

A COMPREHENSIVE EXAMINATION OF PRENUPTIAL AGREEMENTS IN U.A.E: THEIR LEGAL STATUS AND SIGNIFICANCE

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KEYWORDS	ABSTRACT
Significance of marital agreements, Adoption of prenuptial agreements, UAE Federal legislation	This article thoroughly investigates the significance of marital agreements in the United Arab Emirate Region. The economic ramifications of marriage contracts are explored, analyzing their role as legally enforceable instruments. In addition, the interaction between civil laws and Sharia principles is examined, providing insight into how these frameworks contribute towards solidarity of a marital relationship. Also, a thorough examination of the legal legitimacy of prenuptial agreements and their extensive consequences for various demographics in the UAE is done. By analyzing these complex strands, we enhance our comprehension of emerging family dynamics and marriage connections in this culturally diverse and historically important area.

Introduction

The United Arab Emirates, a melting pot of diverse cultures and religions, has undergone significant societal changes in recent years. This transformation is particularly evident in urban centers like Dubai, Abu Dhabi and other emirates of the U.A.E. where traditional norms are giving way to modern practices as expats of various nationalities come to reside here. One such practice is the adoption of prenuptial agreements, especially among the educated elite.

This article explores the legal status, significance, and implementation of the prenuptial agreements according to UAE Federal legislation No. 28 of 2005, often known as the 'Personal Status Law'.¹ Additionally, it distinguishes its application

between Muslim and Non-Muslim expatriates, and nationals of the UAE, examining the legal options that are accessible to each category.²

1. Family and Matrimonial Unions in U.A.E.

In the Gulf and U.A.E culture, the term "aeyla" signifies an extended family unit. Traditionally, large families with several children were always a common norm there. The Gulf region has long been a land of large and sprawling families, where the bonds of blood and kinship span across generations and branches. In the countryside, where life is slow and simple, one can still find the old-styled households, where cousins and grandparents and in-laws and offspring all share the same space and roof. But in the cities, where the lure of progress and prosperity has drawn

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many, the family fabric has been torn and frayed. There, the nuclear family, with its parents and children, has become the norm, and the extended family, with its richness and complexity, has become a memory. The region, predominantly Muslim, sees many individuals entering into marriages as per Islamic Sharia customs. These marriages are formalized through a contract that outlines the agreed terms and specifies the dowry amount.

Arranged marriages, once the majority, are gradually declining in prevalence, mirroring trends as in other parts of Asia. Factors such as urbanization, improved education, and increased female labor market participation have led to a shift towards self-choice marriages. It's important to note that arranged marriages are generally entered into willingly after the individuals have been introduced to each other. Research indicates that only a small percentage (4%) of forced marriages occur in Gulf nations now.³

The UAE, nestled within the Gulf Cooperation Council (GCC), stands as a testament to cultural diversity and coexistence. Its legal framework, intricately interwoven with the tenets of Sharia Law, reflects a delicate balance between tradition and modernity. Despite the cultural significance of marriage in the Gulf region, Qatar has the lowest global marriage rate.⁴ Concurrently, the divorce rates in the United Arab Emirates and Qatar are among the lowest in the world.⁵

1.1 Marriage and Family in Light of New Women Roles aka Feminism

In Gulf culture, marriage is a significant milestone, bestowing societal approval and pride upon both

partners and their families. Over time, spouses have gained the freedom to choose their partners, and marriage is now seen as a social and economic contract between two families. Until the 1970s, UAE women typically married young and were primarily confined to the roles of mothers and wives. However, with societal changes, women as mothers, wife's and daughter in law, now prefer to be educated and financially independent, having their own identity.

Hence to promote gender equality, new legislations have been formulated, allowing both men and women to compose their own marriage contracts. As per Article 19, Personal Status Law of UAE Federal Law 28 of 2005, "Marriage is a contract that legitimates enjoyment between spouses; its aim is protection and forming a steady family under the husband's care on basis ensuring to the spouses the assumption of its charges with affection and compassion." These contracts are crucial for UAE women as they determine their share in financial assets from their marriage and provide compensation in case of divorce.

1.2 Marriage as a Contract and its Economic Function for the Spouses

Marriage, while being a union of love, respect, and mutual affection, also carries the spirit of a contract. In light of this context, marriage has been characterized as sharing the same purpose as a contract, serving as a tool that fosters confidence between two persons to facilitate the exchange of complementary and reciprocal endeavors.

From psychological, philosophical, and biological perspectives, a woman promises to be a wife and homemaker, fulfilling her duties only if her

husband promises to fulfill his part honestly. This mutual performance of duties is often recorded at the time of marriage under certain religions like Islam and Christianity. However, some might object to the characterization of marital alliance as a contract because truly, marriage should reflect more than just a give-and-take agreement. It should give rise to a new progeny, nourished with feelings of utmost love, affection, and faith towards each other. A prenuptial agreement, also known as a prenup, in UAE is a legal contract entered up by a couple before marriage, which specifies the manner in which their financial matters would be settled in the event of a divorce. A prenup is often sought when a party has substantial wealth accumulated prior to the marriage, providing protection to that wealth if the marriage fails.

1.3 Marriage as a contract as per Article 19 and 20 of the Personal Status Law.

UAE **Personal Status Law** applies to both non-citizens, and citizens of the United Arab Emirates State.⁶ This law is designed to guarantee equitable treatment and safeguarding of all residents, whether citizens or non-citizen, Muslims or non-Muslims, inside the United Arab Emirates. Anyone residing in or visiting the United Arab Emirates is subject to the laws of this country, regardless of citizenship status. Non-Muslims may have specific rules that relate to their community, religion or country if they request it. Non-Muslims in such situations may choose for the implementation of their personal status legislation and local laws specific to their faith or community.⁷

The UAE's 2005 Personal Status Law describes marriage as a contract that validates a couple's

enjoyment of one another (Article 19).⁸ Protecting and building a secure family under the husband's supervision is the aim of marriage. Additionally, the law guarantees that spouses carry out their duties with kindness and affection.

The 2005 Personal Status Law, Article 20, states that spouses must honor the conditions of their agreement. Married couples have the right to discuss and agree upon their marital rights and responsibilities, including any marital property, in accordance with Article 20 of the Personal Status Law, 2005.⁹ However, the legitimacy of the marriage agreement depends on the exclusion of any clauses that contradict the core principles of Sharia Legislation, such as acknowledging the splitting of marital assets. In Islam, marriage is a contractual arrangement that encompasses significant elements such as proposal, acceptance, and dowry (Mahr). Sharia Law does not recognize the concept of marital property, but it does mandate that the husband provide the wife with a payment or valuable items, either immediately or in the future, referred to as a deferred mahr or prompt mahr. Hence this provision acts as a precautionary measure to guarantee that a lady does not experience a lack of economic security and safety in the case of divorce or the unforeseen demise of her partner. Hence, it is crucial for Emirati individuals to guarantee that the marriage certificate incorporates relevant clauses (such as inheritance, financial assistance to the spouse, distribution of property, and received presents) in the event of divorce, and these clauses must conform to the norms of Sharia Law.

1.4 Guidelines under Article 20, Personal Status

Law, UAE

Article 20, Personal Status Law states the following regarding marital contracts.

- The postulates in agreement, agreed upon by spouses, bind them, with the exception of those that permit illegal activity or forbid lawful activity.
- A condition in a marriage contract that contradicts the fundamentals of marriage renders the agreement null and void.
- As per Title 2, General Provisions of Marriage in U.A.E, Article 20 “Where the contract is subject to a condition that is not inconsistent with the foundations of marriage but is in contradiction with its requirements or is considered illicit by law, the condition is void but the contract valid.”¹⁰ When a condition of the contract is contrary to its requirements or deemed illegal by law, but does not conflict with the fundamentals of marriage, the condition is void and the deal remains lawful.
- The condition is valid and ought to be met if it is not against the law and is not at odds with the fundamentals of marriage or its obligations. If such a criterion is not met, the party who benefits from the marriage—the husband or the wife—may dissolve it, and in the case of the former, she will not be required to pay alimony during the waiting time that follows the divorce.
- If one spouse required a certain quality from the other but it turned out to be untrue, the person who required it could request that the marriage be dissolved.

- Any condition that is not expressly stated in the registered marriage contract is nullified upon disapproval.
- A contract’s owner forfeits the ability to revoke it, or he implicitly or explicitly agrees to the contrary. shall be deemed an implicit acceptance in the event of an irreversible divorce and one year after the violation occurs with awareness of it.

2. Civil Legislation in Marriages in UAE

2.1 Overview of UAE’s Legislation Regarding Personal Status, Specifically Marriage

Sharia Law’s tenets and regulations have been incorporated into the legal regulations of the United Arab Emirates (UAE), a nation that has a majority of Muslim population, especially when it comes to issues of personal status under Federal Law Number 28 of 2005, as amended by Federal Decree Number 29 of 2020 (the Personal Status Law), which is the primary statute controlling family matters, including marriage, divorce, child custody, wills, inheritance, and alimony. This statute, fortified by subsequent amendments (notably Federal Decree Number 29 of 2020), orchestrates the symphony of marital bonds. Its canvas extends beyond citizenship, embracing both Emiratis and non-citizens alike, with a few exceptions. Here, the Sharia Law whispers through its provisions, shaping the contours of personal lives. For Non-Muslim foreigners, Abu Dhabi (i.e. another Emirate of UAE) has a different personal status law.

2.2 Application of Civil Laws to UAE Nationals and Non-Nationals

Personal issues like marriage, divorce, and

inheritance are governed by the Federal Personal Status Law, which was modified by the Federal Decree Law No. 29 of 2020. Federal Personal Status Law is an important part of the United Arab Emirates' continuous endeavors to reform its legal framework.¹¹ The terms of this legislation apply to all UAE citizens, even those who do not follow Islam, unless the law expressly mentions the non-Muslim's faith and sect. The laws of this legislation apply to foreign individuals who are not citizens of the United Arab Emirates, unless they follow the laws of their native country. Articles 12, 13, 14, 15, 16, 17, 27, and 28 of Federal Law No. 5 of 1985, the Civil Transactions Law of the United Arab Emirates, as modified, apply to this.¹²

2.3 Examination of the Role of Sharia Law in Civil Matrimonial Legislations

The idea of married assets or marital property is not recognized by Sharia law, as stated in the laws of this legal system. Within these legal corridors, marriage emerges as a sacred contract—a covenant validated by faith and witnessed by society. The Sharia Law infuses this union with reverence, emphasizing mutual respect, companionship, and shared responsibilities. Spouses, irrespective of origin, tread the path of marital obligations, their steps guided by both religious precepts and legal mandates. Rather, it grants each spouse sovereign rights over the assets they have gained or possessed during their marriage. This implies that, in the event of a marital dissolution, neither spouse has the right to pursue the other's assets. Prenuptial or postnuptial agreements are therefore not recognized by the UAE Personal Status Law's requirements.

According to the Personal Status Law's accompanying explanatory memorandum (Article 20), marriage contracts are similar to other contracts in that they formalize the parties' best interests. Spousal agreement and condition discussion is a new and important component introduced by Article 20 under Personal Status Law, 2005. This provision allows couples to tailor their marital journey, considering individual circumstances and aspirations. Property rights, a pivotal facet of this negotiation, come to the fore. However, a caveat exists: the negotiated terms must align harmoniously with the core tenets of Sharia Law. Any conditions, including those aiming to limit property rights between the spouses, can be included as long as they do not conflict with the general standards specified in Article 20 para 1/2/3 of the Personal Status Law.

Scholars of Shari'a, however, disagree on the extent of the requirements; some expand it while others narrow it. Nevertheless, they all concur that the prerequisites of Marital Contract should not be in conflict with Islamic Sharia.

2.4 Legal Framework in The United Arab Emirates Regarding Prenuptial Agreements.

The Marriage Contract, under Shariah is similar to modern prenuptial agreement. However, Marriage Contract with all postulates of Prenuptial agreements are referred as Marriage Contract rather than modern terminology.

The UAE employs a dual legal framework encompassing both civil and Sharia laws. which operates in conjunction with the civil and criminal courts, namely Personal Status Courts, to handle family affairs such as marriage and divorce.

However, the majority of codified legislations in the UAE are a fusion of Islamic rules and other civil laws, like Egyptian and French civil laws. The UAE enforces Marriage Contracts which is similar to Prenuptial Contract, if they don't conflict with public morals, UAE laws, or Sharia Law for its Muslim Nationals. The agreement must meet certain conditions and be signed after proper legal counsel. The Personal Status Law for Non-Muslims allows couples to reach a prenuptial agreement before marriage. The prenuptial agreement is getting very popular among expats, and recently Family Court in Abu Dhabi recorded a high increase in signing of these agreements by expats.¹³

As per Article 21, Personal Status Law of UAE Federal Law 28 of 2005 *"As a condition for the binding effect of a marriage, the man must be suitably qualified to deserve the woman, but only at the formation of the contract."*¹⁴ Marriage is perceived as a means to acquire, via mutual collaboration, certain assets of financial and non-financial worth that would otherwise be unattainable or highly challenging to gain alone. The purpose of marriage legislation is to provide a structure that strengthens trust and eliminates barriers that impede these collaborative interactions. The above article (Article 21, Personal Status Law of UAE Federal Law 28 of 2005) also perceives the enforceability and validity of Prenuptial contracts in U.A.E culture.

To further strengthen the concept of Nuptial Contract, Article 24, Personal Status Law of UAE Federal Law 28 of 2005 states "If the man alleges his aptness or uses deceitful devices to give this

impression or if it was made a condition in the contract and it was thereafter revealed that he was not apt, both the wife and her tutor are entitled to ask for rescission." However, the contract is validly known as Marriage Contract, rather as Prenuptial Contract, as in accordance with Sharia Principles.

It is improbable that a prenuptial agreement created in another country will be upheld by UAE courts, particularly if it deals with child-related issues. However, it should be mentioned that recent amendments to the Civil Transactions Law may affect the legality and enforcement of prenuptial agreements. Under the revised Article 13 of the Civil Transactions Law, UAE, the jurisdiction over personal and financial matters arising from the marriage contract is determined by the laws of the nation where the couple tied the knot. This would imply that the UAE courts could utilize the laws of the nation in which the parties were married to determine the validity and enforcement of a prenuptial agreement that was written and performed in a foreign jurisdiction.

It's also crucial to remember that the request to use foreign laws in a family dispute may eventually be approved or denied by the UAE courts. This would depend on how strong each case is. For example, under Article 24 of the UAE Personal Status Law, the UAE courts have the authority to refuse the application of foreign law if the party holds several nationalities.

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affect the legality and enforcement of prenuptial agreements. The law of the nation where the couple was married will control the personal and financial issues arising from the remarriage contract, according to the recently updated Article 13 of the Civil Transactions Law. This would imply that the UAE courts could utilize the laws of the nation in which the parties were married to determine the validity and enforcement of a prenuptial agreement that was written and performed in a foreign jurisdiction.

3. Prenuptial agreements in the U.A.E

The Civil Family Court of Abu Dhabi has seen a significant increase in prenuptial agreements this year, with around 250 agreements executed in the first seven months.¹⁵ This trend is attributed to the popularity of prenuptial agreements among ultra-high net worth individuals, who often marry locally to protect their assets. The Abu Dhabi Civil Family Court, established in December 2021, adjudicates cases related to marriage, divorce, custody, inheritance, and personal status under a non-Sharia process, prioritizing equal rights and protection for all residents, regardless of religion or background.

3.1 Legal Validity of Prenuptial Agreements in UAE.

Prenuptial agreements are particularly relevant to expatriates residing in UAE, besides U.A.E nationals.

All non-nationals residing in the U.A.E are subject to the laws of the country, just as UAE nationals, regardless of their religious views, as stated in Article 1 of the Personal Status Law. But, in regards to family problems, the law also gives non-nationals the option of choosing to be controlled by

the laws of their home country, the country in which the marriage was consummated.

Consequently, UAE courts have the authority to enforce nuptial agreements if the jurisdiction in which foreign couples intend to pursue a divorce in the UAE contains provisions that support the legality of such agreements. These agreements, though, must not be at odds with UAE legislation. The laws of the nation in which the properties are situated govern the distribution of assets.

Regarding Muslim expats, the Personal Status Law's Article 1 shall be applicable to the divorce processes if the divorce is filed within the United Arab Emirates. However, prenuptial agreements will be enforceable under the rules of Civil Law governing contracts if Muslim expats pursue a divorce outside of the UAE's legal jurisdiction.

3.2 Implications of Prenuptial Agreements for Different Groups in the UAE

This discussion explores the impact of prenuptial agreements on different groups in the United Arab Emirates (UAE), encompassing non-Muslim expatriates, Muslim expatriates, and UAE nationals.

a) Non-Muslim Expatriates

Non-Muslim expats are often allowed to enter into prenuptial and postnuptial agreements, especially if the laws of their home countries allow the execution of such arrangements and the split of valuables in the case of a divorce. It is imperative to differentiate assets situated within the United Arab Emirates from those situated outside its borders. Article 1(2) of the Personal Status Law mentions that citizens of the United Arab Emirates are subject to the law, unless non-Muslims are

exempt from it due to religious sectarian differences. Foreigners are subject to the law as well, unless they decide to follow their own legal system. As a result, prenuptial and post marital agreements formed by foreigners who satisfy the conditions outlined in Article 5 will be enforceable under the relevant laws, even with regard to assets situated in the United Arab Emirates. The applicable laws in the country where the properties are located will decide whether or not the agreements pertaining to assets outside the United Arab Emirates are enforceable

b) Muslim Expatriates

It's critical for Muslim expats to distinguish between two groups of people seeking to enforce a prenuptial agreement: (a) during the divorce process in the United Arab Emirates; and (b) after the divorce has been finalized outside of the country. Regarding divorce cases filed in the United Arab Emirates, the Personal Status Law will be relevant. The prenuptial agreement will be managed similarly to how residents of the UAE handle it. Prenuptial agreements are governed by UAE Law No. 5 of 1985 governing Civil Transactions if they are enforced after a divorce but outside of the UAE. This is because they are viewed as the execution of a contractual agreement.

c) UAE Nationals/Emiratis

Islamic Sharia recognizes the couples' independent financial position rather than the idea of marriage property. As a result, any property created or acquired by one spouse during the marriage belongs to that spouse alone, and the other spouse has no ownership rights or claims. However, as long as they do not conflict with Islamic Sharia,

Sharia allows couples to enter into agreements governing the rights and obligations throughout marriage. Thus, citizens of the UAE are free to sign prenuptial agreements if they so want. They are parties to a prenuptial agreement, but its provisions are only enforceable during the divorce process. An illustration of this is the recent increase in demand for prenuptial agreements in Abu Dhabi.

Article 27 of the Civil Transactions Law states that if any provision of the contract is in disagreement with public order, morality, or Islamic Shari'a, it will be void or voidable. "Matters relating to personal status" is how the Civil Transactions Law's Article 3 defines public order. This implies that any clauses in the contract that are morally repugnant to the UAE will be null and void. Nevertheless, one might include the prenuptial agreement's terms in the postnuptial agreement if one wants to be sure that the parties have agreed to the terms in a form that ensures its enforcement. Even the days following the wedding, a postnuptial agreement may be signed.

3.3 Requisites for Enforceability of Prenuptial Agreements

The United Arab Emirates (UAE) courts will abide by prenuptial agreements if they satisfy specific requirements.:

1. The terms of the agreement must be fair and just from the moment it is established. A prenuptial agreement should be equitable and pragmatic. If the allocation of assets is excessively biased towards one party, local courts may deem it unfair and disregard it.
2. The agreement's entrance must have been free from any kind of pressure or duress.

None of the parties shall be compelled to sign the agreement against their volition.

3. The participation in the agreement must have been voluntary and free from any kind of force or pressure. Coercing any party to sign the agreement against their volition is strictly prohibited.
4. The agreement must adhere to the criteria necessary for a legally binding contract, as outlined by civil law regulations.
5. Both parties must have the opportunity before signing it, to seek legal guidance regarding the prenuptial agreements. Each side must have been supplied with separate legal representation.
6. A prenuptial agreement should be established before the wedding. The agreement must be signed no later than one month before the marriage. It should not be entered into if a sufficient amount of time to examine the contract was not provided. Each party should be allotted ample time to thoroughly evaluate and comprehend the terms and conditions outlined in the contract before committing to the agreement.
7. Each party must possess knowledge of the specific information necessary for thorough evaluation of the contractual provisions and clauses in order to have a comprehensive understanding of the agreement.
8. No substantial modifications exist that would make a prenuptial agreement in the UAE unsuitable or void, such as job loss, incapacity, or the arrival of children.

It is crucial to bear in mind that prenuptial agreements are exclusively recognized and enforced by UAE courts in the context of divorce proceedings. The Personal Status Law is applicable to divorce proceedings involving citizens of the United Arab Emirates. Consequently, prenuptial agreements are regulated by the provisions of this statute.

Foreign prenuptial agreements, on the other hand, are subject to the laws of the country where the divorce is being processed. However, as long as the prenuptial agreements adhere to the legal criteria for being recognized as valid and do not contravene public decency, UAE law, or Sharia law, the UAE courts will enforce them.

When getting married in the UAE, individual possessions become joint possessions, meaning they would be taken into account for distribution in case of divorce, unless they are explicitly safeguarded by a prenuptial agreement. Couples in the UAE primarily use prenuptial agreements to restrict possible claims, especially regarding property and real estate, in order to avoid lengthy and expensive legal disputes. In UAE, prenuptial agreements are being evaluated based on particular criteria, indicating that the provisions of the agreement must have been equitable and just at the time of its formation.

4. Guidelines in UAE regarding Nuptial Agreements (Pre/Post Nuptial): A Model for other nations:

Prenuptial Agreements is increasingly gaining popularity in the United Arab Emirates as a method of safeguarding assets within the legal framework in case of a potential divorce, especially among expats. For Emiratis, marriage contract itself consists of several clause as is in Prenuptial Agreement. These agreements may encompass a wide range of subjects, such as property division, spousal support, and asset division.

The enforceability of a prenuptial agreement is often contingent upon the regulations of the non-Muslim expat's country of origin. The marriage and associated rights of non-Muslim foreigners are governed by the legislation of the country where the marriage occurred, regardless of any recent changes to the civil transaction law. Islamic Sharia law is binding upon adherents of the Islamic faith. Any personal property that a spouse obtains before or during the marriage is under the sole possession of that spouse. However, it is possible for couples to create postnuptial agreements, provided that the terms of the agreement do not contradict Islamic Sharia norms. Sharia law upholds the sanctity of marital agreements.

Prenuptial agreements are more prevalent as a means of safeguarding the rights of individuals involved, considering their distinct personal circumstances, and keeping pace with the progress of contemporary society. Prenuptial agreements can facilitate transparency and prevent disputes by clearly outlining the division of assets, thus saving time and financial resources in the event of a

divorce. Additionally, they establish a framework for asset distribution, mitigating potential issues before the commencement of a marriage.

1. The prenuptial agreement, for expatriates, shall be executed before marriage, within a period of twenty-one (21) days, giving both parties enough time to consider and reconsider its considerations.¹⁶
2. UAE civil law permits inculcating amendments in clauses, even after marriage.
3. In UAE, the prenuptial agreement postulates are applied only at the time of Divorce, and not before.
4. If a prenuptial agreement relates to matters of children. And is drafted in a foreign jurisdiction, it is unlikely that it will be enforced in the UAE courts.
5. **UAE has amended its Legislation, validating Prenuptial Agreements for Foreign Nationals-** it should be noted that the Civil Transactions Law has been recently amended for an impact on the validity and enforceability of a prenuptial agreement. In accordance with the recently amended Article 13 of the Civil Transactions Law, personal and financial issues arising from the matrimonial contract shall be subject to the jurisdiction of the nation in which the union took place.
6. **Encouragement to Nuptial Agreements:** If prenuptial not signed, parties may sign postnuptial agreements. A postnuptial agreement could be signed by the parties as an alternative to a prenuptial agreement.

This step is taken by U.A.E government to make life of its expats happier and comfortable, so they can enjoy their stay.

7. Certain Clauses regarding Wife's Maintenance and Custody of Child prohibited:

As long as the financial arrangement does not restrict the wife's ability to claim expenditures, it will not be seen to be against public order. It's also crucial to remember that under this agreement, the parties cannot decide to forfeit or forgo their rights to custody or child support.

8. "Marriage is subject to the filing of a medical certificate from a competent medical committee established by the Minister of Health, attesting that both spouses are free from any disease that the law deems a reason for separation," states the Federal Law No. (28) of 2005 On Personal Status, U.A.E.

In addition to this, in UAE, Premarital Health screening is recommended for couples who plan to marry, several months prior to their official marriage date. The purpose of this screening is to ensure to facilitate awareness of the foundations of a healthy marriage. This also aid in prevent the rapid spread of genetic and infectious diseases. This shall be followed by other nations as well to inculcate presence of Health Checkup of Spouse before marriage as clauses in Prenuptial agreement.

5. Benefits of Prenuptial Agreements

5.1. Clarity and transparency in asset management: By incorporating the property prerequisites into the official marriage contract

rather than a distinct agreement, it becomes possible to assert that both spouses have consented and accepted the terms without the necessity of undertaking any additional formalities.

Furthermore, it is crucial to have prenuptial and post marital agreements in place for properties situated outside the United Arab Emirates and in countries that acknowledge and enforce such arrangements. This is contingent upon fulfilling specific requirements, such as providing financial disclosure and obtaining independent legal advice. Having a contract that regulates these types of possessions is essential, especially when the wife is a citizen of another country. On many occasions, when a divorce occurs, the wife who is a foreign national would have the capacity to commence legal proceedings against these possessions.¹⁷

5.2. Saving time and money in the event of divorce:

Matrimonial assets and/or other criteria are essential for every marriage to ensure a fair and seamless transition and the resolution of conflicts. However, they become much more critical in the case of a divorce. In the case of a divorce, this would result in cost savings, time efficiency, and less mental distress.

5.3. Preventing Unhappy Marriages:

Open communication on delicate issues like conflict management in future, to decisions on asset division, will check on compatibility of spouses with each other, as well of their extended families. Hence marriages that will happen after a detailed discussion, will be more settled and have lesser chances of conflicts between spouses.

6. Scope and limitations in Prenuptial Contracts

When a prenuptial agreement is involved, as it was in the previously mentioned case, it is imperative to adhere to the Civil Transactions Law to guarantee that all necessary formalities and legal criteria are fulfilled. It's also important to keep in mind that personal status court proceedings in the United Arab Emirates typically move more quickly than civil court proceedings. This is particularly accurate when considering that in personal status matters, the court of cassation is obligated to render a direct ruling on each case, but in civil court procedures, the court of cassation has the discretion to remand an appeal to the court of appeals.

1. Possibility and advisability of drafting one's own prenuptial agreement:

If appropriate language isn't utilized in the document, enforcing a prenuptial agreement in the United Arab Emirates will be extremely difficult. If you really want to draft your own prenup, you should at least have a marriage lawyer in UAE review the agreement prior to its signing in order to make sure that your agreement has the correct language and all crucial information is added.

For Emirati individuals embarking on the sacred voyage of matrimony, meticulous attention to the marriage certificate becomes imperative. Clauses pertaining to inheritance, financial support, property distribution, and received gifts must be meticulously crafted. These clauses, while reflecting individual preferences, must harmonize seamlessly with the norms of Sharia Law. Thus, the marriage certificate emerges as a testament to both legal compliance and personal aspirations.

2. Conditions under which a prenuptial

agreement may be changed or canceled:

If circumstances of a couple of changes and both contracting parties agree, a prenuptial agreement may be changed or canceled in UAE. An amendment may be added if a couple wants to modify parts or the entire contract. In the United Arab Emirates, a modification must be signed in front of a notary public. As it is a legal marriage contract, it should be written, reviewed, and approved by a reputable marriage lawyer in Dubai.

3. The role of social media clauses in prenuptial agreements

A Saudi groom ended his marriage in 2016 when his bride violated their prenuptial agreement by posting wedding images on Snapchat. The wife was not allowed to share any images or videos of the event on social media, according to the agreement. Although the groom's response is extreme, worries about a spouse or ex-partner's social media activity are frequently warranted, particularly in light of the rise in revenge porn and harassment on social media. A third of lawyers in New York are considering adding social media restrictions to prenuptial or postnuptial agreements. These clauses usually forbid publishing embarrassing or reputation-damaging photos on the internet.

7. Conclusion: Significance of Prenuptial Agreements in the UAE's Legal Landscape

They provide a legal framework for the purpose of safeguarding assets during a divorce. The rules governing these agreements vary for non-Muslim expats and Muslims, reflecting the diversity of the UAE's population. These agreements, therefore, contribute to the legal certainty and predictability

that are crucial in personal status matters .

The biggest advantage of signing a nuptial agreement is evidenced in the U.A.E when a dispute between the parties occurs. In that case, execution proceedings based on the terms of this agreement can be directly started and enforcement is relatively easier. Considering all factors, it is highly likely that the personal status courts will enforce a marriage contract, similar to a prenuptial agreement, that addresses the division of matrimonial assets, finances, or spousal support, and also obligates one spouse to transfer specific assets to the other in the event of a divorce.

8. Suggestions:

1. An amendment may be added if a couple wants to modify parts or the entire contract. In the United Arab Emirates, a modification must be signed in front of a notary public. As it is a legal marriage contract, it should be written, reviewed, and approved by a reputable marriage lawyer in UAE.
2. A prenuptial agreement should be reviewed and amended, most especially when there are children added into the picture. This will reduce the likelihood of an agreement not being enforced because of the duration or length of time that's elapsed since the agreement was made.
3. The formalities of prenuptial agreement shall be completed within a predetermined period, generally of twenty-one (21) days prior to the marriage, or as accepted by spouse families.

References:

1. Al Shouk, Ali. "Abu Dhabi Civil Court Oversees 6,500 Marriages in First Half of 2023." *The National*, 25 Aug. 2023, Available at (<https://www.thenationalnews.com/uae/2023/08/25/abu-dhabi-civil-court-hosts-6500-weddings-in-first-half-of-2023/>). Accessed 1 Mar. 2024
2. Ayoub, Samy. 'The Egyptian State as a Muftahid: Law and Religion in the Jurisprudence of the Egyptian Supreme Constitutional Court'. *Arab Law Quarterly*, Brill, June 2022, pp. 1–30, <https://doi.org/10.1163/15730255-bja10119>.
3. Badam, Ramola Talwar. "Hundreds of Expat Couples Sign Prenuptial Agreements at Abu Dhabi Court." *The National*, 14 Aug. 2023, Available at (<https://www.thenationalnews.com/uae/2023/08/14/hundreds-of-couples-sign-prenuptial-agreements-at-abu-dhabi-court/>). Accessed 2 Mar. 2024
4. Jaffal, Zeyad, et al. 'Toward Constructive Harmonisation of Islamic Family Law and CEDAW: A Study on the UAE's Reservation to CEDAW Article 16 and Equal Rights to Marriage and Family Relations'. *Australian Journal of Human Rights*, vol. 28, no. 1, Informa UK Limited, Jan. 2022, pp. 139–162, <https://doi.org/10.1080/1323238x.2022.2122689>.
5. "Marriage Contracts in the UAE: To Prenup or Not to Prenup?" Al Tamimi & Company, 3 Mar. 2019, Available at (<https://www.tamimi.com/law-update-articles/marriage-contracts-in-the-uae-to-prenup-or-not-to-prenup/>). Accessed 3 Mar. 2024
6. "Personal Status for Non-Muslims." , (Available at <https://uae/en/information-and-services/justice-safety-and-the-law/personal-status-for-non-muslims>). Accessed 1 Mar. 2024
7. Tadros, Mariz. "The Non-Muslim 'Other': Gender and Contestations of Hierarchy of Rights." *Hawwa*, vol. 7, no. 2, 2009, pp. 111–143. Brill, Available at (<https://doi.org/10.1163/156920709X12511890014540>).

Endnotes

- ¹ Personal status for non-Muslims | The Official Web Portal of the UAE Government.
- ² *Personal affairs' law for UAE citizens* | The Official Webportal of the UAE Government.
- ³ Chantler, K. (2012). Recognition of and Intervention in Forced Marriage as a Form of Violence and Abuse. *Trauma, Violence & Abuse*, 13(3), 176–183. Available at <https://www.jstor.org/stable/26638112>
- ⁴ Noora Lari (2022) Toward marriage sustainability: Impacts of delayed marriages in Qatar, *Cogent Social Sciences*, 8:1, DOI: 10.1080/23311886.2022.2083480
- ⁵ Anser, L. (2013). Divorce in the Arab Gulf countries: A major challenge to family and society. *Contemporary issues in family studies: Global perspectives on partnerships, parenting and support in a changing world*, 59-73.
- ⁶ Supra note 2 at Pg No 2
- ⁷ Zeyad Jaffal, Faisal Shawabkeh & Ali Hadi Al Obeidi (2022) Toward constructive harmonisation of Islamic family law and CEDAW: a study on the UAE's reservation to CEDAW Article 16 and equal rights to marriage and family relations, *Australian Journal of Human Rights*, 28:1, 139-162,

DOI: 10.1080/1323238X.2022.2122689

⁸ *Ibid*

⁹ *Ibid*

¹⁰ Title 2, General Provisions of Marriage in U.A.E, Article 19 and 20, *Personal Affairs' Law for UAE citizens | The Official Webportal of the UAE Government*.

¹¹ *Personal status for non-Muslims | The Official Webportal of the UAE Government*. (n.d.). Available at [https://u.ae/en/information-and-services/justice-safety-and-the-law/personal-status-for-non-muslims#:~:text=29%20of%202020%20\(PDF%2C%20500,N on%2DMuslim%20UAE%20nationals](https://u.ae/en/information-and-services/justice-safety-and-the-law/personal-status-for-non-muslims#:~:text=29%20of%202020%20(PDF%2C%20500,N on%2DMuslim%20UAE%20nationals)

¹² *Personal affairs' law for UAE citizens | The Official Webportal of the UAE Government*. (n.d.). Available at <https://u.ae/en/information-and-services/social-affairs/law-for-personal-affairs>

¹³ Shouk, A. A. (2023, August 25). *Abu Dhabi civil court oversees 6,500 marriages in first half of 2023*. The

National, Available at <https://www.thenationalnews.com/uae/2023/08/25/abu-dhabi-civil-court-hosts-6500-weddings-in-first-half-of-2023> Retrieved on 15 Feb, 2024

¹⁴ Supra 2 at Pg No 2

¹⁵ Badam, R. T. (2023, August 14). Hundreds of expat couples sign prenuptial agreements at Abu Dhabi court. The National. Available at <https://www.thenationalnews.com/uae/2023/08/14/hundreds-of-couples-sign-prenuptial-agreements-at-abu-dhabi-court/>

¹⁶ *Legal Position of Postnuptial or Prenuptial Agreements in UAE - Fotis*. (2022, March 24). Fotis. Available at <https://fotislaw.com/lawtify/pre-nuptial-agreements-in-uae/> Retrieved on 12 January, 2024

¹⁷ Ayoub, Samy. (2022). The Egyptian State as a Muğtahid: Law and Religion in the Jurisprudence of the Egyptian Supreme Constitutional Court. *Arab Law Quarterly*. 1-30. 10.1163/15730255-bja10119.

Statutes Referred

1. Articles 12, 13, 14, 15, 16, 17, 27, and 28 of Federal Law No. 5 of 1985, the Civil Transactions Law of the United Arab Emirates.
2. Article 21, Personal Status Law of UAE Federal Law 28 of 2005.
3. Article 24, Personal Status Law of UAE Federal Law 28 of 2005.
4. Federal Law Number 28 of 2005, as amended by Federal Decree Number 29 of 2020 (the Personal Status Law, U.A.E), commonly known as UAE Federal legislation No. 28 of 2005.
