



Line in the Sand: Iranian Divorce from the Perspective of the Trial Attorneys Involved

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Stephens: In my 18 years of practicing law, I have never tried an "at fault" divorce. I did not truly appreciate the cultural differences between our culture and the Islamic way of life. I certainly did not know what a "Mahr" was.

Crawford: Aside from taking some International Law courses in law school at George Washington University and occasionally indulging at restaurants featuring Middle Eastern fare, I had little to no knowledge of the legal system in Iran or the true meaning of "Sharia Law."

Stephens: The Wife was a 20 something year old young woman from Iran. At the beginning of their short term marriage, the Husband moved her to the United States away from her home. The Wife was very self-motivated, taught herself English, and obtained an entry level position working retail sales in the mall. I think my opposing counsel would agree this young lady had an exceptional work ethic. By the time the case was over, she was the assistant manager of a luxury retail store.

Crawford: The Husband did not initially appear any different than any other young banker in South Florida. He was attractive, well-dressed, and charming. It was clear that while he was of Middle Eastern descent, he

was very much "Americanized." He had an interesting background. His mother was a blonde-haired, blue-eyed American woman; his Father was 100% Iranian. As a child and young man, my client lived in Iran,

the husband decides he was wants a divorce, he owes the wife a financial reward. In this case, a very large financial reward...

Stephens: When the Wife consulted with me she presented the Husband's

petition for divorce and her "Mahr," a hand written religious document. Reading the translation of this document I learned that if the Husband ever filed for divorce, the Wife would have entitlement to a copy of the Koran, some livestock, and most interestingly 1,014 Bahar Azadi gold coins. While I am very familiar with litigating agreements, I was very concerned whether I could get an American judge



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Canada, and America. His English was flawless and he seemed completely immersed in the American lifestyle. He came in with what I thought was a relatively simple case – short term marriage, no children, little in the way of assets – Piece of cake, right? It was about that time that I first heard the word "Mahr," which at a basic level, can loosely be equated to a dowry or "bride price." Because men have the exclusive right to divorce under Iranian law, women are afforded the Mahr as a protective measure. In a nutshell, as long as the wife is "obedient" in "good humor" (yes, the marriage contract uses those exact words) and remains faithful, if

to enforce such a seemingly archaic document. The Mahr precluded the wife from seeking a divorce. If the husband filed for divorce and the wife had been "obedient," in "good humor," and never committed adultery during the marriage, the contract clearly provided she would receive these coins. Legal research revealed only one reported case in Florida concerning the enforceability of a Mahr. *Akileh v. Elchahal*, 666 So.2d 246 (Fla. 2nd DCA 1996). *Akileh* provides that Florida Courts will enforce the secular portions of a Mahr even if it was entered into as part of a religious ceremony. The Husband's petition for

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divorce did not mention or otherwise make the Mahr an issue. In response, I made a demand for 1,014 Bahar Azadi gold coins.

Crawford: I was the second lawyer and became involved in the case well after the initial filings. As such, this unique litigation had already taken a lot of unexpected turns by the time I entered my appearance. The pleadings read like a novel, not the run of the mill dissolution that we know all too well. Knowing my friend Mr. Stephens was opposing counsel, I invited him to lunch to see if I could coerce the "real" story out of him. I was confident that he and I could find a way to resolve the legal issues. After all, Stephens and I had settled numerous cases in the past and I was still trying to believe that the case was relatively simple. At that time, I couldn't fully appreciate how wrong I was. I was met with an offer of settlement of 1,014 gold coins, which, by the way, is nearly a million dollars! My client was a middle-management banker earning approximately \$80,000 per year. He didn't have a million dollars lying around.

Stephens: The demand for gold coins was refused and the Husband's answer attacked the validity of the Mahr. Not only did the Husband make claims the Mahr was unenforceable due to public policy, he also made every traditional challenge to the agreement that one could make, including duress; he claimed he did not understand the agreement because it was written in a foreign language; he did not sleep before he signed it; and there was no financial disclosure. In addition to these claims, the Husband alleged the agreement was void because the Wife was guilty of "ill humor," "disobedience," and "infidelity." As if this case could not get any more complicated, the Husband's first lawyer pled "Lex Loci Contractus" as an affirmative defense and suggested that the law of the case must be gov-

erned by the law of the place where the contract was made, Iran.

Crawford: It seemed so completely inequitable for a woman in a short-term marriage to make a claim for nearly a million dollars, particularly where the parties had modest means and few assets. My client was adamant that he was unaware of the contract he signed on the night of his wedding. In fact, he claimed that he didn't even know that he was entering into a marriage until the ceremony was halfway done. He absolutely did not understand that he had signed a contract that required him to pay the equivalent of a million dollars until Mr. Stephens demanded that the coins be delivered to him. My client understood only that he was signing a marriage certificate. At first blush, I figured I could get my client out of this mess by asserting the typical arguments to set a prenuptial agreement aside. The agreement was signed in the middle of the marriage ceremony (seriously!), duress, lack of capacity, no meeting of the minds, absolutely no financial disclosure whatsoever, no negotiation to speak of, unconscionable on its face, etc. Pretty quickly, I understood that those weren't the kinds of arguments that won cases under Iranian Law, which was exactly the law that we found ourselves arguing. I tried everything I could think of. I argued that the new Foreign Law Statute controlled because this contract clearly violated Florida's public policy. I argued the constitutional issues. I argued that Mahr stems from a jurisdiction that does not separate church and State and discriminates through religious doctrine. After all, Mahr is a concept that is rooted in the Koran and the contract itself was administered by an Islamic religious figure. I argued basic contract construction – that the contract itself is vague and unenforceable. Parol evidence was required in order for judges sitting in our American justice system to even begin to make any sense of it. However, the most compelling argument I had was adultery. Yes, adultery. At the crux of this case

was the deeply-rooted concept that Mahr is completely void if the husband can prove that the wife has been unfaithful. So, here I was smack dab in the middle of a dissolution action where proving adultery was my best shot. We had just enough evidence that it was possible. Enter the private investigator...

Stephens: My client did not have a small fortune to spend on a private investigator as the Husband did. We could not afford the type of experts the Husband engaged and flew in for testimony. We did have a decent fact pattern and a very smart trial judge. The Husband committed himself to a fact pattern with his first attorney and some of it just did not add up. Crawford did an incredible job presenting what she had, but her client took hits on credibility that could not be undone. For example, the Husband's claims that he could not read Farsi were absurd. He also committed himself to the testimony that he did not understand the contract. Even more absurd was his claim that he did not know he was getting married. His testimony was directly contradicted by the wedding video where the agreement was clearly explained to the Husband provision by provision. The wedding video showed clearly that the Husband's arguments were untrue. He was seen participating in the wedding ceremony. He was seen speaking in Farsi conversationally, clearly understanding what was said. He was seen as the Mahr was explained to him, provision by provision, while he was obviously under no duress.

Crawford: With some real credibility issues, I had to attempt to have the judge see the inequity of this situation. We were very lucky to have an incredible expert witness on our side, an Iranian female attorney and Judge from Tehran, who now resided in Detroit, Michigan of all places. She was able to explain the role of religion in the Islamic legal system, the Mahr, the male-dominated society, etc. It was from her that I learned that we were dealing with a culture that allowed polygamy and overtly discrimi-



nated against women. For example, women are required to cover their entire bodies in public, they are unable to pursue certain areas of study or hold certain occupations, their testimony in court is not equivalent to that of a man, nor are they able to inherit in equivalent shares as men. To say the least, as a woman, it put me in an interesting position representing a man in this case.

Stephens: I learned in Iran there are consequences of certain behaviors that simply do not exist in America. In our case, the Wife made allegations the Husband refused to honor the Mahr. The Husband made allegations the Wife was a disobedient, ill-humored adulteress. While the consequences for these behaviors may not seem severe in the United States, in Iran the penalties can include physical punishment. So, regardless of the outcome of the litigation in the United States, both the Husband and Wife initiated proceedings against each other which would have to be resolved before either party returned to Iran. The stakes of the case escalated quickly.

Crawford: It was truly humbling to find myself in a situation where we had to ignore what we knew about Florida (or even United States) laws and norms and put ourselves in the shoes of Iranian attorneys and try to convince the judge to do the same. While attempting to navigate our way through the Palm Beach County case, we were also trying to deal with reciprocal criminal cases and the respective attorneys in Iran (the Husband accusing the Wife of adultery, which carries the punishment of lashing or even, in extreme cases, stoning; the Wife accusing the Husband of drinking alcohol, which carries the punishment of lashing). This was definitely uncharted territory.

Stephens: This trial was fascinating. It was a challenge. I had to be on top of my game and couldn't miss a word. My opponent is a former prosecutor and speaks with authority and has a masterful command of the courtroom. What surprised me most was how she was able to humanize



Photo by Alissa Dragun

her side of the case. It was also a pleasure that we let each other present our respective cases. Not only did I have this incredible mix of legal and factual issues, I was litigating with a top notch family attorney who shares a similar respect for our rules of ethics and practicing with professionalism.

Crawford: Trying this case, while exhausting, was truly an incredible experience. The stakes were extremely high and the clients were both wound pretty tight. The case had the potential to be a complete blood bath. Stephens was a true professional at every stage of the game. Much to my dismay, he was able to effectively call my client's credibility into question. He didn't care for my client one bit, and I wasn't the biggest fan of his; however, we managed to remain civil and even have a little (ok, a lot of) fun along the way. It didn't hurt that we had a judge that was able to beautifully bring judicial professionalism and levity to a tense situation.

Stephens: The Court found the Wife was obedient and in good humor. The Court found the Wife had not committed adultery. However, we had some real problems. While the Court bought Crawford's legal argument and reduced the amount of gold coins owed, the award would have to take the form of a money judgment which

did not seem collectible. The only source for payment was the Husband's family. Under Florida law, I could not force his family to make the payment.

We were also faced with a second, more unusual problem: despite the findings by the American judge, the Iranian divorce was still pending and my client faced 99 lashes if her Husband prevailed. The parties could not be on equal footing in Iran, as the country is male-dominated. This was certainly something new for me. I've never had to factor my client's potential physical punishment into case strategy. Seemed like it was time to make a deal.

Crawford: The judge made some rulings in our favor and some against us. Much to our relief, the Judge reduced the amount of coins that were due from my client to the wife substantially. However, my client was still faced with the reality of having a judgment against him in an amount that exceeded his ability. While we all knew that a judgment against this guy was only as good as the paper it was written on, my client was absolutely adamant that he could not have a judgment for both personal and professional reasons. He wanted to work "something else out" with his now former wife. Despite an exhaus-

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