UvA-DARE (Digital Academic Repository)

Sharia and public policy in Egyptian family law
Berger, M.S.

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: http://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
# LIST OF CONTENTS

## INTRODUCTION

1. Conflict Law, Interreligious Law and Public Policy  
1.1 Conflict law  
1.2 Public policy  
1.3 Interreligious law  
2. Set-up of the Research  
3. Methodology (1): Comparative Law  
4. Methodology (2): 'Sharî'a' and 'Islamic law'  
4.1 Comparative issues: the Western approach to Sharî'a law  
4.2 Sharî'a as moral, jurists' and codified law  
4.3 Sharî'a in Egypt  
4.4 Definitions of Sharî'a

---

### Chapter 1

Public Policy and Islamic Law:

**The Modern Dhimmi in Contemporary Egyptian Family Law**

1. Introduction  
2. The Legal Framework  
2.1 Interreligious law  
2.1.1 Islamic law, interreligious law and conflicts law  
2.1.2 The dhimmî  
2.3 Contemporary Egyptian law  
3. Limitations to the Autonomy of Non-Muslim Personal Status Law  
3.1 Narrowing the scope of non-Muslim personal status law  
3.2 Abolition of family courts  
3.3 Conditions for applying non-Muslim family laws  
4. Changing Religion  
4.1 Conversion and applicable law  
4.2 Changing from Islam to a non-Muslim religion  
4.3 Changing from a non-Muslim religion to Islam  
5. Public Policy  
5.1 Introductory Remarks  
5.2 Definitions of Public Policy  
5.2.1 Public policy in Egyptian legislation  
5.2.2 Public policy as defined by the Court of Cassation  
5.2.3 Public policy as defined in the Egyptian legal literature  
6. Public Policy Cases  
6.1 Introductory remarks  
6.1.1 Functions of public policy  
6.1.2 How to determine what is public policy?  
6.2 Positive public policy  
6.2.1 Inheritance law  
6.2.2 Paternity
6.2.3 Marriage of a Muslim woman with a non-Muslim man
6.2.4 Party autonomy
6.2.5 Procedure of conversion to Islam
6.2.6 Apostasy from Islam
6.2.7 Testimony of non-Muslims against Muslims
6.2.8 Jurisdiction of non-Muslim judges over Muslims
6.3 Negative public policy
6.3.1 Forced marriage of the childless Jewish widow ('levirate marriage')
6.3.2 Divorce in case Christian husband converts to Islam
6.3.3 Waiting period
6.3.4 Adoption
6.3.5 Custody
6.4 Islamic and dhimmī public policy
6.4.1 Conclusion of a marriage
6.4.2 Polygamy
6.4.3 Unilateral divorce
6.4.4 Divorce for Catholics
7. The Modern Dhimmī: Concluding Remarks
7.1 The duality of Egyptian interreligious law
7.2 Unification
7.3 The balancing act of public policy
7.3.1 Positive public policy
7.3.2 Negative public policy
7.4 Dhimmī and Islamic public policy
8. Interreligious law as an Islamic dominion
9. Any change in the legal situation of Egyptian non-Muslims?
10. Conclusion

Chapter 2

Conflicts Law and Public Policy in Egyptian Family Law: Islamic Law Through the Backdoor

1. Introduction
2. Egyptian Conflicts Law
2.1 Historical background
2.1.1 Islamic conflicts law
2.1.2 European influences
2.1.3 Stagnation of Egyptian conflicts law after 1960s
2.2 Egyptian conflicts law: the role of religion and religious law
2.2.1 Religion as connecting factor
2.2.2 Characterization
3. Theoretical Framework of Egyptian Public Policy
3.1 Introduction
3.2 General definitions in Egyptian law
3.3 Egyptian public policy in matters of personal status
3.3.1 'Islamic' and 'general' public policy
3.3.2 Islamic public policy and 'Islamic law'
Chapter 3

Regulating Tolerance: Protecting Egypt's Minorities

1. Introduction
2. Legal Structure: Attempts at Unification
1.1 Dhimmi and citizen
2.2 Contemporary Egyptian plurality of religious laws
3. First Case: Protecting the Italian and Greek Communities in Alexandria (1953-54)
3.1 Historical background
3.2 Legal background
3.3 The court cases
3.4 Comments on the ruling
4.1 Legal background
4.2 The court cases
4.3 Comments on the rulings
5. Tolerance
5.1 ‘Protecting the rights of religious minorities’