



Stipulation in the Marriage Contract

Draft Instruction Manual for Intending Spouses



Jordan 2022

The 1st Edition



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Marriage is a sacred bond that unites a man and a woman based on compassion and mercy. For protecting the family and sparing it future marital disputes and problems, preserving the benefits and interests of the spouses and organizing some important issues in their future lives, the Islamic Law and the Jordanian Personal Status Law, which is derived from the former, grant spouses the right to include in the marriage contract the appropriate conditions to guarantee their rights and establish the marital relationship between them on a basis that is free from problems and disputes, and does not contradict Sharia and law.

Why this manual?

This manual aims to:

1. Educate intending spouses about the right to make stipulations in the marriage contract and significance of such right in preserving rights of both spouses.
2. Present and illustrate the most important stipulations for the intending spouses.
3. Explain position of the Islamic Law and the Personal Status Law on stipulation in the marriage contract.

Significance of stipulation in the marriage contract

Stipulation in the marriage contract is essential since:

1. Inclusion of stipulations in the marriage contract maintains family stability and marriage durability.



2. Discussion of stipulations by betrothed and inclusion of such stipulations in the marriage contract make the marital relationship clear and help serve interest of the family in the future.
3. Discussion of marital life- related issues before conclusion of the marriage contract reduces family disputes in the future.

Concept of stipulation in the marriage contract

The stipulation in the marriage contract means that either or both spouses insert a condition in the marriage contract that is beneficial to them, does not conflict with the purposes of marriage, does not include legally prohibited demands, and does not affect the right of others, and such condition is written in the designated field in the marriage contract document.

Position of the Islamic Law on stipulation in the marriage contract

It is agreed among jurists that both spouses are permitted to make conditions in the marriage contract. Spouses must comply with their conditions, where Quran says "O believers! Honor your obligations" (Al-ma'ida/1), and the Hadith says "The stipulations most entitled to be abided by are those with which you are given the right to enjoy the (women's) private parts (i.e. the stipulations of the marriage contract)". (An agreed upon Hadith).



The Companion Omar bin Al-Khattab delivered a judgment in favor of a woman who stipulated in the marriage contract that her husband does not force her to leave her house, where he ruled that “her condition must be fulfilled”. Narrated by Al-Bukhari, Conditions in Marriage.



Position of the Personal Status Law on stipulation in the marriage contract

The Jordanian Personal Status Law No. 15 of 2019 permits stipulation in the marriage contract. The marriage contract document contains a field for insertion of conditions.

Article 37 of the said provides that:

- A.** If a wife makes a condition that serves her legitimate interest and does not prejudice rights of others; for example, she stipulates that her husband does not force her to leave her country, that he does not take co-wives, that he lets her live in a certain country, that he does not prevent her from working outside house, or that she has the right to divorce herself, such condition is valid. If the husband does not fulfill such condition, the marriage contract is terminated at the wife's request, and she has the right to claim all her marital rights.
- b.** If a husband makes a condition that serves his legitimate interest and does not prejudice rights of others; for example, he stipulates that his wife does not work outside house or that she lives with him in the country where he works, such conditions is valid and binding. If the wife does not fulfill such condition, the marriage contract is terminated at the husband's request, and a wife may not claim the deferred dowry and the post-divorce waiting period support.



Marriage contract form applicable in the Hashemite Kingdom of Jordan

The marriage contract form contains a field for stipulation to be filled out by a spouse who wishes to insert conditions in the marriage contract.

In the Name of Allah, the most Compassionate, the most Merciful

The Hashemite Kingdom of Jordan
Supreme Judge Department
..... Sharia Court
Place of contract:

Contract No.:
Date of Contract:
Corresponding to:

Marriage Contract

Name	Father	Grand father	Family	Mother	Place/ Date of Birth	Place of Residence	Nationality	Religion	Marital status	Occupation	National ID
Hasband											
Wife											
Documents of age verification and eligibility:											
Dower	Prompt Dower										
	Deferred Dower										
Method of Payment:											
Contract Initiators:											
Conditions:											
Witnesses:											
By Proxy Approval or Court Permission:											
The Contract Formula:											
I, have conducted this contract in the manner detailed above after having ascertained that the conditions have been fully met and that the eligibility is established, on this day A.H. Corresponding to A.D.											
Witness	Witness	Hasband or his guardian	Wife or her guardian	Legal Guardian	Marriage Registrar	Judge Endorse					

Controls over stipulation in the marriage contract:

A stipulation is valid and binding if:

1. It is beneficial to either spouse. For example, a spouse stipulates that he/she lives in a certain place.
2. It is not contrary to purposes of marriage. For example, a spouse stipulates that he/she does not cohabit with the other spouse.
3. It does not contain a prohibited demand. For example, a spouse stipulates that the other party stops performing prayers.



4. It does not prejudice rights of others. For example, a spouse stipulates that the other party ceases to associate with his/her parents.
5. It is written in the stipulation field in the marriage contract document.

The most important matters and issues that can be discussed between intending spouses before the marriage contract is made



Housing and residence

The issue of housing and residence constitutes a priority for the intending spouses, where they might agree on the following matters:

1. The betrothed agree to respect and appreciate each other's family, and seek to form a good relationship with them.
2. The betrothed agree to determine the place of residence in which they will live, whether in a separate house or the family's house of one of them, where each party has the right to express his consent or refusal to live with the other party's family. The two parties can write down what is agreed upon in the stipulation field in the marriage contract . Examples of permissible stipulations include:

- A wife stipulates that she lives in a separate marital home.
- A husband stipulates that his parents live in the marital home, provided that a wife exercises her right to privacy





Fatwa No. (904) issued by the General Iftaa Department: my fiancé stipulated that he would marry me on a condition that we live with his mother.

Answer: a wife must fulfill the conditions agreed upon in the marriage contract. If your husband stipulates that you live with his mother, and you can enjoy privacy in that house, then you are required to fulfill such condition.



Travel and movement

One of the important topics that the intending spouses can give more attention and agree on is that one of them might travel to another city or another country in order to work or settle down or in order to get a scholarship. If either intending spouse intends to travel or move in the future, he/she must inform the other party of such intention. It is preferable to record these intentions as conditions in the marriage contract to avoid disputes in the future, as in the following examples:

1. A husband stipulates that his wife lives with him in the country where he works.
2. A wife stipulates that her husband does not force her to leave her place of residence (town, governorate or city).
3. A wife or a husband stipulates that she/he lives in a certain place (town, governorate or city).



Fatwa No. (3443) issued by the General Iftaa Department:

What is the Islamic ruling on a wife who refuses to live with her husband in his place of residence without a legitimate excuse?

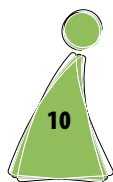
Answer: if a husband provides a suitable housing to his wife, the wife must live with him in the country where he resides, if the wife believes that she and her property will be safe in the country where her husband lives, unless she stipulated in the marriage contract that he husband does not force her to live in another country, and unless she cannot travel with her husband for a legal excuse, such as illness.



Children from previous marriage

If a spouse has children from a previous marriage and wishes they live with him/her in the marital home, spouses are advised to:

1. Clarify in advance that he/she has children, especially if he/she wishes to make children live with them.
2. To discuss this issue in order to reach a mutual agreement



3. To insert the agreed upon stipulation in the marriage contract, as in the following examples:

- A. A husband or a wife who has children from previous marriage stipulates that his/her children live with them in the marital home.
- B. A wife who has children from a previous marriage stipulates that she communicates with and visits her children.



Financial Rights

In the event of future joint projects between the intending spouses, such as the ownership of the housing in which they will live, especially if a wife contributes financially to building the house, or contributes financially to the purchase of an apartment, and in order to guarantee the right of each party to their financial contribution, it is advised that:

1. Intending spouses discuss ownership of a house or an apartment in which they will live in the future. If a wife will contribute to purchase of such house or apartment, it is advised to insert a condition in this respect in the marriage contract, for example:

- A. A wife stipulates that the house she contributes to its purchase is registered in names of both of them.
- B. A wife stipulates that the house she contributes to its building is registered in names of both of them.

2. If the intending spouses wish to carry out a business jointly financed by both of them, it is advised to follow the legal procedures for issuing licenses and procuring commercial registers that prove the right of each of them to avoid any future problems between them.



Article 320 of the Jordanian Personal Status Law provides that “each spouse has a financial liability independent of the other”



Right to employment

Work is a catalyst for success and supports a stable family life. Jordanian laws give both spouses the right to access employment and to keep employed. One of the disputes that may arise between spouses is that a husband prevents a wife from keeping employed. These disputes can be avoided as follows:

1. Intending spouses should deliberately discuss their professional life. If a fiancé does not want his future wife to work, he should inform her of such desire. If a fiancée agrees not to work, this agreement should be inserted in the marriage contract, as explained in the following example:

A husband stipulates that his wife does not work.

2. If a fiancée believes that keeping working after marriage serves her interest, or that she wants to look for a job opportunity after marriage, she is encouraged to write this in the marriage contract to avoid any future disputes over this issue. For example:

A wife stipulates that she has the right to access to employment.

3. A fiancée may want to contribute to the household expenses from her salary or keep such salary for herself. If a fiancée wishes to keep her salary, she is encouraged to stipulate this in the marriage contract, for example:

A wife stipulates that she has the right to dispose of her own salary and property.

A non-working wife can stipulate that her husband pays her maintenance other than the support provided under the law (for example, she stipulates that her husband registers her with the Social Security Corporation).



Fatwa No. 3269 issued by the General Iftaa Department:

What is the Islamic ruling on a husband who disposes of his wife's salary to pay the household expenses?

Answer: a wife has a financial liability independent of her husband's, where she disposes of her own salary and he disposes of his own salary. None has the right to dispose of a wife's salary or property without her consent. A husband is obliged to pay maintenance to a wife even if she works. A wife maintenance has priority over a husband's parents maintenance even if they are poor.).

A husband may not dispose of his wife's property nor may he spend her money on the household without her consent. This is since a husband is required to support the household from his money and not from the wife's money. The marital life is based on compassion and respect. Understanding between spouses on such matters is essential, etc. A wife is encouraged to provide assistance to her husband to keep the family stable. Everything provided by a wife to her husband or family is deemed to be a charity. Hence, a wife is encouraged to contribute to the household expenses even if a husband's salary is sufficient to do so. An assistance provided by a wife to her husband has a positive impact on the husband and the family, provided that this is made upon agreement between the spouses.





The right to education

Everyone seeks to realize his aspirations and achieve his goals in life. To limit spouses' conflicting views on this matter in the future, intending spouses are advised to discuss the education-related matters before marriage. For example:

1. If an intending spouse wants to complete his/her school, university or postgraduate education, he/she is encouraged to discuss this issue with the other party. If an agreement is reached, such agreement can be inserted in the marriage contract.



Fatwa No. 953 issued by the General Iftaa Department:

I stipulated in the marriage contract that I would complete postgraduate education at my husband's own expense, is he permitted to cease to pay my education expenses on the pretext that he wants to support his another wife?

If a wife stipulates that she completes her education at her husband expense, a husband must pay her education expenses. Allah says "O believers! Honor your obligations" Al-ma'ida/1), and the Prophet Mohammad, Peace be upon Him, says "The stipulations most entitled

to be abided by are those with which you are given the right to enjoy the (women's) private parts (i.e. the stipulations of the marriage contract)." (narrated by Al-Bukhari)), and says "Muslims must fulfill their conditions" (narrated by Al-Bukhari),



The fatwa is available at:



The right to divorce

- Under the Islamic Law, a husband has the right to divorce his wife, and a wife has the right to claim "Khula" or separation before the court. However, in case of Khula, a wife is required in most cases to waive some of her rights such as the deferred dowry. Discussion of this issue by the intending spouses is essential and might prevent divorce in the future. To avoid any disputes over this issue between spouses, some stipulations can be inserted in the marriage contract, including: A wife stipulates that her husband does not take a co-wife.
- A wife stipulates that she has the right to divorce herself.



Fatwa No. 1988 issued by the General Iftaa Department:

What is the Islamic ruling if a husband promises his wife not to marry another woman without her consent, and he does not keep the promise?

Answer:

Under the Islamic Law, a man is permitted to marry more than one woman, provided he treats his wives equally in terms of maintenance and intimacy, unless his wife stipulated in the marriage contract that he does not take another wife. If a wife stipulates such condition, and a husband does not fulfill it, a wife has the right to terminate the marriage contract and claim all her marital rights, as such stipulation serves her interest and does not contradict purpose of the marriage contract. The Hadith says " Muslims must fulfill their legal stipulations" (Narrated by Al-Hakem. However, if such promise is verbally given and not written in the marriage contract, a wife is not permitted to terminate the contract. The fatwa is available at:





Physical health and contagious diseases in marital life

An intending spouse must inform the other party of any psychological, communicable, infectious or genetic diseases he/she has. or that he/she is addicted to drugs, alcoholic beverages, or abuse of psychotropic substances. Hence, they should agree on the following:

1. If a spouse has a contagious disease, he/she inform the other party of such disease. They should think deliberately to decide whether to keep the marriage or terminate it.
2. Failure to disclose any contagious diseases or psychological disorders might result in termination of the marital life in the future. Hence, intending spouses are encouraged to disclose to each other any diseases or disorders. A spouse may stipulate:
 - A. A husband or a wife stipulates that the other party does not hide any contagious diseases or mental disorders.
 - B. A wife or a husband stipulates that the other party does not drink alcoholic beverages or use psychotropic substances or both.

Is it permitted to include other stipulations?

Intending spouses should keep in mind that the stipulations that suit some spouses might be not suitable for other spouses, and vice versa. Hence, intending spouses are advised to agree on the matters that suit their circumstance and to disregard circumstances of other spouses.



Tips for the intending spouses

Intending spouses should take the following matters into account when inserting stipulations in the marriage contract:



Be aware:

1. You should be aware of the stipulations that can be inserted in the marriage contract, where such stipulations should serve interest of both spouses and should not contradict purposes of the marriage contract and Sharia.



Consult family members:

2. Before marriage, you should consult your family members with respect to your desire to insert certain stipulations in the marriage contract for the sake of family stability, and you should convince them of such stipulations.



Do not hurry:

Do not be in hurry to conclude the marriage contract. You should take your time to get to know each other and to agree on your future family life, including the place of residence, employment, having children, education, movement, travel, etc.



Stipulations make parties aware of their rights and duties. If I had known about stipulations, and that they would have solved the divorce issue, I would have stipulated that I would live with my mother in the same house as she is an old woman.



As there was no agreement between my ex-wife and me, I divorced her (a young man- Maan Governorate)



In my previous marriage, I liked to complete my education. I was good at school. I agreed with my family that I would complete my education. At the time of conclusion of the marriage contract, my fiancé's parents did not accept the idea of insertion of stipulations; even my parents waived the stipulation". (a lady- Ajloun governorate)





Let your family members know:

You should inform your family members about the stipulations you have mutually agreed upon.



Do not disclose:

You do not have to tell people about the agreed upon stipulations. You should ask the marriage registrar to keep such stipulations confidential.

Most frequently asked questions

1. What are the consequences of breach of the stipulations contained in the marriage contract?

If the husband does not fulfill the stipulation written in the marriage contract, the marriage contract is terminated at the wife's request, and she has the right to claim all her marital rights, such as the deferred dowry and maintenance. If the wife does not fulfill the stipulation written in the marriage contract, the marriage contract is terminated at the husband's request, and a wife may not claim the deferred dowry and the post-divorce waiting period support.

2. Are the stipulations not written (verbal) in the marriage contact binding?

The stipulations not written (verbal) in the marriage contract are not binding and have no legal effect under the Jordanian Personal Status Law. Stipulations are not binding unless written in the marriage contract.

3. What will happen if an illegal stipulation is inserted in the marriage?

In this case, the marriage contract remains valid and the illegal stipulation is void.



Useful websites:



www.aliftaa.jo

دائرة قاضي القضاة
المجلس الأعلى للشريعة الإسلامية



www.sdj.gov.jo

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