

# International Journal of Law in Context

<http://journals.cambridge.org/IJC>

Additional services for *International Journal of Law in Context*:

Email alerts: [Click here](#)

Subscriptions: [Click here](#)

Commercial reprints: [Click here](#)

Terms of use : [Click here](#)



---

## Arab Israeli women's renunciation of their inheritance shares: a challenge for Israel's courts

Haim Sandberg and Adam Hofri-Winogradow

International Journal of Law in Context / Volume 8 / Special Issue 02 / June 2012, pp 253 - 267

DOI: 10.1017/S1744552312000079, Published online: 30 April 2012

**Link to this article:** [http://journals.cambridge.org/abstract\\_S1744552312000079](http://journals.cambridge.org/abstract_S1744552312000079)

### How to cite this article:

Haim Sandberg and Adam Hofri-Winogradow (2012). Arab Israeli women's renunciation of their inheritance shares: a challenge for Israel's courts. *International Journal of Law in Context*, 8, pp 253-267 doi:10.1017/S1744552312000079

**Request Permissions :** [Click here](#)

# Arab Israeli women's renunciation of their inheritance shares: a challenge for Israel's courts\*

**Haim Sandberg**

School of Law, Academic Division of the College of Management, Rishon Le-Tzion, Israel

and

**Adam Hofri-Winogradow**

Law Faculty, Hebrew University of Jerusalem

---

## Abstract

*The practice of Arab women voluntarily renouncing their shares in the family inheritance is well known, having been noticed in several Mediterranean and African countries, including Israel and the West Bank. This practice seems grossly inegalitarian, reflecting many Muslim women's social and economic inferiority and their dependent status. Some Islamic feminists argue that the practice contradicts not only the letter of the sharia, which guarantees women shares in the family inheritance, but also fundamental Islamic principles. Conservatives, however, see the practice as cohering with the spirit of Islam (though not with the letter of sharia), as a voluntary choice by many Muslim women to let their brothers or husbands fulfil their traditional role of providing for their sisters or wives. International institutions concerned with enhancing gender equality have taken the latter view seriously enough to refrain from judging the practice negatively. Our article highlights the Israeli civil courts' diverse responses to the practice: some judges criticise it while others choose a policy of non-interference. The article further discusses the practice and Israeli civil courts' responses in the comparative perspective of Jewish women's practice of renouncing their property and other rights on divorce. Some Jewish husbands make such renunciation a condition of their dissolving the marriage. Israeli civil courts often see such renunciation as an effect of extortion and permit women to rescind it once divorced. We thus conclude with a plea to the civil courts to encourage gender equality among the Arab population to the same extent, at least, to which they promote it among Israel's Jews.*

## Introduction

It is widely accepted that Islam improved the status of Arab women by recognising their right to inherit (Brill, 1987, p. 508; Honarvar, 2007, pp. 336, 360–61; Shah, 2006, pp. 38–39, 55). Still, daughters' shares in the parental estate are, under sharia, only one half as large as their brothers' (Koran 4:11). While such a Koranic division of the estate is, in fact, common in the contemporary

---

\* An earlier version of this article was presented in March 2009 at the 4th Conference of the Concord Centre: 'Family – An International Affair'. It was further presented in April 2009 at an Islamic Law Research Symposium held at the Van-Leer Institute, Jerusalem, and in October 2009 at an International Workshop entitled 'Islamic Law and the Challenges of the 21st Century', held at the same institute. We extend our thanks to the participants of those fora. Particular thanks are due to Professor Aharon Layish and Professor Frances Raday for their useful and enlightening comments. The usual caveats apply. All websites cited were last visited on 17 December 2009.

Muslim world (Edge, 2008, p. 459), many Muslim daughters renounce their shares entirely in favour of their male siblings, a practice called *tanazul* or *taharuj* (Lim & Sait, 2007, p. 255). This last practice has been documented in different parts of the contemporary Muslim world, including, for example, Indonesia (Bowen, 2000, p. 106), Pakistan (Weiss, 2007, p.145) and Beduoin tribes in the Sinai (Stewart, 1991). In Palestine/Israel, it has been documented during the British Mandate era (Canaan, 1931),<sup>1</sup> in independent Israel (Layish, 1975, pp. 29off.; Natur, 1991, p. 110; Kark, Galili and Foyerstein, 2009)<sup>2</sup> and in the 1980s West Bank (Moors, 1995, pp. 48ff.).<sup>3</sup> There are traces of the practice among the Christian Arabs of the region, though its extent among the Christian population is unclear (Joseph, 1994, p. 63).<sup>4</sup> While one may hope the practice is gradually declining, the available data makes clear that many Arab women still follow it.<sup>5</sup>

In the first part of this article, we critically examine the justifications offered for this practice in academic and other literature. We discuss the hesitation of both international and Islamic organisations concerned with women's status in Muslim societies to intervene in the practice. We next discuss Islamic feminists' attempts to raise Islamic arguments for the elimination of forced renunciation. Such attempts underline the character of renunciation as a social norm rather than a religious commandment. In our second part, we show how Israel's civil courts have spoken in a number of voices regarding their role as fora for social change generally, and in helping Arab women who wish to rescind their renunciation of their portions of the inheritance specifically. We argue that while social change could never be achieved through courts alone, they should contribute what they may to the eradication of forced renunciation. Our third part compares Israeli civil courts' treatment of Arab women's attempts to retract their renunciations with the same courts' treatment of Jewish women, who after receiving a *get* (a Jewish husband's unilateral act of divorce) attempt to retract waivers they previously made in order to drive their husbands to give it. The comparison shows that whereas in the Jewish cases, the courts find means for allowing retraction, they have not demonstrated a similar flexibility in the Arab cases. We conclude with an appeal to the courts, asking that they fulfil their role in combating forced renunciation.

## I. Justifications for renunciation

Renunciation undermines the attempts of *shari* jurisprudence to ensure that daughters receive their (unequal) shares of the parental inheritance. Paradoxically, the reasons *shari* commentators give in

- 
- 1 We found Mandate-era (1922–1948) traces of the practice in the following civil court decisions: C.A. 210/41 *El Hajj v. Hamuda* (1941) 2 S.C.J. 537, at 538; C.A. 177/41 *Abu el Inein v. Abu el Inein* (1941) 2 S.C.J. 467; C.A. 37, 38/42 *Dasuqi v. Dasuqi* (1942) 2 S.C.J. 416; C.A. 177/62 *Toma v. Maloof*, 16 P.D. 2237 (1962) (the daughters renounced in 1935); C.A. 4415/90 *State of Israel v. Estate of Bechar*, 46 (5) P.D. 200, 201 (1992) (the daughters renounced in 1942).
  - 2 Layish described the practice as reflected in Israeli Sharia Court decisions from 1948 until the early 1970s. Qadi Ahmad Natur noticed it in the records of the Beersheva Sharia Court from 1978 to 1984. Kark and her co-authors recently found that it is still widespread.
  - 3 Moors (1995) showed that women from the Nablus area, particularly from the city of Nablus and the Balata refugee camp, generally renounced their shares in the parental inheritance.
  - 4 Christian daughters' renunciations were mentioned in a few decisions of Israeli Courts: C.A. (Haifa) 1884/00 *Tanus v. Bashara*, Takdin-Mehozi 2002 (2) 12976 [*Bashara*]; C.A. 8331/01 *Bashara v. Tanus*, Takdin-Elyon 2005 (3) 3233 [*Bashara Appeal*]; O.M. (Haifa) 644/95 *Boutrous (Deceased) v. Estate of Sohil Alias*, Takdin-Mehozi 2000 (3) 30839 [*Boutrous*]; O.M. (Haifa) 192/06 *Tanus v. Estate of the Late Michael Joseph Komboz*, Takdin-Mehozi 2007 (4) 3153 (2007) [*Tanus*]; A.M. (Haifa) 403/06 *A.A.M. v. A.A.M.* Takdin-Mehozi 2007 (1) 13975 (2007) [*A.A.M.*].
  - 5 According to a 2007 survey of Arab attorneys appearing before Israeli Sharia Courts, conducted by Nissa waAafaq (Women and Horizons), an Arab Israeli NGO, women renounced their shares in about 90 per cent of the formal applications for the distribution of decedents' estates. See the survey results as reported by *Banias*, an Israeli Arab newspaper, on 20 February 2007, available at: [www.banias.net/nuke/html/modules.php?name=News&file=article&sid=2751](http://www.banias.net/nuke/html/modules.php?name=News&file=article&sid=2751).

justifying daughters' reduced share under sharia can also serve to justify the elimination of their reduced portions. Both traditional *shari* authors and some modern academic scholars of sharia do not regard daughters' reduced share under sharia to violate gender equality. They see it as part of a social network of reciprocal rights and obligations, according to which the family land generally stays with the patrilineal family and is usually owned by the men. Daughters' surrender of their shares of the inheritance to their brothers, intended to prevent the patrilineal family's assets from passing, as the daughters marry, to their husbands' patrilines, expresses the strong patrilineal ethos characteristic of Arab society. Cultivable rural land is, in Israel's Arab sector, allocated per (patrilineal) family; the fractionalisation consequent on daughters passing their shares to their husbands' families creates a host of economic and practical difficulties (Pastner, 1980, p. 152). Land in the residential areas of Israeli Arab villages and in Israel's Arab cities and neighbourhoods is also held on this clan-based system (Khamaisi, 2007, pp. 28ff.). Brothers – so the justification goes – must maintain their sisters' social and economic wellbeing, while those sisters enjoy land substitutes such as dowries, direct economic support or gifts (Lim and Sait, 2007, p. 248; Esposito, 1982, pp. 39ff.; Shehadeh, 2003, p. 200). In the same vein it is argued that while women are entitled to economic support from their spouses, their male siblings' shares in their parental inheritance are reduced by the cost of fulfilling their obligations towards their wives and unmarried sisters (Engineer, 1992, pp. 71–73; Chaudhry, 1997, pp. 542–44; Moors, 1995, pp. 51, 57).

Such arguments reflect a patriarchal approach to women's social position, assuming their inherent dependence on men. The practice they aim to justify gravely circumscribes daughters' opportunities for pursuing a way of life inconsistent with that approach. Husbands' duty to support their wives fails to explain unmarried adult women – the never-married, divorcees and widows – also renouncing their shares. There is indeed evidence that the tendency to renounce is greater among younger girls expecting to marry, or early in their marriage, whereas insistence on exercising inheritance rights and retraction of previous renunciations primarily occur among older married, unmarried, divorced and widowed women.<sup>6</sup> It cannot be taken for granted that Arab Israeli women are today prepared to adopt a dependent way of life and renounce property coming to them by inheritance from their family of origin. The patrilineal justification for renunciation is particularly hard to accept as to assets designated exclusively for economic purposes, which are not perceived as family heirlooms.<sup>7</sup>

Renunciation by unmarried and divorced women is sometimes described as 'balanced' by their brothers' duty to provide them with social protection and support.<sup>8</sup> As in the case of married women being supported by their husbands, the unmarried variant, too, is based on a paradigm of feminine dependence. While many Arab women do remain in a dependent position, renunciation perpetuates it (Rosenfeld, 1968, p. 745; Moors, 1995, pp. 55–58). Further, brothers' implicit undertaking to support their unmarried sisters often proves hollow when they are in fact called upon to provide such support (Lim & Sait, 2007, pp. 255, 258).

Renunciation is sometimes 'balanced' by specific consideration: compensation, whether in money or movables (Pastner, 1980, pp. 157, 158). Though the possibility of there being some cases of fair consideration cannot be entirely ruled out, money and movable assets transferred by way of inheritance are generally worth less than inherited realty (Lim and Sait, 2007, pp. 257–58). As a

6 Layish found that in the period he studied, the majority of non-single women who applied to *sharia* courts for succession orders were older (Layish, 1975, p. 283).

7 Moors refers, inter alia, to renunciation of residential apartments in the city of Nablus (Moors, 1995, pp. 55–56).

8 Islamic sources refer to this kind of responsibility as *ehsan* (Abd al Ali, 1977, p. 209).

rule, renunciation is not made *conditional* on receiving consideration, and is sometimes given without any consideration or against such as is negligible or imaginary.

Some claim that renunciation is a voluntary decision to abide by the social structure dictated by Arab women's religion and social environment. On this view, understanding renunciation as the product of discrimination or coercion is imposing Western ideas and ways of life on the non-Western 'other' (Lim and Sait, 2007, p. 243). As indicated in data mentioned above and in daughters' testimonies in the courts, many Arab women take renunciation for granted, reconcile themselves to it, sign the required documents and testify about it in court.<sup>9</sup> Many renouncing sisters are grateful to their brothers for their material and social support. Overwhelmingly, Arab women do not wish to be abruptly extracted from their family circle and exposed to intense disapprobation by family members, relatives and others (H'mis, 2005). Refusal to renounce may make a woman's brothers less likely to offer physical and economic support in case her share of the estate does not suffice to make her economically independent and she remains, or becomes, unmarried. Married women fear that their relationship with their spouses would be jeopardised as one result of the souring of the women's relations with their brothers. Thus, while renunciation may in many cases seem consensual, or at least accompanied by external signs of consent, it is doubtful, given many Arab women's social environment, whether avoiding it is truly a viable option for them: insisting on their rights may come at a prohibitive price (Layish, 1975, p. 291; Moors, 1995, p. 55; Lim and Sait, 2007, p. 257). One author claims that renunciation may sometimes be connected with the application of physical force or the fear thereof (Sonobol, 2003, p. 190). Even in the absence of physical force or explicit threats, women's consent to socially dictated patterns of conduct reflecting male supremacy, such as renunciation, may be a result of what Bourdieu called 'symbolic violence'. As he explained, behavioural codes ingrained as a result of such violence are one explanation for the survival of succession patterns reflecting unequal power relations (Bourdieu, 2001, pp. 33, 39, 96–97). Women's internalisation of, and even identification with, such codes, does not make for the conclusion that they consent to them willingly and voluntarily.

The above justifications seem clearly at odds with a feminist conception of women's role in society, especially an urban society. Indeed, most Western jurisdictions' laws of succession grant sons and daughters equal shares in the parental inheritance (Neumayer, 2002, pp. 6, 12).<sup>10</sup> A similar position is enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>11</sup> The supervisory committee for the implementation of CEDAW determined that discrimination against daughters with respect to receiving an equal part of the family inheritance contradicts the Convention.<sup>12</sup> Article 5 of CEDAW requires signatory states to take measures to eliminate customs and practices based on women's inferiority. Though not reflecting state policy, renunciation, which results in daughters' exclusion from any share in their family's assets, much less in the family's land, leads to their increased dependence on their spouses and male members of their family of origin. The practice denies women's right to

9 See, e.g., *Boutrous*, *supra* note 4, p. 30845 (para. 11), and Civil Case 702/03 *Hadar v. Hadar*, Takdin-Mehoz 2004 (4) 4768, 4774 (2004).

10 This is also the position under Israeli law: viz. s. 13 of the Israeli Succession Act of 1965, Israeli Legislation [LL] 63, and the Women's Equal Rights Act of 1951, LL. 248.

11 Convention on the Elimination of All Forms of Discrimination against Women, 18 December, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 12 (entered into force 3 September 1981).

12 Report of the Committee on the Elimination of Discrimination against Women, Thirteenth Session, *General Assembly Official Records – Forty-Ninth Session, Supplement No. 38 (A/49/38)* (para. 35) (1994); United Nations, *Report of the Fourth World Conference of Women*, para. 51 (Beijing, 1995) [*Beijing Report*], §274.

equality, diminishing their independence and economic possibilities – in a social environment where even an independent female property owner faces prejudice.<sup>13</sup> It bears note that international law grants priority to the principle of women's equal rights over the protection granted to religions and traditional cultures (Raday, 2003, pp. 678–79; Ketcher, 2007, pp. 228–29). One would thus expect international fora tasked with protecting women's rights to make efforts to help women overcome the pressures which sustain the practice.

Some of the very international bodies involved in implementing and enforcing the principle of women's equal rights appear reluctant, however, to undermine renunciation's sociocultural background and the 'package deal' renunciation involves: family protection and support in return for renunciation. For example, UN-HABITAT, which aspires to improve women's access to land, expressed the following cautious position:

'While gender rights advocates are justifiably concerned over women being forced to renounce their limited property rights, the reality may be far more complex. It may be a choice of empowerment through property or enhanced family support.' (UN-HABITAT, 2005)

Such a hesitant approach to curtailing customs and traditions discriminating against daughters in respect of their inheritance is not limited to Arab or Muslim societies; it seems to plague other patrilineally inclined social groups as well (Raday, 2003, p. 670). A similar approach found striking expression in *Magaya v. Magaya*, a decision of the Supreme Court of Zimbabwe.<sup>14</sup> While many criticised *Magaya*, the CEDAW Committee avoided doing so, a failure attributed to the primarily political difficulties encountered by the Committee when balancing the promotion of women's status and rights against social groups' right to self-determination and the preservation of their customs (Bigge and Briesen, 2000, pp. 297, 299).

Reluctance to impose 'Western' norms on an 'Eastern' Islamic world is accompanied by fear that attempts to eliminate the practice, or encourage daughters to retract their renunciations, will not only be ineffective, but will worsen their lot by bringing community members to associate refusal to renounce and retraction with the contaminating influence of an alien culture. One solution to this conundrum may be arguing for the elimination of the practice *from an Islamic position*. Islam could potentially serve as a legitimating tool for the feminist struggle against renunciation, endowing it with 'authenticity and legitimacy and thereby effectiveness and durability' (Lim and Sait, 2007, p. 241). Those advocating such an Islamic feminist position emphasise that renunciation is a sociocultural norm rather than a religious commandment, and may actually conflict with some such commandments (Welchman, 2000, p. 367, fn 40). Renunciation is ascribed to the social practice of Muslim societies, inherited from their pre-Muslim (*Jahiliyya*) past, as distinct from the substantive tenets of Islam (Engineer, 1992, p. 73). An Islamic feminist position that rejects renunciation has guided a media campaign waged in Israel since 2006 by an Islamic women's NGO called *Nissa waAafaq* (Women and Horizons).<sup>15</sup> In areas controlled by the Palestinian Authority, too, a proposal was made in the 1990s to enact regulations that would prohibit this kind of renunciation.<sup>16</sup> Other Palestinian women are sceptical as to the likelihood of such Islamic feminist approaches being seen as legitimate by the male-controlled religious

13 'Women's poverty is directly related to the absence of economic opportunities and autonomy, lack of access to economic resources, including ... land ownership and inheritance ...' (*Beijing Report*, para. 51).

14 *Magaya v. Magaya* [1999] 3 L.R.C. (Zim).

15 One can learn about this campaign from the NGO's website (<http://nissa-wa-aafaq.org>) and from the press: e.g. Yael Ivri, 'Transforming Religion from an Enemy of Women to a Tool for their Liberation', YNET, 8 May 2007, available at: [www.ynet.co.il/articles/0,7340,L-3391864,00.html](http://www.ynet.co.il/articles/0,7340,L-3391864,00.html).

16 We mean the Model Parliament for Family Law Reform (1997–98) (Welchman, 2000; Shehada, 2004, p. 136).

establishment (Shehada, 2004, p. 138). Those fears seem to be confirmed by the response of the northern faction of the Israeli Islamic Movement, which rejects any form of co-operation with *Nissa waAafaq*.<sup>17</sup> It appears, however, that Islamic feminists' sharia-based opposition to renunciation is certainly shared by more conservative Islamic groups. For example, in 2005 the regional government of the North West Frontier Province of Pakistan, then controlled by a coalition of six Islamic movements (*Muttahida Majlis-i-Amal*), attempted to create a statutory group of civil servants who would discharge the classic Islamic role of the *Muhtaseb*, the public custodian of Islamic morality. These *Muhtasibin* were authorised, inter alia, 'to eliminate un-Islamic traditions, which affect the rights of women, particularly . . . their murders in the name of Honor . . . [and] remove the tendency of depriving them of their right of inheritance . . .'.<sup>18</sup> In Indonesia, too, since the 1980s, there has been a discernable change in sharia courts' approach to renunciation. While those courts had in the 1960s tended to confirm renunciation agreements, holding family agreements sacrosanct irrespective of the manner in which they were obtained, they have since the 1980s become increasingly willing to accept claims concerning inappropriate pressure having been exerted against daughters, and divide fathers' inheritance in accordance with sharia. Some sharia judges were prepared to assume that renunciation, even if expressed in writing, could not have been given other than under illegal duress, even absent proof of such duress (Bowen, 2000, pp. 106, 121, 122).

One may therefore conclude that while there is doubt whether feminist Islam may itself overcome both more conservative Islamic viewpoints and many Muslims' desire to show deference and respect for traditional customs, the willingness of state bureaucrats, whether legislators or judges, to uphold gender equality in inheritance may make positive social change more likely. In the next section, we shall discuss the possible contribution of civil courts to enhancing Arab and other Muslim women's enjoyment of their inheritance shares.

## II. Renunciation in Israel's civil courts

Civil courts are occasionally faced with a contradiction between egalitarian points of view and conservative social customs, both in an inheritance context and in other contexts. One may, however, hold that such sociocultural conflicts should be negotiated by sociocultural processes, rather than in court. Even if we concede that courts may, in principle, be one context for the processing of such conflicts, one may still doubt whether their institutional limitation to the occasional resolution of concrete private disputes does not impede them from working a true social transformation. Further, state courts' subjecting traditional customary hierarchies to egalitarian standards imposed as a matter of positive law may result in custom-bearing groups conceiving of egalitarianism as an alien ideology, part of a bureaucratic attempt to eradicate their

17 The movement's spokesman, Adv. Zahi Nagidat, said: 'Women's inheritance is a commandment and principle of our religion, stipulated in the Holy Qu'ran and mentioned in the Sunna of the Prophet Muhammad. We do not require the guidance of others on this subject and accordingly, the Islamic movement will not cooperate with the NGO that initiated and manages this project.' However, the response of the more moderate southern faction of the movement has been more sympathetic, while still according the NGO less than full legitimacy: Sami Ali, 'Equal and Less Equal – Woman Demand their Portion of the Inheritance', 23 January 2007, *Mahsom*, a website operated by the *Amwag* Association for Alternative Media, available at: <http://212.179.113.235/mahsom/article.php?id=4556>.

18 North-West Frontier Province Hisba Act 2005, s.23(xviii). Unlike other sections of this controversial enactment, the Supreme Court of Pakistan did not declare subsection 23(xviii) to violate the Constitution of the Pakistani Federation: *Reference No.2 of 2005*, PLD 2005 S.C. 873. For a general discussion of attempts by *Muttahida Majlis-i-Amal* to protect what they see as women's rights under Islam and to combat what they see as their infringement, in defiance of Islam, see Weiss (2007).



distinctive identities and rights.<sup>19</sup> Some courts are apprehensive about attempting to work social change, an attitude which may reflect a restrictive understanding of the judicial office, a covert ideological preference for the existing distribution of social power, or both (Vago, 2003, p. 390). Doctrinal difficulties may also tie the courts' hands. To return to Arab Israeli women's renunciation of their shares in their parents' property, while we concede that civil court decisions are neither the only nor the principal means for restricting the prevalence of the practice, we believe that the courts should use the opportunities they get to critically examine purported cases of renunciation and enable women who would retract their renunciation or have it rescinded, to have their wish. In so doing, the courts shall transmit an encouraging message to potential women plaintiffs. A different response shall be understood by this target audience to signify that the civil court system sees the existing custom as proper.

The practice in question is only occasionally reflected in Israeli civil court decisions. Though inheritance is generally, in Israel, a matter of (supradenominational) civil law,<sup>20</sup> and succession orders are usually given by Succession Registrars, or, in certain cases, by the civil courts<sup>21</sup> – denominational religious courts, including sharia courts, enjoy concurrent jurisdiction to grant succession orders, conditional on all parties having consented to such a court's jurisdiction.<sup>22</sup> On that condition, religious courts may (and do) issue succession orders according to the relevant denomination's religious law.<sup>23</sup> There is evidence that matters of Muslims' inheritance come before Israel's sharia courts more often than before their civil counterparts (Layish, 1975, p. 290). While Israeli Muslims may, as a matter of positive law, apply to the civil inheritance authorities, they apparently do so only relatively rarely.<sup>24</sup> As aforementioned, sharia grants each daughter a share in the inheritance equivalent to half a son's share. Israeli civil inheritance law does not discriminate between the deceased's children.<sup>25</sup> The choice of whether to litigate in the civil or the religious courts therefore leads to a different substantive result. From the daughter's perspective, agreeing to litigate in the sharia court means agreeing in advance to receive a reduced share of the inheritance, whereas a Muslim daughter's application to a civil court means insistence on her right to an equal portion of the inheritance, unless the application was accompanied by a renunciation of her share in the estate or such a renunciation followed subsequently. The very act of applying to the civil court may therefore reflect a desire to ignore the Islamic law of inheritance. Once she renounced her purported share, an Arab Israeli woman needs a great deal of courage to attempt retracting her renunciation; in the social atmosphere prevalent among many of Israel's Arabs, the mere act of applying to an Israeli civil court may be regarded as rebelling against social convention.

19 Fears that courts' intervention would lead to such a negative response were emphasised by the *Magaya* court, n. 14, at 49d: 'I consider it prudent to pursue pragmatic and gradual change which would win long term acceptance rather than legal revolution initiated by courts. . . .'

20 Israeli Succession Act of 1965, s. 148.

21 *Ibid.*, ss. 66, 67(a).

22 *Ibid.*, s. 155(a); and see H.C.J. 2117/99 *Mansoor v. Sharia Court of the Central Area – Taibe*, 54 (1) P.D. 211, 216 (2000). And see Tagari in this volume.

23 Israeli Succession Act of 1965, ss. 148, 155(c).

24 Layish (1975, pp. 291, 312). Changes, however, may have taken place since the period studied by Layish. Having conducted our own random study based on the experimental system currently available on the Succession Registrar's website ([http://147.237.72.63/RashamYerusha/BakashaRasham/wfrmBakashaRasham\\_List.aspx](http://147.237.72.63/RashamYerusha/BakashaRasham/wfrmBakashaRasham_List.aspx)), we found many (at least some hundreds) of applications for succession orders to have been filed by Israeli Arabs during the last few years.

25 Israeli Succession Act of 1965, ss. 13, 40.



It may be for such reasons that only relatively few cases of Arab women who, having renounced their rights, later attempt to retract their renunciation, have reached Israel's civil courts. Most of these few were filed by older Christian Arab women, either married or not.<sup>26</sup> As a rule, the civil courts of Palestine/Israel have, since the British Mandate era, been receptive to attempts to retract, provided that they arrived in court at a relatively early stage of the dispossession process, before renunciation had crystallised in writing, registration or court orders.<sup>27</sup> In *Bashara v. Tanus*, the leading case on the subject, Israel's Supreme Court thought proper to express clearly its displeasure at the practice, noting that 'presuming women to have renounced their shares as a matter of course contradicts the fundamental rights discourse as to equality and women's status'.<sup>28</sup> Arab members of Israel's civil judiciary are key proponents of this approach, using every opportunity to condemn the custom.<sup>29</sup>

Nevertheless, a different approach, rejecting daughters' attempts to retract, often many years after renouncing, finds expression in decisions by several judges of the Haifa District Court, notably Judge Yitzchak Amit.<sup>30</sup> The decisions were concerned with retraction attempts by older women, who attempted to release themselves from written arrangements regarding which they had remained silent for decades. The women, having clearly understood their actions when renouncing, had to prove duress to have those actions rescinded. Judge Amit understood the social reality of the cases before him. In *Tanus v. Komboz*, while being prepared to assume that having been threatened with her wedding not taking place, young Ibtihag Tanus had not renounced her rights in her parental inheritance of her own free will, Amit did not rule that this defect invalidated her renunciation. 'What prevented [Ibtihag Tanus]', asked Amit, 'from notifying her brother that she was cancelling [the instrument of renunciation] – a day, a month, or even a year after the wedding – when she was already under the patronage of her husband?'<sup>31</sup> A possible answer to this question could be that even married women are not always in a position to retract waivers they made in favour of their brothers, insofar as the delicate, unequal structure of agnatic family relations continues to exist even after their marriages. Amit reached a similar result in *A.A.M. v. A.A.M.*, in which the renouncing sister, who married at the age of fourteen, signed a written renunciation more than thirty years later, at which time she was, according to her testimony, 'under the control of my husband and children'.<sup>32</sup> This case only reached the Haifa District Court on appeal from the local magistrate's court. Judge Menachem Raniel of the latter court had ruled that the circumstances indicated that renunciation was coerced. As described by Raniel, the brother in whose favour renunciation was made was 'the older brother in a patriarchal family and the main provider' and as such 'his sisters were unable to defy his will and . . . did not object'. Hence Raniel decided that renunciation '... was not the product of [the renouncing sister's] voluntary desire to give [her

26 See, e.g., *Toma*, *supra* note 1; *Tanus*, *supra* note 4; and *A.A.M.*, *supra* note 4.

27 See, e.g., *El-Haj*, *supra*, note 1; *Toma*, *supra*, note 1; and the *Bashara Appeal*, *supra* note 4.

28 *Bashara Appeal*, *supra* note 4, p. 3239, per Rubinstein J.

29 See, e.g., Judge Jarjura's dissent in *Bashara*, *supra* note 4; he expressed similar views in Civil Case (Haifa) 3702/03 *Estate of Boutrous v. Estate of Suhil Elias*, Takdin-Mehozi 2006(1) 121, 131 (2006). Judge Oni Habash, an Israeli Arab, reacted similarly to a claim that a similar custom existed among the Jews of Mashad (Iran): 'It is inconceivable that a custom discriminating against women shall control an Act enacted to guarantee equal rights for both genders. Such an approach is in essential contradiction of common sense and the sense of justice': O.M. 637,681/99 *Central Committee of Olei Mashad Iran in Israel v. Margalit*, para. 24 (2009).

30 See Amit's decisions in *A.A.M.*, *supra* note 4, and *Tanus*, *supra* note 4, and the majority opinion in *Bashara*, *supra* note 4, by Judges Yigal Grill and Shoshana Shtemer. Amit was in September 2009 promoted to the Supreme Court of Israel.

31 *Tanus*, *supra* note 4, p. 3156.

32 *A.A.M.*, *supra* note 4, p. 13987.

brother] the land as a gift'.<sup>33</sup> Amit reversed, commenting that cases of this kind are inappropriate for judicial intervention. He clearly feared that even if renunciation was indeed coerced, the attempts to retract it were again initiated by the applicants' male relatives: what was presented as an attempt at feminine self-assertion was really an attempt by the brothers to undo transactions they had undertaken respecting the land they received.<sup>34</sup> Amit's decision also involved an element of acceptance of the practice and some of the justifications we described in Section I.<sup>35</sup>

Some belated attempts to avoid old instances of renunciation are, doubtless, products of encouragement by the female petitioner's male relatives: brothers, husbands and sons. Such encouragement does sometimes reflect the self-interest of those applying it, such as their desire to avoid a business deal they have made with third parties regarding the renounced land. That such men encourage their female relatives to try and avoid their concessions does not, however, necessarily mean that the consequent attempts to have them avoided are not voluntary, or that they do not also serve the women's own interests. Attempts which genuinely contradict women's own preferences should, of course, be rejected, and the court must ensure that they are not harmed by their avoiding their concessions. To disseminate a normative standard according to which women do not routinely give up their rights, the court must, under all circumstances, project a clear message respecting women's free will. Since older, married Arab women seem able, more often than other Arab women, to summon the courage necessary to attempt to have their renunciation rescinded by court action, we believe courts should, when possible, allow them the retraction they desire, subject to proof of renunciation having been involuntary and to doctrinal constraints. Despite the paucity of renunciation cases heard by the civil courts, a principled stand made in those few cases may influence women's behaviour *ex ante* – if they hear about it. Information regarding pertinent civil court judgments may be circulated by, for example, the media, human rights organisations or the school system. We find support for our view in the civil courts' being prepared to quash express, written concessions made, in a different but analogous context, by Jewish women, despite those concessions having been formally confirmed by the competent court. We shall develop this analogy in more detail in Section III.

### III. Compare and contrast: Jewish women's concessions on divorce in Israel's civil courts

Israeli Arab women's tendency to renounce their rights in their parental inheritance is paralleled among Israeli Jews (leaving the Ultra-Orthodox to one side) in a different context: that of divorce. Quite often, Israeli Jewish women renounce at least some of their *prima facie* rights in marital property under Israeli civil family law, obeying demands their husbands have made as conditions for granting a *get*. Some Jewish women caught in such a situation give up their very right to apply to the civil courts for a partition of family property, as provided for by the civil law governing the economic incidents of divorce. Once the *get* is granted, some of those women apply to the civil courts nonetheless, brushing their erstwhile concessions aside. The fundamental reason for Jewish women's distress, which drives them to renounce their rights in marital property, is that under *halacha* (Jewish religious law), which governs Israeli Jews' marriage, divorce, and ancillary matters, a marriage can only be terminated, while both spouses are alive, by the husband giving his wife a *get*, and a *get* can only be given voluntarily. Under no circumstances may a man be coerced into giving his wife a *get*, or a court, religious or civil, supply an obstinate husband's unreasonable refusal.

This situation enables men to make the grant of the *get* conditional on their wives' renunciation of their rights in marital property, such as their *halachic* right to compensation on divorce (enshrined

<sup>33</sup> *Ibid.*, p. 13977.

<sup>34</sup> See a similar comment in *Tanus*, *supra* note 4, p. 3158.

<sup>35</sup> *A.A.M.*, *supra* note 4, 13987.

in the *ketuba*, a deed each Jewish husband gives his wife on marriage, granting her certain rights), their right to one-half of the couple's entire property,<sup>36</sup> and their right to have the ex-husband maintain the couple's children until their majorities. Most routine agreements purporting to resolve divorcing spouses' mutual economic rights and claims include an exhaustion and renunciation clause, in which the parties declare that the agreement exhausts their mutual claims on each other. Sometimes the parties expressly declare their renunciation of any rights to file suit in any court claiming rights not allocated in the agreement. Such clauses are one way to try and ensure that the agreement is final, and prevent the parties raising further demands following its execution. An agreement which includes such a clause can certainly reflect a proper division of property between the spouses; it can also, however, reflect extreme coercion forcing one of the parties, usually the wife, to give up significant economic rights in order to be released from her marriage.

The current attitude of Israel's civil courts to suits filed by Jewish women looking to rectify the distribution of their family property they made in their divorce agreements is quite sympathetic. The courts do not always oblige such women plaintiffs' applications to have their contractual renunciation of their rights rescinded: where a sophisticated woman, who cannot be expected to have consented to terms promising her no advantages, appears to have clearly understood, when making a divorce agreement, the meaning of her renunciation, the court may refuse her application to have her concessions rescinded.<sup>37</sup> The court may also refuse such an application where the husband, too, gave up significant rights, or otherwise generously provided for his ex-wife.<sup>38</sup> Experience shows that putting the ex-wife's claim not as an application to have the renunciation clause or the entire divorce agreement rescinded, but as an application for additional assets, looking to allocate more property to the wife than she had obtained in the agreement she made, while leaving that agreement intact, could also be counter-productive.<sup>39</sup> But in the (fairly frequent) case where a wife has given up any right in family property not explicitly reserved in the agreement, the civil courts grant her application to have her renunciation partly or wholly rescinded fairly easily. This tendency is particularly evident regarding the wife's right to one-half of that part of her ex-husband's pension rights and rights to other benefits vis-à-vis his employers which has accrued during the marriage: many wives are not aware of this right, and so do not insist on its being expressly mentioned in the divorce agreement. Not having been expressly mentioned, that right is, supposedly, abrogated by the general renunciation clause in the agreement. Courts tend to believe wives' claims that not having been aware of this right when making the divorce agreement, they did not mean to give it up, and to award them its full value.<sup>40</sup> Short agreements, agreements not phrased in lawyerly language, agreements in the drawing of which lawyers were not involved, and agreements confirmed by the Rabbinical Court (rather than by the civil Family Court), where the parties renounce all rights not expressly mentioned therein, sometimes make the courts conclude that the parties thereto did not actually give up any right not expressly and specifically waived therein. The courts then distribute any such rights between the ex-spouses according to the default rule of equal distribution found in the Spousal Economic Relations Act.<sup>41</sup>

36 Spousal Economic Relations Act 1973, I.L., 267.

37 Family Case (Hadera) 2631/04 *A.Z.T.Z. v. A.Z.T.Z.* (delivered 4 June 2007).

38 Fam. App. (Beersheba) 113/07 *R.A. v. A.G.A.* (delivered 27 May 2008).

39 *Ibid.*

40 Fam. (Ashdod) 10875/00 (delivered 1 February 2007); Fam. (Rishon-Letzion) 36510/06 *Doe v. Roe* (delivered 2 December 2007); Fam. App. (Haifa) 416/06 *Roe v. Doe* (delivered 12 April 2007), and the decision appealed from in that case.

41 Fam. (Rishon-Letzion) 36510/06, *supra* note 40.

In her December 2006 decision in *Ayala Kahalani v. the Rabbinical Court of Appeal*, Justice Arbel of the Supreme Court extended this approach, and was, in principle, ready to apply it even to fully professional, highly detailed divorce agreements, containing an express discussion of many specific assets, which were confirmed by the Family Court. Such application was not called for in the instant case. With some hesitation, Arbel held that 'there may be reason to consider' creating a general presumption that a general renunciation clause leaves the burden of proof regarding the renunciation of a specific asset not expressly mentioned in the agreement with the party arguing for such renunciation.<sup>42</sup> Some Family Court and District Court judges are reading Arbel's hesitant suggestion as if it was a settled rule, and applying it to read general renunciation clauses, the plain sense of which is consent to renounce any assets or rights not expressly mentioned in the agreement, as empty statements not implying any renunciation of assets not expressly mentioned therein.<sup>43</sup> Neither great sophistication nor a legal education is necessary to understand the meaning of a general renunciation clause: giving up anything not expressly distributed in the agreement. It is, therefore, likely that a significant number (at least) of the parties to divorce agreements which include such clauses understand them to have this meaning when executing them. Still, the courts choose to leave the burden of proving the renunciation of a specific asset or right with the party arguing that such a renunciation had, in fact, taken place: normally, the defendant. The resulting burden of proof laid on the defendant is little short of the burden of proof he would have faced in the absence of any renunciation clause from the agreement. The emergent *Kahalani* rule thus serves to eliminate a clause from divorce agreements. It serves as an indirect means to extend the doctrines permitting the court, or a party to the contract who made a part or the whole of that contract under duress, subject to coercion or deception, or based on a mistake, to rescind that part of the contract.

Juxtaposing the civil courts' attitude towards Arab women's renunciation of their shares in the parental inheritance with their attitude towards Jewish women's renunciation, vis-à-vis their husbands, of their rights in the marital property, makes for an instructive comparison. The two phenomena are similar in not being mandated by any applicable law, whether of the traditional religious or of the modern state sort. They are rather common customs, reflecting social structures of male superiority common to both the Arab and Jewish social sectors. Arab women commonly give up their rights according to sharia and, a fortiori, their rights under Israeli civil law. Their Jewish sisters give up both rights accorded them under *halacha*, such as their right to compensation for divorce according to the *ketuba* marital contract, and rights which Israeli civil law added to the traditional package.

There are, however, significant differences between the two phenomena.

First, Jewish women's concessions are, mostly, evidenced in writing (though not necessarily referring separately to each asset or right given up) and confirmed by the competent court. Arab women's concessions, on the other hand, are quite often 'invisible', not evidenced in any way: in some cases, while a probate or succession order is duly applied for and obtained, the order lists the women as inheritors as if no renunciation had taken place. In other cases, no probate order is applied for, and the land passes from the deceased to his (male) heirs while remaining registered as the property of the deceased or his estate. In both types of case, renunciation takes place outside the courts, and no court is given an opportunity to review, confirm or question it at the time, or soon after, it is made. It takes place as a written or oral contract or gift. Even where a contract in writing is made (e.g. between brothers and sisters), it is not, like Jewish women's

42 H.C.J. 7947/06 *Ayala Kahalani v. the Rabbinical Court of Appeal* (delivered 24 December 2006).

43 Fam. (Krayot) 18390/04 *A.A. v. H.A.* (delivered 11 June 2007); Fam. App. (Haifa) 416/06, *supra* note 40.

divorce agreements, subject to judicial review and confirmation. Arab women's concessions are thus less likely than their Jewish equivalents to be scrutinised by a court as they are being made, to ensure their having been given absent duress, deception or coercion.

Second, the absence of writing in many Arab cases means that the consideration for renunciation – women's right to be supported by their husbands (if married) or brothers (if not) – is not evidenced in writing. In Jewish cases, the consideration moving from the husband is explicit in the divorce agreement: in fair agreements, other property, and in extortionate agreements, the husband's very consent to give a *get*. Arab men's duty to provide consideration for their sisters' concessions is, thus, social and religious rather than legal in the formal sense. Such duties are often less than fully complied with. While formal legal undertakings are hardly always fulfilled, their formal nature means that enforcement is, at least, a theoretical possibility. That Jewish women, more often than Arab women, obtain a formal undertaking in writing to provide the agreed consideration (meagre as it may be) for their concessions is a product of the legal requirement that spousal agreements regarding property, including those attendant on a divorce, be made in writing, formalised and confirmed in court; there is no such requirement as to familial understandings regarding the division of parental property. It is also a product of the difference between the two sectors of Israeli society in the pace in which social life is being encrusted with formal legal undertakings: Jewish society is ahead of the Arab. That many Arab women apparently agree to give up their property rights for a mere expectation that their husbands or male relatives shall comply with a social and religious norm expresses this difference – the more the less coercion is present.

Third, the relative, though declining, autonomy of social practice vis-à-vis the law among Arab Israelis (compared to the situation among Jews) also contributes to women's different levels of awareness regarding their legal rights to try and have their concessions avoided. Many Jewish women who renounce their rights in their divorce agreements, and later wish to have their concessions avoided, are more aware of their rights, and enjoy easier access to the various courts, than Arab women, some of whom do not speak Hebrew – the principal language of Israel's civil court system.

Fourth, while coercion is frequently applied in both the Jewish and Arab scenarios, its duration is different in each case. In the Jewish case, the nub of coercion is husbands' power to delay the *get*; coercion thus typically ends once the *get* has been given (unless a husband, faced with his wife's application to the Family Court, looking to have the concessions she made avoided, applies to the Rabbinical Court to have the *get* avoided as 'mistaken' or 'conditional'). In the Arab case, however, women are driven to renounce their rights by a familial balance of power which typically stays in place for years after the parental inheritance has been distributed. Coercion, or at least the environment and balance of power which made it possible, thus continue indefinitely, making the withdrawal of concessions given difficult.

Fifth, the assets renounced differ in the two cases. Arab women normally renounce rights in the parental land, and it is those rights a few of them later try to reclaim through the civil courts. Jewish women try, in the cases Israeli civil courts have decided in recent years, to avoid their concessions of rights to rather more liquid assets, often money (e.g. their ex-husbands' pension rights). This difference disadvantages Arab women, as rights to land, once registered with the Land Registry, are presumed to be conclusively correct; amending the registered data is exceedingly difficult. Rights to money or income streams, on the other hand, are not registered at an equivalent state registry. Arab women's attempts at avoiding their past renunciation of their rights are only successful where the distribution of rights to the land reflecting their concessions has not yet been registered; while Jewish women are usually trying to amend the allocation of an income stream which is, when they apply to the court, either partly or wholly future. Land is, furthermore, far more fungible than the pension and other rights ex-husbands hold vis-à-vis their employers; the

problem of third parties acquiring rights in the disputed asset in reliance on the results of renunciation is thus present often in the Arab cases and never in the Jewish ones.

Sixth, Israel's judges have different stereotypical ideas regarding Jewish and Arab women. Jewish judges – as most Israeli judges are – tend to conceive of Jewish women generally, and non-observant Jewish women particularly, as independent women zealous for their rights. This stereotype leads judges to regard concessions as results of women not being aware of the rights they have given up. This seems to be one cause of decisions holding general renunciation clauses, giving up any rights not expressly mentioned in the agreement, to lack any legal effect regarding such rights. Arab women, on the other hand, seem to be seen by many judges as prepared, more often than Jewish women, to give up their legal rights so as to fit into a discriminatory social context as obedient dependents. Arab women testifying when middle-aged as to concessions made decades before are especially likely to receive such stereotypical treatment, judges occasionally commenting that while those women may not be ready to accept a position of inferiority now, things were different in the 1970s. This stereotypical view may be one cause of the frequent failure of Arab women's arguments, in trying to have concessions made decades ago avoided, that they did not understand what was going on at the time, were not aware of their rights and did not consciously renounce anything. Further, the stereotypical image of Arab women as subservient and unsophisticated may also be one cause of judges' occasional suspicions that applications presented as women's attempts to have their concessions avoided were really orchestrated by their male relatives to mislead the court into letting those relatives avoid transactions conducted with third parties, regarding parcels of land including women's notional shares.<sup>44</sup>

Most of these differences work to the detriment of Arab women trying to avoid their renunciation of their rights in their parental inheritance, compared to Jewish women trying to avoid concessions they made in their divorce agreements. Though the civil courts have usually used the rare opportunities which came their way to intervene in the gender inequality common in Israel's Arab sector, they have done so less forcefully than in the case of Jewish women forced to give away their rights in divorce agreements. This disparity is neither necessary nor desirable. Arab women are no less disadvantaged, in receiving their shares of the parental inheritance, by sharia and customs common in Arab society, than divorcing Jewish women are disadvantaged, in receiving their share of the marital property, by the *halachic* law of divorce. In both cases, cross-gender consent reflects the inter-gender balance of power. This fact should induce scepticism as to female parties' consent being truly free, deserving of enforcement as per classical contract theory. As in Anglo-American law, Israeli law, too, understands the family as a 'separate sphere', where standard contract and property law rules, modelled on commercial relationships and reflecting the liberal-individualist concept of man (rather than 'person') characteristic of Western modernity, should not be applied absent significant adjustments. Family-context contracts, including agreements regarding parties' parental inheritance, should thus only be enforced subject to an especially strict and penetrating scrutiny of the genuine and free character of parties' consent, particularly that of weaker parties, which may well be coerced by the other parties or by a discriminatory social ethos. The civil courts enjoy a varied doctrinal toolbox with which to enable women to avoid coerced consent. Having found the doctrinal wherewithal to avoid, in the Jewish context, express concessions made in writing and confirmed by the competent court, one may expect the courts to do no less to correct the results of gender inequality in the Arab context, even despite the additional difficulty of Arab renunciation cases often only arising many years after the original renunciation had taken place.

44 *A.A.M.*, *supra* note 4, at paras. 23, 27; *Tanus*, *supra* note 4, at para. 14; *Bashara*, *supra* note 4, at para. 27 of the majority opinion.



## References

- ABD AL ALI, Hammuda (1977) *The Family Structure in Islam*. Indiana: American Trust Publications.
- BIGGE, David M. and BRIESEN, Amélie von (2000) 'Conflict in the Zimbabwean Courts. Women's Rights and Indigenous Self-Determination in *Magaya v. Magaya*', *Harvard Human Rights Journal* 13: 289–313.
- BOURDIEU, Pierre (2001) *Masculine Domination*, trans. Richard Nice. Stanford: Stanford University Press.
- BOWEN, John R. (2000) 'Consensus and Suspicion: Judicial Reasoning and Social Change in an Indonesian Society, 1960–1994', *Law & Society Review* 34: 97–127.
- BRILL, E. J. (1987) 'Mirath', in M. Th. Houtsma, A. J. Wensinck, E. Levi-Provencal, H. A. R. Gibb and W. Heffening (eds), *Brill's First Encyclopedia of Islam 1913–1936*. Brill, vol. 5, 508–514.
- CANAAN, Tawfiq (1931) 'Unwritten Laws Affecting the Arab Woman of Palestine', *Journal of Palestine Oriental Society* 11: 172–203.
- CHAUDHRY, Zainab (1997) 'The Myth of Misogyny: A Reanalysis of Women's Inheritance in Islamic Law', *Albany Law Review* 61: 511–55.
- EDGE, Ian (2008) 'Methods of Avoidance of the Fixed Heirship Rules in Islamic Law: The Islamic Trust', *Trusts & Trustees* 14: 457–65.
- ENGINEER, Ashghar Ali (1992) *The Rights of Women in Islam*. New York: St. Martin's Press.
- ESPOSITO, John L. (1982) *Women in Muslim Family Law*. Syracuse, NY: Syracuse University Press.
- H'MIS, Samar (2005) 'Dual Discrimination: The Arab Woman's Status as an Individual in her Community and as Part of the National Collective Battling for its Rights', *Adalah Electronic Newsletter* 20: 1–6 [Hebrew]. Available at: [www.adalah.org/newsletter/heb/nov05/ar2.pdf](http://www.adalah.org/newsletter/heb/nov05/ar2.pdf).
- HONARVAR, Nayer (2007) 'Behind the Veil: Women's Rights in Islamic Societies', in Gad Barzilai (ed.), *Law and Religion*. Dartmouth: Ashgate, 335–67.
- JOSEPH, T. Suad (1994) 'Brother/Sister Relationships: Connectivity, Love, and Power in the Reproduction of Patriarchy in Lebanon', *American Ethnologist* 21: 50–73.
- KARK, Ruth, GALILI, Amir and FOYERSTEIN, Tamar (2009) *Independence and Initiatives of Israeli Arab Women*. Jerusalem: Floresheimer Institute for Policy Studies, Hebrew University of Jerusalem, 32.
- KETCHER, Kirsten (2007) 'Cultural Rights and Religious Rights', in M. L. P. Loenen and J. E. Goldschmidt (eds), *Religious Pluralism and Human Rights in Europe: Where to Draw the Line*. Mortsel: Intersentia, 219–37.
- KHAMAISI, Rassem (2007) *Between Customs and Laws: Planning and Management of Land in Arab Localities in Israel*. Jerusalem: Floresheimer Institute for Policy Studies.
- LAYISH, Aharon (1975) *Women and Islamic Law in a Non-Muslim State – A Study based on Decisions of the Sharia Courts in Israel*. New York: Wiley/Jerusalem: Israel Universities Press.
- LIM, Hilary and SAIT, Siraj (2007) 'Accidental Islamic Feminism – Dialogical Approaches to Muslim Women's Inheritance Rights', in Hilary Lim and Anne Bottomley (eds), *Feminist Perspectives on Land Law*. Oxford/New York: Routledge-Cavendish, 239–63.
- MOORS, Annelies (1995) *Women, Property and Islam*. Cambridge: Cambridge University Press.
- NATUR, Ahmad (1991) 'Shari'a and Custom in the Negev Bedouin Family, as Reflected in the Case Law of the Beersheba Shari'a Court', *Hamizrah Hehadash–The New East* 33: 94–111.
- NEUMAYER, Karl Heinz (2002) 'Intestate Succession', in *International Encyclopedia of Comparative Law*. Tübingen: J. C. B. Mohr, vol. V, chapter 3.
- FASTNER, Carroll McC. (1980) 'Access to Property and the Status of Women in Islam', in *Women in Contemporary Muslim Societies*. London: Associated University Press, 146–85.
- RADAY, Frances (2003) 'Culture, Religion and Gender', *International Journal of Constitutional Law* 1(4): 663–715.
- ROSENFELD, Henry (1968) 'Change, Barriers to Change, and Contradictions in the Arab Village Family', *American Anthropologist* 70: 732–52.



- SHAH, Niaz A. (2006) *Women, The Koran and International Human Rights Law – The Experience of Pakistan*. Boston: Martinus Nijhoff.
- SHEHADA, Nahda Yunis (2004) 'The Model Parliament for Family Law Reform: A Significant Step towards Linking Women's Issues with National Concerns', *Warning Signs of Fundamentalisms*. WLUML Publications: 135–40. Available at: [www.wluml.org/english/pubs/pdf/wsf/16.pdf](http://www.wluml.org/english/pubs/pdf/wsf/16.pdf).
- SHEHADEH, Lamia Rustum (2003) *The Idea of Women in Fundamentalist Islam*. Gainesville: University Press of Florida.
- SONOBOL, Amira El-Azhary (2003) *Women of Jordan – Islam, Labor & The Law*. Syracuse, NY: Syracuse University Press.
- STEWART, Frank H. (1991) 'The Woman, Her Guardian, and Her Husband in the Law of the Sinai Bedouin', *Arabica* 38: 102–129.
- UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME (UN-HABITAT) (2005) 'Islamic Inheritance Laws and Systems' in *Islam, Land & Property Research Series* 6: 12.
- VAGO, Steven (2003) *Social Change*, 5th edn. Harlow: Prentice Hall.
- WEISS, Anita M. (2007) 'A Provincial Islamist Victory in Pakistan: The Social Reform Agenda of the *Muttahida Majlis-i-Amal*', in John L. Esposito *et al.* (eds), *Asian Islam in the 21st Century*. Oxford: Oxford University Press, 145–74.
- WELCHMAN, Lynn (2000) *Beyond the Code – Muslim Family Law and the Shari'a Judiciary in the Palestinian West Bank*. The Hague: Kluwer.