

## “Because it’s an Islamic Marriage” Conditions upon marriage and after divorce in transnational Dutch-Moroccan and Dutch-Egyptian marriages

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### Abstract

Spouses in transnational Dutch-Moroccan or Dutch-Egyptian marriages potentially get married in a foreign legal system or in two legal systems with significant differences with regard to, for example, marital property law and the regulation of divorce. One of the ways of dealing with the perceived risks and legal uncertainties of this situation is to include conditions in the marriage contract or a prenuptial agreement. This paper describes the experiences of spouses in Dutch-Moroccan and Dutch-Egyptian marriages with agreements upon marriage and after divorce. I will address the legal specifics and complications of marriage contracts and prenuptial agreements in a transnational context and the meaning of these arrangements for the participants in the research, analysing why some couples take a contractual view of marriage while others do not.

### Key words

Migration and Transnational Families; Law in Everyday Life; Marriage Contracts and Prenuptial Agreements; Islamic Family Law

### Resumen

Los cónyuges de matrimonios transnacionales holandeses-marroquíes y holandeses-egipcios potencialmente se casan en un sistema jurídico extranjero o en dos sistemas legales con diferencias significativas con respecto a, por ejemplo, la ley de propiedad conyugal y la regulación del divorcio. Una de las maneras de hacer frente a los riesgos percibidos y las incertidumbres jurídicas de esta situación es incluir las condiciones en el contrato de matrimonio o en un acuerdo prenupcial. Este artículo describe las experiencias de los cónyuges en matrimonios holandeses-marroquíes y holandeses-egipcios con acuerdos sobre el matrimonio y después del divorcio. La autora se refiere a los detalles legales y las complicaciones de los

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contratos matrimoniales y acuerdos prenupciales en un contexto transnacional y el significado de estas disposiciones para los participantes en la investigación, analizando por qué algunas parejas tienen una visión contractual del matrimonio, mientras que otras no la tienen.

**Palabras clave**

Migración y familias transnacionales; Derecho en la vida cotidiana; contratos matrimoniales y acuerdos prematrimoniales; Ley islámica de la familia

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## 1. Introduction

By concluding a marriage contract, prospective spouses can agree on the conditions of their married life and plan for eventualities, such as conflicts, death, or divorce. For transnational Dutch-Moroccan and Dutch-Egyptian families, the marriage contract also offers an opportunity to choose the legal system applicable to their marriage and to create a similar legal position and financial security in both countries. As the Netherlands on the one hand and Morocco and Egypt on the other hand have quite different laws with regard to maintenance and property during marriage and after divorce, the financial consequences of transnational marriage and migration can be hard to foresee. According to Macaulay (1963), in his famous article on business relations, a contract involves two elements:

- (a) Rational planning of the transaction with careful provision for as many future contingencies as can be foreseen, and (b) the existence or use of actual or potential legal sanctions to induce performance of the exchange or to compensate for non-performance (Macaulay 1963, p. 56).

In his analysis, Macaulay demonstrated how business relations can differ with regard to their "contractualness", both at the start of the contract and in case of disagreements or conflicts. In this article, I will demonstrate how similar differences in "contractualness" can be seen in transnational Dutch-Moroccan and Dutch-Egyptian marriages contracts and subsequent divorces. I aim to explain how and why spouses in transnational marriages have used contracts at the moment of marriage and divorce.

My analysis is based on 26 interviews with Dutch, Dutch-Moroccan, Egyptian and Moroccan men and women divorced from a transnational marriage.<sup>1</sup> In this research, a transnational marriage is defined as a marriage between spouses who have grown up in two different countries. This research group thus encompasses both mixed marriages between native Dutch and Moroccan or Egyptian spouses as well as so-called migration marriages. In this last category, a Dutch partner of Moroccan descent marries a partner from their parents' country of origin.<sup>2</sup> A secondary source of information in this research are the results of 35 interviews with other persons and organizations involved in transnational marriages and divorces, including lawyers and other legal professionals, NGOs, embassy staff, and translators.

While most interviewees in the research project had included some sort of conditions in their marriage contract, mostly concerning a sum of money to be paid by the husband to the wife, a *mahr*, only a minority carefully planned for eventual contingencies and used the possibilities to deviate from the standard legal consequences of marriage. Moreover, how and why those who included such conditions wrote their contracts differed. This article analyses how transnational couples make use of legal possibilities, which are also legal processes, at two important moments in their lives: marriage and divorce. I will argue that the use of contracts can be explained by spouses' perceptions of the risks their marriage entailed. This risk perception should be understood in the social context of the

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<sup>1</sup> The semi-structured interviews took place between 2009-2012 in Egypt, Morocco, and the Netherlands. The interviews lasted between one and four hours and were conducted in the best communal language of interviewee and interviewer (mostly Dutch, but also French, English, and Arabic). These interviews were part of a research project on transnational divorce in Dutch-Moroccan and Dutch-Egyptian families. This research project is part of a larger programme on family law and transnational families at the Radboud University in Nijmegen, coordinated by prof. dr. B. de Hart and funded by the Netherlands Organisation for Scientific Research (NWO).

<sup>2</sup> In the Netherlands these people are generally seen as second generation migrants or second generation *allochtonen*, consisting mostly of the children of the Moroccan and Turkish labour migrants who came to work in the Netherlands in the 1960s-1980s. Their marriages to spouses from their parents' country of origin (often called "import brides") are regularly presented as a problem, hindering integration in Dutch society. Several measures in immigration law have been taken in an attempt to limit marriage migration (Bonjour 2006, 2009).

marriage, including debates on transnational marriages and images and perceptions of Dutch, Egyptian, Moroccan family law.

Below, I will start with an introduction of the three legal systems and the possibilities for conditions upon marriage, introducing four types of marriage agreements; followed by a short theoretical framework of risk perception and transnational marriage contracts. Next, I will demonstrate the diversity in handling these possibilities by presenting three stories of spouses about concluding and ending a transnational marriage. Then I connect these three stories, each conducted at a different time and place, to the social contexts in which they took place, demonstrating the interconnectedness between individual experiences and choices and the social context in which transnational marriages take place.

## 2. Conditions upon marriage – possibilities in Egypt, Morocco, and the Netherlands

In Egyptian and Moroccan family law, which are both based on Islamic family law, it is possible to include different kinds of stipulations in the marriage contract itself or in an appendix.<sup>3</sup> In the Netherlands, marriage is less visibly a contract. Although couples receive a "trouwboekje" or marriage booklet as a proof of their marriage, they do not have a copy of an actual marriage contract, like in Morocco or Egypt. Instead, it is possible to sign a prenuptial contract before the marriage, which details the division of property and financial resources during and after the marriage, called *huwelijkse voorwaarden*. Such a contract needs to be made and signed before the marriage by a notary, and it can be quite expensive in more complicated cases.<sup>4</sup>

Four types of agreements can be made by transnational Dutch-Moroccan and Dutch-Egyptian couples at the moment of their marriage. First of all, interpersonal stipulations in the marriage contract can permit or prohibit certain behaviour of the spouses during the marriage. The marriage can be dissolved if these conditions are not met. Such conditions are legally possible in Egypt or Morocco but not in the Netherlands. Although both men and women can include such conditions in the marriage contract, most of these are included for the benefit of the wife.<sup>5</sup> A couple can choose, for example, to include stipulations that enable the wife to work, travel, or finish her education.<sup>6</sup> Another possible provision called *isma* (Egypt) or *tamlík* (Morocco) gives the wife equal rights to divorce, without having to go to court (Welchmann 2004, p. 71; Singerman 2005, p. 173; Jordens-Cotran 2007, p. 142- 152).<sup>7</sup> However, including such interpersonal conditions in marriage contracts

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<sup>3</sup> Although both the Moroccan Moudawana and the Egyptian Personal Status Laws are based on aspects of Islamic Family law, which is in itself a contested concept (see for example: Dupret 2007), there are significant differences between the Egyptian and Moroccan legal systems and I will generally discuss them separately.

<sup>4</sup> Based on a short comparison of websites of notaries, I estimate that the costs range from around €400-500 for the cheapest option up to €1000-1500 in more complicated (transnational) cases. It is also possible to conclude such a contract later, during the marriage, but that requires a more complicated and costly court procedure (Mourik and Nuytinck 2006: p. 112-117).

<sup>5</sup> This is, of course, also related to the fact that the husband already has easy access to divorce, and thus he has little use for including stipulations which would enable him to divorce more easily if one of the conditions is not met.

<sup>6</sup> These last stipulations are controversial among Egyptian women's groups and activists because they believe women already have these rights in Egyptian law (Singerman 2005: p. 173; Welchmann 2004: p. 71).

<sup>7</sup> According to Welchman, "The basic principle is that the stipulations may not make what is prohibited lawful nor what is lawful prohibited" (Welchmann 2004: p. 71). Permissible stipulations are for example that the couple will not move abroad or live with in-laws or that the wife can keep running her own business. However, the wife cannot stipulate that her husband will not divorce her, and the husband cannot demand that his wife will not have children or limit his obligation to maintain his family (Jordens-Cotran 2007: p. 142- 152; Welchmann 2004: p. 71).

is controversial in both Egypt and Morocco and is only used by a small minority (Singerman 2005, p. 173).<sup>8</sup>

A second type of agreement is concerned with the division of property. This can be relevant during the marriage but, in practice, even more so at the moment of divorce, when all property needs to be divided between two households. In the Netherlands, at the moment of marriage, all property and debts of both spouses becomes communal property. As such, the married couple becomes an economic unit, in which both partners share profit and loss, regardless of who performs economic or household tasks. According to Dutch private international law, Dutch property law is also applicable if a transnational couple has their first communal residence after marriage in the Netherlands, even if they married abroad. In 2009, in about one out of four marriages a prenuptial arrangement was made to deviate from this default-situation of communal property.<sup>9</sup> Several kinds of prenuptial agreements are possible. In 2009 almost 30% of agreements were based on the principle of *koude uitsluiting*, ("cold exclusion"), meaning that the property of both spouses remains completely separated.<sup>10</sup> All other agreements have some kind of mix between community and private property, for example that the property remains separated but that the spouses equally share their income (Schols and Hoens 2012). In Morocco and Egypt, on the other hand, a complete separation of the property of both spouses is the standard. In Egypt, couples cannot opt for any other division in their marriage contract. However, it is possible to include a list of property belonging to the wife, called an *ayma* (see Sonneveld 2009, p. 116-118). In Morocco, since 2004, the spouses can agree on a different division and use of property accumulated during the marriage. Just like the marriage contract, this agreement needs to be written by a notary, but in a document separate from the marriage contract.<sup>11</sup>

A third, also financial, form of agreement in marriage contracts is the *mahr* or *sadaq* (dower), an amount of money paid by the husband to the wife, which remains her personal property. In both Egypt and Morocco, the inclusion of a *mahr* in the marriage contract is a necessary requirement to make the contract valid, and thus it is not optional as is the case with the agreements discussed earlier. However, the amount of *mahr* paid is not prescribed, making it possible to write down only a symbolic amount. The *mahr* can consist of two parts, one part is paid at the moment of concluding the marriage, while the other part remains a debt to be paid by the husband in case the marriage ends (Jordens-Cotran 2007, p. 126-135).

The last form of agreement is the choice of law applicable to the marriage. In the Netherlands, couples can agree in their *huwelijkse voorwaarden* on which national law will be applicable to their marriage and in case of divorce. This is especially relevant for Dutch-Moroccan and Dutch-Egyptian couples because of the large differences between Dutch and Egyptian or Moroccan legal principles on the division of property during the marriage and other financial issues such as maintenance. However, in Morocco or Egypt such a choice of applicable legal system in the marriage contract is not valid. Moroccan or Egyptian family law is always applied to marriages in which a Moroccan or an Egyptian spouse is involved. After this introduction of the four categories of marital agreements possible in transnational

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<sup>8</sup> In research done in the early 1990s in Rabat, only 36 out of 1,503 marriage contracts were found to include stipulations, mostly a stipulation that the wife had the right to work outside of the house (Bouman 1992).

<sup>9</sup> As arranged in BW.01.93-113. These percentages include civil partnerships (*geregistreerd partnerschap*), which is equal to marriage with regard to property law.

<sup>10</sup> This seems to be a recent trend. Until 2003, the percentage was going down, with a low point of only 11%, while in the past, the number of cold exclusion arrangements was far larger, around 70% in 1970. After 2003, the number of cold exclusions went up again sharply. The researchers note that part of the difference may be related to a broadening of the definition of cold exclusion (Schols and Hoens 2012) (see also: Mourik and Burgerhart 2005; Mourik and Nuytinck 2006).

<sup>11</sup> Art. 49 Moudawana 2004.

marriages, I will now present a short theoretical framework on risk perception and marriage contracts.

### 3. Risk perception and transnational marriage contracts

Mahar (2003) and Baker & Emery (1993) have tried to explain a relative lack of prenuptial agreements by studying risk perceptions focusing on the risk of divorce. Baker and Emery found that respondents, despite a fairly accurate perception of the divorce risk, and the consequences of divorce in general, still displayed "unrealistic optimism" about the chances of their own marriage ending in divorce or of the consequences of divorce in their own case (Baker and Emery 1993). Mahar also found an "optimism bias", a belief that the marriage will last, and a fear of signaling uncertainty about the marriage when insisting on a prenuptial agreement (Mahar 2003).

While the perceived risk of divorce may play a role in taking a more contractual view of marriage, taking precautions for eventualities by writing a contract, this does not adequately explain the *content* of the contract. As has been demonstrated above, spouses in transnational marriages can conclude several kinds of contracts, including a wide range of possible arrangements. As the cases below will illustrate, marital contracts in transnational marriages did not just include provisions for the eventuality of divorce, but they also involved agreements relevant during the marriage. By focusing just on the risk of divorce and the presence of a prenuptial contract, the widely different contents of these contracts are easily overlooked.

In this article, I argue that it is the context of the marriage which is of crucial importance to understand how and why spouses in transnational families have made use of the possibilities to include conditions in their marriage contract. Studies dealing with public risk perceptions of environmental hazards and new technologies have demonstrated how the social, cultural, and historical context is important for risk perception (Jasanoff 1998). Kasperson *et al.* (1988) have developed a conceptual framework, "the social amplification of risk", describing how risks can be socially amplified as well as attenuated. Powerful means of amplification are the use of symbols and the communication of risk messages through media and informal networks (Kasperson *et al.* 1988). Framing is an important part of this process. According to Jasanoff:

[a risk discourse] *frames* the world, so that users of the discourse are systematically alerted to certain features but desensitized to others. Such frames in turn delimit the universe of possible scientific inquiry, political debate, and policy options; yet they remain in many ways invisible to people operating within the frame. (Jasanoff 1998, p. 96)

Below, I will argue that the particular frames available for the risks of transnational marriages depend on the context of the marriage and divorce. As to place, these contexts can be divided into three distinct elements: time, place, and distance. The marriages and divorces in this study took place in three countries and in different regions within those countries. These *places* are distinguished by significant differences with regard to discourses on mixed or migration marriages and perceptions of the Other, but they are also distinguished by the practical opportunities and legal information available for transnational couples. Practical opportunities also change over *time*, connected to the history of Moroccan and Egyptian migration to the Netherlands and legal measures taken to limit marriage migration. Discourses on mixed and migration marriages also shift over time, as do legal rules and regulations. Partly as a result of place and time, the physical, social, and cultural *distance* between the spouses in transnational marriages can vary, forming the third context in which spouses in transnational marriages handle law during marriage and divorce. This perception of distance is an important aspect of risk perception in transnational marriages and informs the distinction between the two main groups in this research project: mixed and migration marriages.

According to Waldis, all marriages contain aspects of sameness and difference, and it is only those differences that are marked as significant which make a marriage mixed (Waldis 2006, p. 3). The main marker of difference between the two categories of marriages in this study is ethnicity, which also includes elements of religion and culture. While marriages between native Dutch spouses and Moroccan or Egyptian spouses are being seen as mixed, in so-called "migration marriages", spouses marry someone from the same ethnic group, sometimes even the same extended family or village, but from another country. These last marriages are transnational but, from the perspectives of the spouses and of Dutch society, they are not "mixed". The perceived cultural distance between the spouses is especially large in Dutch-Egyptian and Dutch-Moroccan mixed marriages, where images of Orientalism and Occidentalism polarize "Western" and "Islamic" societies and culture. As will be demonstrated below, distance is an important factor in how spouses in transnational marriages deal with their marriage contract; mixed marriages in this study were generally more contractual than migration marriages.

#### 4. Dealing with insecurity and risk – contracting a transnational marriage

Most interviewees did not have a very contractual approach at the moment of marriage. However, there were some important differences between the different groups represented in this research. Whereas the *mahr* was important in mostly Dutch-Moroccan migration marriages, interpersonal conditions were more of an issue in mixed marriages. Aiming to show the diversity of arguments for the different kinds of conditions and the contexts and circumstances in which these are made, I have chosen to focus on three stories of spouses who expressed something about their choice in the interview. All of the three stories I present here are told by women, two of them native Dutch women living in the Netherlands and a third a Moroccan woman that moved to the Netherlands after her marriage to a Dutch-Moroccan man. Although it was not a deliberate choice to focus on women's stories, the subject of marital conditions was mostly discussed by female respondents. This is not surprising considering that most stipulations are considered to be there for the benefit of the wife, especially in Egyptian or Moroccan marriage contracts. Female respondents are also overrepresented in my research project.<sup>12</sup>

Below I will introduce the stories of Eva, a Dutch woman who married her Moroccan husband Ayman in the Netherlands in the 1970s; Inge, a Dutch woman who married her Moroccan husband Hicham in Morocco in the 2000s; and Rabia, a Moroccan woman who married her Dutch-Moroccan husband Mo in Morocco, in the 1970s.<sup>13</sup> I will present these narratives from the perspectives of the interviewees.<sup>14</sup> Next, I will further analyze and compare these three stories and connect them to ongoing debates in Dutch society with regard to Islamic family law, migration marriages, and mixed marriages.

##### 4.1. Eva – A mixed marriage from the 1970s

Eva met her husband Ayman in the Netherlands, where they were both doing voluntary work in the early 1970s. She was studying at that time, while he had broken off his studies in Morocco to find work in the Netherlands. They fell in love and started living together, but they took a long time to decide whether they would marry:

We did not reach a decision about getting married just like that. We were very much in love with each other, but we also saw many problems surrounding mixed

<sup>12</sup> Out of 26 interviews with divorced spouses only 5 respondents were male. Although I have tried at length to include more stories of men in my research, I had serious difficulties in finding men who had been in a transnational marriage and were willing to participate in the research project.

<sup>13</sup> All names and some details of the stories have been left out or modified to prevent recognition.

<sup>14</sup> As I have only interviewed one of the spouses, these are one-sided stories by default. Had I interviewed their former husbands instead, I would probably have collected a different, though equally interesting, set of narratives.

marriages. [...] Well, there were moments we thought that we should not do it [getting married], it is not wise, considering everything we saw happening with acquaintances, but we were also so attached to each other that we thought we should just try.<sup>15</sup>

Eva and Ayman knew many mixed couples, both personally as well as professionally. Based on those experiences, they perceived the risk of divorce as serious. When they eventually got married, they prepared the legal aspects well. They used their Dutch and Moroccan networks to gain information about the legal aspects of transnational marriages, both in the Netherlands and in Morocco. Although they married and made their prenuptial agreement in the Netherlands, they chose French as a language and chose for Moroccan law to be applicable to their marriage. Their main aim was to make a contract "which would not be open to misinterpretation in either country". Because of earlier experiences with Dutch law Eva distrusted the way the Dutch legal system handled mixed marriages:

[...] I noticed from all the mixed marriages I knew that Dutch law handles them rather oddly. We were asked at the town hall [at the moment of marriage] if we were going to raise our children in Islam. I said: "that's none of your business". [Town Hall administrator:] "Well, I need to know whether there will be a second nationality". [...] But we wanted our children to choose their own nationality once they became 18 years old. [...] The fact that Dutch women could not pass on their nationality to their children at that time deeply offended me, how old-fashioned our Dutch law is!<sup>16</sup>

By including all the Moroccan requirements for a valid marriage, Eva and Ayman aimed for a prenuptial agreement which would be clear for both legal systems, avoiding problems of interpretation later on. This decision was partly informed by the experiences of other mixed couples in their environment, which negatively influenced their perception of Dutch law and mixed marriages. Interestingly, while Eva felt offended by the gender inequalities in Dutch nationality law at the time, she did not mention similar gender inequalities in Moroccan nationality or family law as being objectionable; her experiences and worries all concerned Dutch law.

I: Did you have the contract acknowledged or registered at the consulate?

Eva: No. We made a French contract *onder huwelijkse voorwaarden*, in which it was clear that my father was the *wali* [marriage guardian] and I would have a dowry, yes, that looked like the phrases in Moroccan style.<sup>17</sup> But we particularly married for the Dutch law. [...] In the end we did not need it [the contract], because we divorced in the Netherlands. But even then we thought, there is a difference in law between Morocco and the Netherlands, and we did not want to agree on something here that would be interpreted differently there. And the other way around as well. We did not want to agree on something that would be interpreted negatively in the Netherlands. So we did what was possible, necessary, to make something valid in Moroccan law at that time, and we took that into account in this French-language contract. With separated property, my father was *wali*. It just missed mentioning I was not a virgin, you know, those kind of things. But it did mention that I had I right to travel to my parents, travel to Europe, a right to work. You can see that there, each spouse had their own private property, while we in the Netherlands pretend you always automatically have to share everything.

Eva describes her marriage as "particularly" for Dutch law. She and Ayman choose to marry in the Netherlands, but they based their prenuptial agreement on Moroccan family law, in an attempt to reconcile both legal systems. Interestingly, however, the marriage was never actually registered with the Moroccan authorities. This is remarkable considering Eva's and Ayman's intent to conclude a marriage

<sup>15</sup> All three interviews were conducted in Dutch. Interview fragments have been translated by the author. I have tried to keep as close to the original text as possible, but some editing has occurred to improve clarity for the reader.

<sup>16</sup> At the moment of Eva's marriage, Dutch women were not able to pass on their nationality to their children. This was changed in 1985. Morocco made similar reforms in 2007.

<sup>17</sup> A *wali*, or marriage guardian, used to be obligatory when concluding a Moroccan marriage.

contract which was equally valid in both countries. Furthermore, Eva also shows a preference for some aspects of Moroccan family law over those of Dutch law, such as the separation of marital property. However, she also slightly ridicules the contract by joking about virginity.

Eva and Ayman also included a *mahr* in their Dutch prenuptial agreement:

I: In the beginning [of the interview] you mentioned having made arrangements for a dowry?

Eva: yes.

I: Was it registered and paid right away; how did you arrange that?

Eva: In the [marriage] contract it should be, at least according to the Moroccan norms of that time, mentioned whether a dowry is involved. Ayman had bought an encyclopedia from a colleague. It had cost him an arm and a leg and he was very fond of it. [...] He was the one who bought it from a colleague, it was his. But he thought it would be a good, symbolic dowry for me. Because it then would not be about the money, but just about, well, a symbolic value, highlighting my scientific side.

In an attempt to reconcile Dutch and Moroccan norms on *mahr*, Ayman creatively chose a present for his Dutch wife-to-be that pleased her and would be acceptable legally as well as socially in both countries.

The marital agreement did not just have a legal significance for Eva. On a more personal level, Eva also sees this contract, including many interpersonal stipulations, as a reflection of an agreement about their marital relationship.

It shows that we ... just wanted to be together, realizing that you are living in a society which attaches expectations to that, and those can differ between Morocco and the Netherlands. I mean, this is of course the legal consequence of the fact that we conferred a lot, also in other areas.

Eva wanted to take precautions for the risk of mismatched expectations based on societal differences between the Netherlands and Morocco. She described the careful discussions on the stipulations in the agreement as symbolic of their marriage.

After five years of marriage, Eva and Ayman were doubting whether their relationship could bear raising children. They decided it would not be wise to start a family together and they filed for divorce. Again, this divorce was very much a united affair, carefully considered and discussed. For example, even though they had chosen for separated property at the moment of marriage, they equally split their belongings at the moment of divorce, based on personal need:

R: We divided the property. It was clear he needed this, I needed that. [...] We could quite easily separate the things. We had agreed together like, you will get this many chairs, I will get that many, I'll get this many tables, you'll get that many, I'll take the *Friese* clock, you'll get the little bible... The photos we divided equally, agreeing that we could always get copies of each other's photos.

To Eva's surprise, after their divorce, Ayman insisted that she kept the encyclopedia:

And well, it was in the contract, so when we separated I suddenly got the encyclopedia. And I thought he could use it far better than I could, but no, he insisted; "this is yours". And it was a nice thing to have, of course.

As it was Eva's *mahr*, the encyclopedia already became legally hers at the moment of marriage. However, as Eva and Ayman took needs instead of rights as the main principle when dividing their marital property, Eva felt that Ayman should have kept the encyclopedia.

Thus, while Eva and Ayman's marriage was very contractual and friendly while carefully planning for eventualities and possible risks, their divorce was far less

contractual. Even though they had intended to reconcile Dutch and Moroccan family law in their marriage, they never had any actual contact with Moroccan family law. In the end they split property based on need and fairness, in a very non-contractual way. Their carefully drafted prenuptial agreement was never actually put into action, except for the *mahr*.

#### 4.2. Inge

Inge met Hicham on a holiday in Morocco, in 2005. It was love at first sight, and at the end of the holiday Hicham started to discuss marriage. Inge was happy to accept the idea:

For me, it really felt right. I did not have the impression that he had other intentions. It was just, well, love at first sight. It felt right. But then I had to return home, because of my plane ticket. And I said: I'll try to come again very soon.

A few months later Inge returned to Morocco and started to arrange the marriage. She collected information from the Dutch embassy in Rabat and spent time at several Dutch institutions to collect all the paperwork for the marriage, which took place in Morocco a few months later. They celebrated a small ceremony in the presence of Hicham's family. As a *mahr*, Hicham gave Inge a golden coin, a traditional gift according to Inge. While preparing for the marriage, Inge also tried to gain more in-depth knowledge of Moroccan family law. She bought a Dutch translation of the Moroccan family law *Moudawana*, and she searched the internet for information. Based on this information she took special care writing the marriage contract:

I: Did you have any special conditions in the contract?

R: Yes. I included certain conditions with regard to divorce, second wife. Let's see, to be free to work, free to travel, and I included a stipulation that, in case I die, part of my money would be for my children. I have got two sons in the Netherlands. Otherwise, everything would go to my husband's family, because it is an Islamic marriage. So I sorted out everything well beforehand, gained more in-depth knowledge of the law. I indeed bought a readable book in the Netherlands to see what all the rules are like, for men and women. There have been reforms that women get more rights if they marry.

In planning for the risks of her marriage, such as death, Inge focussed her orientation on Moroccan family law. The text on inheritance in Moroccan family law is a long and complicated enumeration of all kinds of family members, from which Inge easily could have gotten the impression that her husband's family would inherit everything. However, from a legal perspective, the stipulation about inheritance does not make sense in Morocco. As Inge was a Christian, Hicham, a Muslim, could not inherit anything from her.<sup>18</sup> And even if they had been of the same religion, he would only have inherited a small part of her property, the rest would have been inherited by her children and *her* other family members. In either case, the family-in-law would not inherit. Moreover, as they were planning to live in the Netherlands, and as Inge's property was located there, Dutch inheritance law would have been applicable. In the Netherlands, Hicham would inherit all property upon her death. Her children could claim their shares only after his death, if any of the property was left by then.<sup>19</sup> Thus, to make sure her children would inherit, Inge should not have included stipulations in her Moroccan marriage contract, but she should have made a Dutch will.

After the marriage took place in Morocco, Inge registered the marriage in the Netherlands and started the necessary migration procedures to have her new husband come to the Netherlands, where she had her business. During the immigration process, Inge began to have some doubts about her marriage. After

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<sup>18</sup> Art. 332 Moudawana 2004.

<sup>19</sup> Art. 4:13 BW.

discussing moving to Morocco and starting a new business, Hicham asked her to buy a house for them in Morocco:

But then he came with two apartments. He said: we could let out one and live in the other. [...] They were very nice houses by the way, but I got the impression that he was figuring out how much money we could dispose of. And that did not feel good to me.

Apparently, Inge had not shared information about her financial situation with her husband, keeping their finances entirely separated. In the context of a substantial difference in wealth between Inge and Hisham, Inge was suspicious of Hisham's intentions when he wanted her to buy a house. After this first incident, a second incident happened, which strengthened her doubts about the marriage:

Then he had bought something and asked me for money. And from that moment I had the idea that this did not feel right to me. [...] In the [sic] Islam, it is absolutely not permitted that a husband asks his wife for money, right, to make a certain purchase for him. So that did not feel right to me. I gave him the money, it was 300 euro, so it did not run into thousands right away. It was very strange for me. I asked him: is something wrong? You never asked me for money. You have always provided for yourself. We are trying to build something together, and this is very unfortunate. It just did not feel right to me.

Inge felt Hicham's request for money was improper. Even though they were married, she still expected ongoing financial independence from Hicham. She refers to an "Islamic" notion of men not being allowed to ask their wives for money, possibly based on the concept that in Moroccan family law husbands are responsible for maintaining their wives and children, keeping the wife's property separate.<sup>20</sup> Interestingly, once Hicham would have migrated to the Netherlands, Dutch law would have become applicable to their marriage, meaning that they would have been married under communal property, as they had made no prenuptial agreement in the Netherlands. Furthermore, Inge would have been responsible for Hicham's upkeep. After this incident, Inge stayed away from Morocco for a few months before visiting Hicham again. In the meantime, she got the news that her application for a Dutch residence permit for Hicham had been rejected. According to Inge, this news was a real turning point in their relationship.

And from the moment I told him that the visa was called off he withdrew himself enormously. Then I tried again at the IND [Dutch immigration service], which also cost a lot of money to get started. I registered the marriage [in the Netherlands]. I really meant to make it a successful marriage. But it must be a two-sided affair.

As Inge had already invested a lot in this marriage, both emotionally as well as financially, she decided to spend the summer in Morocco, with her children, and give her marriage a last chance. During their holiday together, Hicham withdrew into himself a lot. Inge decided that she wanted a divorce. Together with the demand for money, Inge seems to consider this to be a sign that, for Hicham, this was not a "real" marriage, referring to an ideal of marriages based only on love, to the exclusion of other motives.

Inge did not tell Hicham about her divorce plans right away. Before leaving for Morocco she had discussed her marital problems with a Moroccan friend. She had warned her about the consequences of leaving Hicham:

My friend warned me: be careful if you want to finish [the marriage]. Because, if you tell him you want to finish when you are there, he can make sure you are arrested at the border and put into prison. So I did not say anything and went home.

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<sup>20</sup> However, Article 199 of the Moudawana of 2004 reads: "In the event the father becomes wholly or partly unable to pay maintenance to his children, and the mother is affluent, the latter shall become responsible for their maintenance in proportion to the amount the father is unable to pay" (Translation: HREA 2004).

In Moroccan law, Hicham had no rights to have his wife arrested for leaving him. He could also not stop her from travelling abroad.<sup>21</sup> Still, Inge felt this warning presented a real danger, and she only told him she was going to leave him after she had safely returned to the Netherlands.

After her return to the Netherlands she contacted a lawyer specializing in Dutch-Moroccan divorce cases who arranged a Dutch divorce for her. As they had never lived together in the Netherlands, their property had remained separate, and no maintenance had to be paid. For Inge this was self-evident; she never considered that things might have been different had they already been living together in the Netherlands. After migration, Dutch law would have been applied to their marriage and she would have had to pay maintenance to Hicham for some time and share half of her property, including her business, with him:

I had no obligations towards him, because, in that sense, he never had anything of me, nor I anything of him. We did not own a house in Morocco. In fact, apart from losing my money, I escaped unscathed.

In the end, their marriage had lasted a year and a half. At the moment of the interview, several years later, Inge now doubts Hisham's intentions when getting married. She feels he changed completely after they got married and especially after the application for the Dutch residence permit failed. Looking back on her marriage, she now fears it was "all about the residence permit" after all. The fact that he asked her for money was, according to Inge, a strong sign that it was not a "real marriage" for him. Inge still fears that she will be arrested and put in prison if she visits Morocco, as she is divorced in the Netherlands but not in Morocco. She has made digital copies of all the divorce papers and emailed them to Hicham, but she does not know whether he actually arranged for the recognition of the divorce in Morocco. She now believes she will never again be able to visit Morocco safely.

Thus, even though Inge had a very contractual approach to her marriage, the marriage contract was of little use when arranging the divorce. The precautions she took all concerned possible conflicts or problems during the marriage or the eventuality of death, not divorce.

#### 4.3. *Rabia*

Rabia was studying when she met her Dutch-Moroccan husband Mo, in the 1970s in Morocco. Mo was visiting mutual friends for a summer holiday. Rabia liked him a lot, as he was such a nice and funny man, and at the end of the summer they decided to get married. Mo went back to the Netherlands and would come back to Morocco for the marriage. Even though Rabia's family objected to Mo, as he wanted to marry without having money, Rabia and Mo married later that year. In their marriage contract they agreed on a mahr of 500 gulden.<sup>22</sup> Mo would buy furniture from the money, which would then be Rabia's property.

At that time, Mo was aiming to start a new business in Morocco. After their marriage, he went back to the Netherlands to prepare the business, while Rabia stayed in Morocco to finish her studies. Their first child was also born in Morocco:

I had my job, and he would run the project. But in the end he did not have money to run the project. He was just having fun. He did not have a foundation to build on.

Mo's failure to keep his promises was a recurring theme in Rabia's story. After it was clear that the project to return to Morocco had failed, Rabia decided to move to

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<sup>21</sup> In the old Moroccan Moudawana (1957/1958) a legal obligation of obedience of the wife to the husband existed, which entailed living in the marital home. Contrary to what many people think, this does not give the husband the right to have his wife arrested and brought back to him. Legally, the only possible penalty for the wife consists of suspending her rights to maintenance, and this can happen only after she ignores a court order to return to the marital home (Art. 123 old Moudawana).

<sup>22</sup> Dutch currency at the time. 500 *gulden* is approximately 225 euro.

the Netherlands with their child, as she did not believe in long-distance marriages. Her arrival in the Netherlands was a big disappointment for her:

When I arrived, I was surprised. Because I thought he had a job. Well, I was quite naive, despite my education. [...] In Morocco, someone working abroad sounded like a lot. But that was not the way it was.

In the Moroccan context, in which men working abroad are considered to earn a lot of money, Rabia trusted Mo's promises and did not consider the marriage a financial risk. Thus, Rabia was taken aback when the furniture which had been promised in her marriage contract turned out not to be there. Mo did not even own a bed. A few months later the couple was so poor they lacked the money to buy food for their child. Rabia started to learn Dutch, and after their second child was born, she started to look for a job. After she found good employment, Mo worked for a few more months, and then he quit his job. While Rabia was working fulltime and taking care of a growing number of children, he spent his time sleeping, drinking coffee, and gambling. Mo turned out to be a very controlling husband, and Rabia led an isolated life. Through her work, she quickly learnt to speak Dutch fluently, and her language skills eventually surpassed those of Mo, even though he had lived most of his life in the Netherlands.

After several years of marriage, Mo wanted to start a new business abroad. Rabia took out a loan in her own name to finance the start of Mo's new business, and she continued to live and working in the Netherlands with the children while Mo moved abroad to start his business. They had some arguments and she grew suspicious. She took the children with her and went to see Mo. She discovered that Mo was having an affair with one of the employees of the new business. Devastated with grief, she returned to the Netherlands. Back home, she was confronted with a financial chaos. Mo had always been handling the accounts, and it turned out the family was in severe debt. Mo had neglected to pay the mortgage on the family home for some time, and Rabia was at the point of losing the house. Rabia went to work immediately, and step by step she managed to pay off all the debts over a period of six years. Meanwhile, Mo refused to have any contact with her or the children:

That man had only greed for money. No love or something. Then I had patience, hoping he would miss the children, that he would visit. But that was not the case. He did not call, he did not visit. So he left everything behind and forgot. That's why I went on with my job, with the life I tried to build.

Rabia kept hoping that Mo would come back to her and the children for a while, but after a year she decided to apply for a divorce in the Netherlands. Mo did not respond to the procedure. Rabia was not completely happy with the results of the Dutch divorce procedure.

R: Afterwards I discovered the verdict was not clear to me, that I did not agree on several points. Still.

I: What kind of things?

R: The amount of maintenance. The house I paid for myself. They said that, if I sold it, I need to repay him part of the money. While the value increased every year. From the beginning I was the only one working, the only one paying. He is out of the picture and does nothing. But still a part of the sum has to go to him.

I: Even now, if you would sell it?

R: Yes

I: And will you do that, if you ever sell?

R: I don't know. [laughs] I don't know.

As Rabia and Mo first started living together in the Netherlands, and they did not make a Dutch prenuptial arrangement, Dutch family law was applicable to the

division of property. This meant that all debts and property would have to be divided. As Mo was abroad, Rabia paid off all the debts herself and never received any maintenance. However, from her conversations with her lawyer and the court documents, Rabia got the impression that, if she ever sold the house, she would still be obliged to share part the profit with Mo, something which she resisted, as she had been paying for the house on her own. After the Dutch divorce, Rabia did not register it in Morocco, even though Moroccan courts could have been used to force Mo to pay maintenance for his children. Rabia could not spare the time or money needed to travel to Morocco to arrange for a divorce procedure.<sup>23</sup>

Rabia and Mo did not have a very contractual approach to their marriage, and Rabia saw little financial risk in marrying a husband living in the Netherlands. As Mo was absent and debts were a problem, Rabia was forced to take a legal, contractual, approach to their divorce, letting the court decide on financial arrangements and the division of property. However, these decisions did not fit her sense of a fair arrangement, and she considered just to avoid paying the amount she thought Mo was entitled to after she sold the house.

## 5. Framing risk in transnational marriage

These three stories about contracting and dissolving a transnational marriage can be better understood when looking at the contexts in which the marriages were concluded. In a context of differences between the Netherlands and Morocco, Rabia did not see her marriage to a man working in the wealthy Netherlands as a great financial risk. The differences between the stories of Eva, who married in the 1970s, and Inge, who married in 2005, both of whom took a very contractual approach to the marriage, could be partly explained as a result of a shift in public discourse from a focus on mixed marriages as a problem later to a focus on Muslim men as a problem. Whereas Eva worried, together with her husband, about the stability of mixed marriages and tried to protect herself against the possible interactions of the legal systems, Inge worried about concluding an "Islamic marriage" and tried to protect herself against the perceived privileges of men in Moroccan family law. In this section, I will go further into the social developments and Dutch debates regarding mixed and migration marriages that inspire these positions below, starting with the guest workers in the 1970s and a discourse of cultural difference. Then I will discuss the welfare differences between Morocco and the Netherlands and the issue of marriages of convenience. Lastly I will address the still-popular new realism discourse, in which Islam is seen as the main problem.

### 5.1. Guest workers and concerns about mixed marriages – the 1970s

When Eva met Ayman, he had already been living and working in the Netherlands for some time. Moroccan migration to the Netherlands started with a demand for foreign workers in the 1950s and 1960s. Companies recruited personnel from Southern Europe in the 1950s and Morocco and Turkey in the 1960s. Migration streams consisted mainly of young men, some of whom married Dutch women. Initially, their presence was seen as temporary, using the term *guest workers*, and settlement in the Netherlands and family reunification was restricted (Bonjour 2006, p. 4-5).

According to Hondius (1999), cultural difference was the main focus with regard to mixed marriages in the 1970s. Moroccan migrants were generally seen as poor men, victims of their circumstances, and not as a threat. Mixed marriages were the target of social aid, focussing explicitly on teaching Dutch women how to deal with cultural differences. In her research, and in her story, Eva, who married in the 1970s, focuses not so much on her husband being Moroccan or Muslim, but on their

<sup>23</sup> Rabia's divorce took place before the new Moroccan Moudawana of 2004 came into force. Before 2004, the recognition of a foreign divorce was a complicated procedure.

marriage being mixed. Having seen other mixed marriages fail, Eva expected problems in the interaction of family law systems. She seemed to consider Moroccan family law not so much as threat or something to protect herself against. Instead, she aimed to reconcile their legal situation in both countries, aiming at a contract which would be acceptable in both legal systems. Eva and Ayman saw the fact that their marriage would be a mixed marriage as the main risk and that two different legal systems might not handle their marriage in the same way. Therefore they oriented themselves both towards the Moroccan and the Dutch system, and in particular their possible interactions.

### *5.2. Differences in prosperity and marriages of convenience*

A recurring theme in the stories of Rabia and Inge concerns the differences in prosperity between the Netherlands and Morocco. In Morocco, the Netherlands was seen as a very wealthy country, and a husband working there was considered to be a good prospect financially. Thus, unlike Eva and Inge, Rabia did not seem to consider her transnational marriage a risk from which she should protect herself in a marriage contract. As she expected her husband to make good money in the Netherlands, she did not worry too much about the *mahr* in her marriage contract. Only when Rabia divorced did she first come into contact with Dutch family law, to which she had not given much thought until that moment. She was disappointed by this contact, as she considered the outcome to be unfair. Divorcing in the Dutch legal system, with its gender-neutral wordings of law, did not benefit her.

For the Dutch or Dutch-Moroccan spouses in transnational marriages, marrying a foreign spouse will often mean providing someone from an economically less-favourable environment with the means to migrate to the more wealthy Netherlands. If money becomes an issue, this seems to exclude the presence of "real" love. This notion of love as excluding all other motives for marriage has a strong presence in the Dutch context of transnational marriages. While both Rabia and Inge refer to their former husband not "really" loving them after all and having financial motives instead, an important difference between their stories is their access to Dutch residence. During the 1970s, a transition took place in Dutch migration policy. In changing economic circumstances restrictive measures were introduced to limit labour migration (Bonjour 2006, p. 6-8). Dutch policymakers started fearing marriages of convenience, by which they meant labour migration disguised as marriage migration. De Hart, for example, describes how Dutch civil servants, involved in executing immigration policies on marriages of convenience separate "real" marriages from marriages of convenience. A real marriage is solely based on love, without any other motives involved (de Hart 2003, p. 127-129). Eggebø (2013) and Fernández (2013) have also demonstrated the importance of such migration procedures in the stories of transnational couples, who relate their descriptions of love to the image of a marriage of convenience.

Looking back on her marriage, Inge interprets several actions of Hicham as "evidence" that her marriage might not have been a "real marriage" for him, such as his withdrawal after the migration procedure failed and his request for money. This line of reasoning was used by several others in this research and can also be found on, for example, internet forums for Dutch living in Egypt. In this gendered narrative, Muslim husbands "should" pay for their wives' expenses because of Islam, custom, or family law. Their failing to perform this male provider role is seen as a sign that they are not proper, loving, husbands but married for the sole purpose of financial or visa reasons. It is remarkable that, through such a gendered frame, even if Egyptian or Moroccan husbands are very poor compared to their Dutch wives, proof of "real love" is closely connected to the male provider role.

### 5.3. New realism discourse – Islam as a problem

Since the 1990s, Muslims, and especially Moroccan migrants, occupy a particular position in politics and the Dutch media. Moroccan migrants and their children have often been at the centre of the public debate, focusing on issues of gender inequality and juvenile delinquency. In this discourse, Muslim women have taken centre stage as victims, while Muslim men are seen as perpetrators, both with a large distance from society: "[...] Dutch laws and customs particularly conflict with the privileges of immigrant (i.e. Muslim) *men*. Immigrant (i.e. Muslim) *women*, on the other hand, were depicted as 'victims' of their own culture, and as having a self-evident interest in their integration into Dutch society" (Prins and Saharso 2008, p. 368). Similarly, Roggeband and Verloo have shown how, as a result of parallel shifts in gender equality policy and policy frames on the integration of ethnic minorities between 1995 and 2005, Muslim women were singled out as a "group in particular need of emancipation" (Roggeband and Verloo 2007, p. 286). As Prins and Saharso (2010, 2008) have described, with regard to migration and integration, a public discourse of "new realism" has emerged and has quickly become mainstream. In this highly gendered discourse, a backlash against multiculturalism, public policy, and social debates should depart from a non-nonsense, frank discussion of the problems ordinary people have with Muslims living in the Netherlands, leaving behind "old taboos" like racism (Prins and Saharso 2008, 2010, p. 74-77).

Islamic family law occupies an important place in such current political debates, generally portraying Islamic family law as dangerous for women. Opponents generally use the Arabic term *sharia*, which has strong connotations of extremism and violence. Following requests from parliament for information, members of the Dutch government ordered research into issues related to Islam and the law. Research was undertaken on topics like *sharia* courts and alternative dispute resolution for Dutch Muslims (Bakker *et al.* 2010), forced marriages (Koning and Bartels 2005, Ratia and Walter 2009), informal Islamic marriages (Leun and Leupen 2009) and polygamy (Boele-Woelki, Curry-Summer and Schrama 2009). The connection with debates on the integration of migrants is clear from the selection of the subjects of these research projects, issues which are far removed from the everyday life of most Dutch Muslims.<sup>24</sup> In 2012, the controversial right-wing politician, Geert Wilders of the Freedom party (PVV), in a typical example of the new realism discourse, called for a ban on the application of *sharia* by Dutch courts through private international law because of gender inequality.<sup>25</sup>

Thus, since the 1990s, mixed marriages between a native Dutch woman and a native Egyptian or Moroccan partner were mostly seen as problematic because of the husbands being Muslim. In the Netherlands, there is a strong *othering* of especially Muslim men as being problematic. Kamminga (1993) has done research on the representations of mixed relationships in the Dutch media. Dutch and foreign men and women are ascribed different positions and motives. Especially marriages of Dutch women and (foreign) Muslim men are seen as a problem. In these marriages representations of power relations between native and foreign men and women collide (Kamminga 1993, p. 34-35). Hondius also notes that frightening stories and negative representations concerning mixed marriages in the Dutch media concern nearly exclusively Dutch women married to men from Muslim countries (Hondius 1999, p. 177). Many of the interviewed women in the present study reported that their friends and families were worried or disapproving of their choice of husband.

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<sup>24</sup> I would like to thank my colleague, Friso Kulk, for drawing my attention to these research projects as an illustration of the public debate on Islamic family law and its preoccupation with integration issues.

<sup>25</sup> PVV website, [Uhttp://www.pvv.nl/index.php/component/content/article/36-geert-wilders/4316-creeping-sharia.html](http://www.pvv.nl/index.php/component/content/article/36-geert-wilders/4316-creeping-sharia.html)U, accessed on 7 August 2012.

Considering this Dutch context, it is not remarkable that Inge, similar to other Dutch women in the research who got married in the 2000s, took care to gain knowledge of Moroccan family law. Inge focused exclusively on the risks of Moroccan family law, framing her marriage as an "Islamic marriage". She uses her marriage contract to protect herself and her children from some of the perceived risks of Moroccan family law, mostly its gender inequalities. Inge made considerable effort to prepare herself for a marriage in Morocco, reading the Moroccan family law, searching information on the internet and contacting the Dutch embassy in Rabat. The popular negative perceptions of Islamic law as risky made Moroccan family law something to be aware of. This focus on Moroccan or Egyptian family law as problematic for women does not leave much room for critical consideration of Dutch family law. Through the *othering* of these foreign family law systems as being dangerous for women, Dutch family law is implicitly constructed as "safe". It is ironic that the legal consequences Inge wanted to prevent might have happened anyway if Hicham would have migrated to the Netherlands, not because of Moroccan family law, but because of Dutch family law.

## 6. Conclusion

In this paper I have discussed the possibilities for conditions upon marriage in transnational marriages and why and how spouses in transnational Dutch-Moroccan and Dutch-Egyptian marriages have made use of these possibilities. By retelling the stories of Eva, Inge and Rabia, I have demonstrated the importance of risk perceptions for how and why spouses handled the contractual aspects of their marriage. The social context in which these transnational marriages take place labels some of these marriages as "mixed" and others not, and labels some mixed marriages as potentially problematic while others are not. I argue that it is this framing of the marriage which informs how some spouses in transnational marriages consider the legal aspects of their transnational marriages. Moreover, the context of fear of marriages of convenience combined with a focus on love as an exclusive marriage motive also provided a frame for action with regard to the inclusion or absence of conditions in the marriage contract.

In the Dutch context, time plays an important role in this process. As we have seen in this article, there is a shift in public debates from attention to cultural differences in general to a focus on the negative aspects of Islam and Islamic family law. When comparing the stories of Eva, married and divorced in the Netherlands in the 1970s and Inge, married in Morocco and divorced in the Netherlands in the 2000s, this shift diverts attention from the problems of the interaction of both family law systems to just the perceived disadvantages for women in the Moroccan or Egyptian family law system, obscuring Dutch family law as a factor of importance. Even though both Dutch women saw their marriage as "risky" and took a very contractual approach to the marriage, the content of the contracts and why they wrote them depended on their framing of the marriage in a specific context.

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