse's respective contribution to domestic labour (household chores, children's upbringing, caretaking responsibilities for older persons or other dependents)?
- What are each spouse's current capacities and future potential contributions to the preceding points?
- Are there any foreseeable changes to the previous points during the course of the marriage (for example, the wife who will completely, partially or temporarily abandon her work or studies after marriage may solicit compensation for lost income and earning potential; the spouse who is still a student at the time of the marriage who will have salaried employment once s/he completes studies will have future income to be taken into account, etc.)?
- Does either of the spouses have a high-risk profession or business (risk of unemployment, bankruptcy, seizure or foreclosure, etc.)?
- What are each spouse's current debts and other financial liabilities (loans, financial maintenance obligations to other persons, children from a previous relationship, etc.)? Does this personal debt confer a benefit upon the entire family? Are there any foreseeable changes during the course of the marriage on this point?
- What assets (cash, movable property, real property) does each spouse own at the time of marriage?
- What does each spouse anticipate receiving as inheritance during the course of the marriage?
- What are each spouse's respective age and state of health?

C. Crafting a framework for financial relations

Spouses may want to reflect on the best way to establish the forms that any future financial transactions or compensations between them will take – payment terms as well as the methods by which any amounts or values will be calculated. Often it may be preferable for example to establish a formula for any future calculations in the marriage contract clause, rather than a fixed sum at the time of marriage.

- How will the amount or value of any future financial transactions or compensations be calculated? Based on a % of the payer spouse's revenue? According to the duration of the marriage? Other criteria?
- What form will this compensation take? Cash, in-kind, transfer of title to property, or other?

- What will the payment schedule be? Weekly, monthly, annual, and for how long? Or is a lump sum payment better?
- How may any compensations or financial transactions be adjusted or modified as necessary over time and to reflect changes in either spouse's financial situation? Periodic adjustments for inflation and cost of living increases? Adjustments for changes in circumstances? (for example, unemployment of payer spouse, increased needs of the wife/children beneficiaries)

D. Drafting conditions

When drawing up clauses governing their financial relations, spouses should consider:

- As was the case with clauses related to their personal rights, noting that this or that specific clause is « in accordance with » or « as provided for by » and then insert the relevant articles from the Family/Personal Status Code;
- Paying particular care that the marital property contract is coherent as a whole and that individual clauses do not contradict each other.

Article I3: Contribution to household obligations

The spouses hereby undertake to equitably share and contribute to household obligations according to their respective revenue, property and efforts. Household obligations are defined as all expenditures and acts required for the family's needs and for the welfare of each and all of its members. This duty shall exist as long as the marriage has not been dissolved and even in the event that the spouses reside separately for any reason whatsoever.

Option 1: The spouses contribute to household expenditures in proportion to their respective revenue.

Option 2: The spouse who assumes responsibility for domestic labour and other household tasks in addition to their salaried work will only contribute (a lower or reduced % of their salary) to household expenditures in consideration of their unpaid efforts in the home.

Option 3: The wife who has salaried employment may freely dispose of her salary and in no event will she be obliged to contribute to household expenditures, which remain solely the husband's responsibility.

Option 4: In the event that the wife works exclusively in the home and has no outside income, the husband hereby undertakes to provide her with (compensation determined by the framework in section C. above) which she may freely dispose of for her own personal use without restriction or condition and which is separate from the husband's contribution to household obligations.

Article I4: Obligation to provide housing and financial support after the marriage's dissolution

In the event the marriage is dissolved, and regardless of which spouse initiates divorce or the type of divorce, the husband hereby undertakes to provide for the wife's housing and maintenance, to the extent possible, at the same standard of living prior to the divorce and according to (compensation determined by the framework in section C. above).

In the event the marriage is dissolved, and regardless of which spouse initiates divorce or the type of divorce, the husband hereby undertakes to provide for any children's housing and maintenance, to the extent possible, at the same standard of living prior to the divorce and according to (compensation determined by the framework in section C. above).

Article 15: Marital Property

(a) Assets acquired prior to the marriage

Each spouse retains exclusive ownership, administration, use and free disposal of all movable and real property s/he acquired prior to the marriage.

(b) Assets acquired during the marriage

The spouses hereby adopt the following framework for the management and ownership of movable and real property to be acquired during the marriage:

Option 1: Each spouse retains exclusive ownership, administration, use and free disposal of all movable and real property that s/he will acquire by any means during the marriage. No division of property between spouses will occur upon dissolution of the marriage.

Option 2: Each spouse retains exclusive ownership, administration, use and free disposal of all property that s/he will acquire during the marriage that is registered in his or her name. No division of this property between spouses will occur upon dissolution of the marriage.

All other property acquired during marriage by one or both spouses is considered joint property. The spouses hereby agree that decisions concerning the administration, use and disposal of this property will be taken by (each spouse may act alone, or after consultation with the other, or joint management). Upon dissolution of the marriage, joint property will be divided equally between the spouses (or by any other % or formula agreed upon by the spouses determined by the framework in section C. above).

Objects intended for individual personal use as well as property acquired free of charge (inherited or by gift) by either spouse during the marriage are excluded from this definition of joint property.

Option 3: The spouses hereby agree that the movable and real property listed below shall be considered joint property regardless of which spouse acquired it or in whose name it is registered:

The spouses hereby agree that decisions concerning the administration, use and disposal of this property will be taken by (each spouse may act alone, or after consultation with the other, or joint management). Upon dissolution of the marriage, this joint property will be divided equally between the spouses (or by any other % or formula agreed upon by the spouses determined by the framework in section C. above).

Each spouse retains exclusive ownership, administration, use and free disposal of all other movable and real property that s/he will acquire by any means during the marriage not included in the above list.

Option 4: Each spouse retains exclusive ownership, administration, use and free disposal of all movable and real property that s/he will acquire by any means during the marriage.

Nonetheless, upon dissolution of the marriage each spouse shall be entitled to $\frac{1}{2}$ of the net profits of the other's spouse's estate.⁹

Property acquired free of charge (inherited or by gift) by either spouse during the marriage is excluded from the calculation of net profits.

Option 5: All property acquired during marriage by one or both spouses is considered joint property.

The spouses hereby agree that decisions concerning the administration, use and disposal of this property will be taken by (each spouse may act alone, or after consultation with the other, or joint management). Upon dissolution of the marriage, this joint property will be divided equally between the spouses (or by any other % or formula agreed upon by the spouses determined by the framework in section C. above).

Objects intended for individual personal use as well as property acquired free of charge (inherited or by gift) by either spouse during the marriage are excluded from this definition of joint property.

IV. Final provisions

Article 16: Penalties and remedies for non respect of this contract

The non respect or violation by one of the spouses of any provision(s) of this contract shall be penalized or compensated by (insert the manner by which the spouses agree to penalize or compensate for violation of contractual obligations, which may include a transfer of property, a sum of money, the exercise by the wife of her right to *tamleeq*, or other).

Article 17: Retroactivity¹⁰

The spouses hereby agree that articles (insert the numbers of the desired clauses) will have retroactive effect dating back to the conclusion of their marriage on (insert date of marriage).

⁹ In other words, each spouse shall have the right to receive from the other the sum of the following calculation: Value of the other spouse's estate at the time of the marriage's dissolution – Value of the other spouse's estate at the time of marriage x 50%. The idea is that each spouse benefits by $\frac{1}{2}$ to the extent that the other spouse's estate has earned a profit during the course of the marriage. The respective profits compensate and partially cancel each other out, so it is really the excess or difference that is divided between spouses.

¹⁰ This clause may be of particular relevance for spouses already married for some time without a detailed marriage contract and who would like to draw one up during the course of their marriage. In particular a retroactivity clause may be useful for provisions related to property rights and financial relations.

All other provisions have legal effect upon signature of this contract and do not have retroactive effect.

Article 18: Contract modification

Any amendment, codicil, modification, waiver or termination of the agreement must be recorded in writing and signed by both spouses.