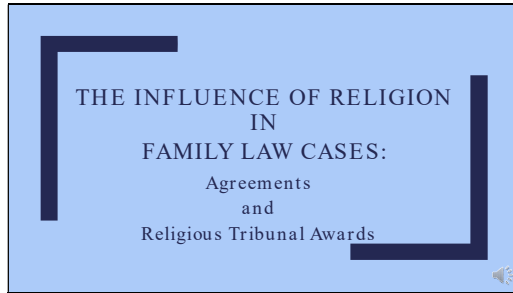


Slide 1



Slide 2




Slide 3



Slide 4


"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

— Article 18, The Universal Declaration of Human Rights



Slide 5


WILLIAMSBURG CHARTER



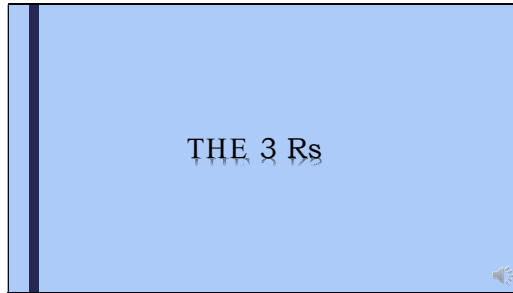
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Signed by 100 national leaders on June 25, 1988, the 200th anniversary of Virginia's call for the Bill of Rights.

Haynes, Charles, Thomas, Oliver, *Finding Common Ground a First Amendment Guide to Religion and Public Schools*, First Amendment Center



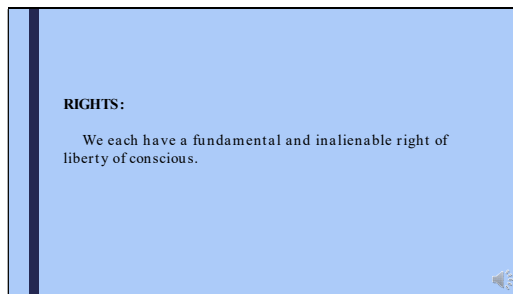
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Slide 8




Slide 9



Slide 10

RESPONSIBILITIES:


We each have a corresponding duty to recognize and to respect the other's right of religious freedom.



Slide 11

RESPECT:


This includes respecting strongly held differing viewpoints, the avowed belief of a party may conflict with the other party's beliefs or even your own.



Slide 12

Religious literacy provides the individual with a tool to better understand religion as a complex and sophisticated social/cultural phenomenon.

Diane Moore



Slide 13

Religious Literacy is:

- The ability to discern and analyze intersections of religion within social, political, and cultural life through multiple lenses.
- A basic understanding of the history, central texts, beliefs, practices and manifestations of several religious traditions and expressions as shaped by the social, historical and cultural context.
- An ability to discern and explore religious dimensions of political, social, and cultural expressions.

Moore, Diane L., *Overcoming Religious Illiteracy: A Cultural Study's Approach*, 4:1 *World History Connected* (2006), PP.1-10; Moore, Diane L., *Guidelines for Teaching About Religion*, *American Academy of Religion*, (2010)

Slide 14

Religious Illiteracy

A lack of understanding about:

- (1) The basic tenets of world religious traditions;
- (2) The diversity of expression and beliefs within the traditions that emerge and evolve in relation to differing social and historical context; and
- (3) The profound role that religion plays in human social, cultural and political life in both contemporary and historical context.

Moore, Diane L., *Overcoming Religious Illiteracy: A Cultural Study's Approach*, 4:1 *World History Connected* (2006), PP.1-10; Moore, Diane L., *Guidelines for Teaching About Religion*, *American Academy of Religion*, (2010)

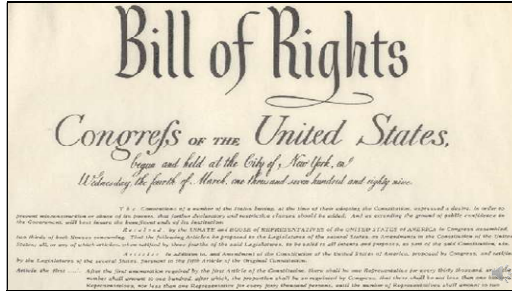
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Moore highlights three principles regarding the consideration of religion:

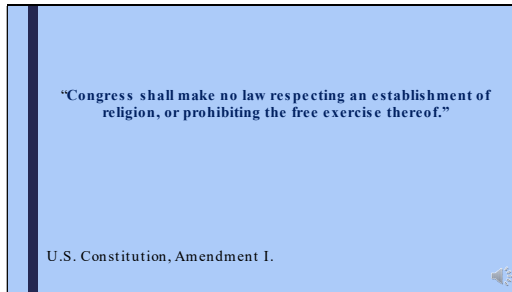
- 1. The various religions are not internally homogenous, but are **internally diverse**.
- 2. Religions are not static but are **dynamic and changing**.
- 3. Religions are **embedded in culture, economics, and politics**.

Moore, Diane L., *Overcoming Religious Illiteracy: A Cultural Study's Approach*, 4:1 *World History Connected* (2006), PP.1-10; Moore, Diane L., *Guidelines for Teaching About Religion*, *American Academy of Religion*, (2010)

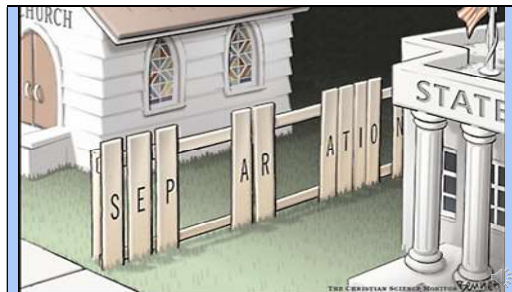
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Slide 17




Slide 18



Slide 19

In 1879 the Supreme Court, unanimously held that the First Amendment protected *religious beliefs, but not religious practices that were criminal acts*.


Reynolds v. United States, 98 U.S. 145 (1879)



Slide 20

In 1947 the Court again articulated the concept of the “wall of separation between church and state” in Everson v. Board of Education.


Everson v. Board of Education, 330 U.S. 1 (1947)



Slide 21

The free exercise clause of the First Amendment has been applied to states through the Fourteenth Amendment.

Cantwell v. Connecticut, 310 U.S. 296, 303 (1940)




Slide 22

Sherbert and Yoder

Established the strict scrutiny, compelling interest tests.

If a law *substantially infringes* upon the individual's free exercise of religion, the state must show a *compelling state interest*.

Sherbert v Verner, 374 U.S. 398 (1963)
Wisconsin v. Yoder, 406 U.S. 205 (1972)




Slide 23

Smith


Lessened the standard from the compelling interest to: "neutral general applicability."

Employment Division Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990)



Slide 24

RFRA




Slide 25

In 1993 Congress enacted The Religious Freedom Restoration Act and restored the strict scrutiny established by Sherbet/Yoder.

Under RFRA:

If the law *substantially burdens* a person's exercise of religion even if the burden results from a rule of general applicability, the *state must show* that the law if is in furtherance of a *compelling government interest* and that the law is the *least restrictive means* to further the government interest.


42 U.S.C.A. §200bb



Slide 26


The Federal RFRA is not applicable to state or local governments.

City of Boerne v. Flores, 521 U.S. 507 (1997)



Slide 27

STATE RFRA



Slide 28

RELIGIOUS FREEDOM RESTORATION ACTS	
Jurisdiction	Statute
Alabama	Ala. Const. Art. I, §3.01
Arizona	Ariz. Rev. Stat. §41-1493.01
Arkansas	2015 SB 975, <i>enacted April 2, 2015</i>
Connecticut	Conn. Gen. Stat. §52-571b
Florida	Fla. Stat. §761.01, <i>et seq.</i>
Idaho	Idaho Code §73-402
Illinois	Ill. Rev. Stat. Ch. 775, §35/1, <i>et seq.</i>
Indiana	2015 SB 101, <i>enacted March 26, 2015</i> ; 2015 SB 50, <i>enacted April 2, 2015</i>
Kansas	Kan. Stat. §60-5301, <i>et seq.</i>
Kentucky	Ky. Rev. Stat. §446.350

Slide 29

Louisiana	La. Rev. Stat. §13:5231, <i>et seq.</i>
Mississippi	Miss. Code §11-61-1
Missouri	Mo. Rev. Stat. §1.302
New Mexico	N.M. Stat. §28-22-1, <i>et seq.</i>
Oklahoma	Okla. Stat. tit. 51, §251, <i>et seq.</i>
Pennsylvania	Pa. Stat. tit. 71, §2403
Rhode Island	R.I. Gen. Laws §42-80.1-1, <i>et seq.</i>
South Carolina	S.C. Code §1-32-10, <i>et seq.</i>
Tennessee	Tenn. Code §4-1-407
Texas	Tex. Civ. Prac. & Remedies Code §110.001, <i>et seq.</i>
Virginia	Va. Code §57-2.02

<http://www.hbsi>


Slide 30

States with RFRA-like provisions that have been provided by state court decisions:	
•Alaska	
•Hawaii	
•Ohio	
•Maine	
•Massachusetts	
•Michigan	
•Minnesota	
•Montana	
•Washington	
•Wisconsin	

https://en.wikipedia.org/wiki/State_Religious_Freedom_Restoration_Acts


Slide 31

Florida enacted The Religious Freedom Restoration Act of 1998.



Slide 32


§761.03 Free exercise of religion protected.—
(1)The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:
 (a) Is in furtherance of a compelling governmental interest; and
 (b)Is the least restrictive means of furthering that compelling governmental interest.
(2)A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief



Slide 33

A Muslim woman who wore a full veil sought an exemption from being required to remove the veil for the purposes of her driver's license photograph. Department of Highway Safety and Motor Vehicles cancelled her license. The Court held that Department of Highway Safety and Motor Vehicles' requirement and decision did not constitute substantial burden on motorist's exercise of religion, and thus did not violate Florida's Religious Freedom Restoration Act (RFRA).

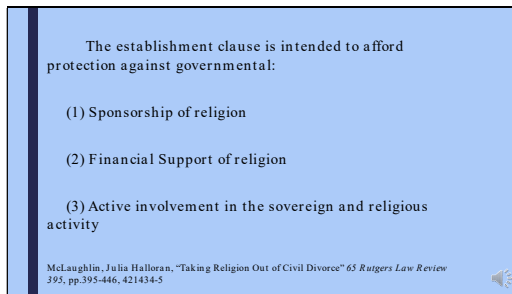
Freeman v. Department of Highway Safety and Motor Vehicle, 924 So.2d 48) (Fla. 5th DCA 2006).



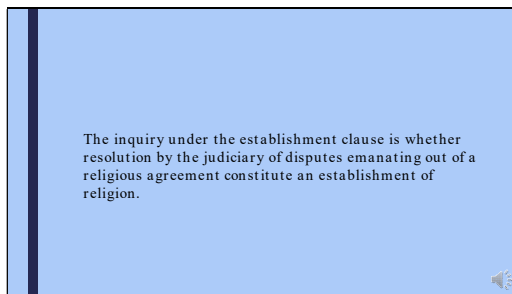
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Slide 35



Slide 36




Slide 37

The Lemon Test requires the following analysis:

- (1) The government action must have "a secular legislative purpose";
- (2) Principal or primary effect must be one that neither advances nor inhibits religion; and
- (3) Must not foster an excessive government entanglement with religion.


Lemon v. Kurtzman 403 U.S. 612 (1971)



Slide 38

The typical dispute relates to the third prong of the Lemon test, specifically:


How to resolve a religious dispute without entanglement in religious doctrine.



Slide 39

The Supreme Court offers two options for overcoming the dilemma:


1. Deference approach, when presented with internal disputes within a religious community, the court defers to the holdings of the highest authority within the religious institution wherein the disagreement arose.
2. The neutral principles approach in which the courts resolves religious disputes using secular legal rules.



Slide 40


Since the decision in 1971, there has been ongoing criticism and debate over the Lemon test.

The focus has been on the second and third prongs.



Slide 41

Justice O'Connor suggested the endorsement test




Slide 42

Endorsement Test

Whether the government acted in ways that are reasonably perceived as endorsing or disapproving of religion or that are intended to endorse or disapprove religion .


Lynch v. Donnelly, 465 U.S. 668, 692 (1984)



Slide 43

The endorsement test considers the context and the unique circumstances of the case and treats believers and non-believers on equal footing to determine if an objective observer would think the government was endorsing any particular religion.

Capital Square Review and Advisory Bd. v. Pinett, 515 U.S. 779, 753 (1995) (O'Connell, J concurring in part and concurring in the judgment).




Slide 44

Coercion Test

When there is sponsorship by a state official or entity of a religious activity and based upon the circumstances, the "machinery of the state" is used to "coerce."

Lee v. Weisman, 505 U.S. 577 (1992)




Slide 45

Lemon:

- ✓ Secular legislative purpose.
- ✓ Neither advances nor inhibits religion.
- ✓ Does not foster an excessive government entanglement with religion

Endorsement:

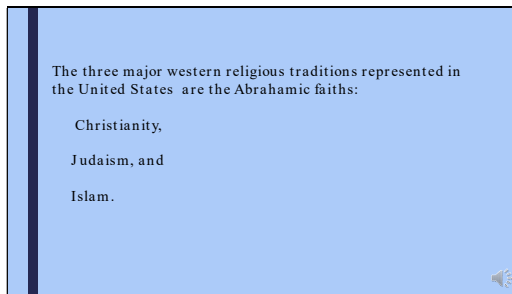
Whether the government acted in ways that are reasonably perceived as endorsing or disapproving of religion



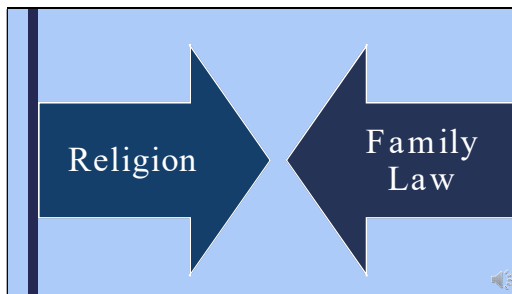
Slide 46



Slide 47



Slide 48



Slide 49

Religious Law intersects with Family Law when:

- (1) A party seeks review of an agreement and asks the Court to enforce or to set aside an agreement that includes terms related to religion.
- (2) A party may seek to enforce the religious tribunal family law award in the U.S. civil court.
- (3) A party seeks to rely upon a family law ruling of a religious tribunal as an affirmative defense to bar the other spouse's efforts to obtain relief under state law.

Slide 50

AGREEMENTS

Slide 51

Individual Interests and liberties



Family Unit

Slide 52

Tension increases when agreement involves religious provisions.

A Legal quandary arises when a party does not wish to be bound by the agreement and the other party seeks enforcement through the court.

Does enforcement equate to excessive entanglement
or
Will the result be a restraint on free exercise.



Slide 53

Prenuptial Agreements

It is an accepted principal throughout the United States that provisions of prenuptial agreement regarding financial obligations between the parties including, property division and alimony, are enforceable.


the Uniform Premarital Agreement Act expressly sets forth those areas that may be addressed in a prenuptial agreement.

Provisions regarding children are not enforceable.- the right of a child to support may not be adversely affected by a premarital agreement.

Provisions within a prenuptial agreement that regulate the religious behavior of the spouse as well as religious upbringing of the children are generally unenforceable.

There are exceptions - Illinois Marriage and Dissolution of Marriage Act ("IMDMA"), which directs courts at divorce to allocate responsibility for a child's religious upbringing according to "any express or implied agreement between the parents." 28.

Bix, Supra., 1671



Slide 54


MARTIAL SETTLEMENT AGREEMENTS



Slide 55

In general, courts consider terms relating to the financial obligations between the parties, such as equitable distribution and alimony, with greater deference than terms relating to the children.


All matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child.



Slide 56


A trial court has discretion to determine the best interests of the child independently and to decline to follow an agreement regarding custody, support, and visitation.

Holland v. Holland, 458 So.2d 81 (Fla. 5th DCA 1984);
Elebash v. Elebash, 450 So.2d 1268 (Fla. 5th DCA 1984).




Slide 57

Contrasting Interests:



Interest of the religious community in the recognition and protection of their rules and practices which are protected when parties agree to use religious decision-making bodies or to make agreements regarding the religious upbringing of their children.

Interest in protecting the rights of individuals from the pressures of religious groups and the constitutionally grounded interest of the government to not serve as the enforcement mechanism to protect the interest of religious groups against individuals




Slide 58

Courts cannot make a decision as to whether a particular religious belief is intrinsically more sound than another or determine whether particular religious groups' practices comport with higher social ideas of fairness and equality than others.

Any judicial attempt to consider the religious practice apart from their religious setting creates a situation wherein the court is making an appraisal or evaluating the religion.

Greenawalt, Kent. "Child Custody" *Religion and the Constitution*. Princeton: Princeton U Press, 421- 422, 2009. Print.




Slide 59

A complicated issue arises when the parent, relying on an express agreement regarding the child's religious education, is in dispute with the other parent regarding the provisions of the agreement.

Such a fact pattern presented in the case of Zummo v. Zummo wherein the parents had agreed to raise the children as Jewish. After the breakup of the marriage, the parties each wished to educate their children in their respective religion, the mother Jewish, and the father Catholic. The mother requested that the court enter an order prohibiting the father from exposing the children to non-Jewish services.

Zummo v. Zummo, 5748, 2d 1130 (PA. Super. 1990).




Slide 60

The trial court entered an order prohibiting a father from taking his children to Christian religious services. The appellate court ruled that the order violated the father's constitutional rights, constituted an abuse of discretion and thus vacated the restrictions imposed.

The appellate court held that justify restrictions upon parent's rights to inculcate religious beliefs in their children, the party seeking the restriction must demonstrate by competent evidence that the belief or practice of the party to be restricted actually presents a substantial threat of present or future physical or emotional harm to the particular child, and that the restriction is the least intrusive means adequate to prevent the specified harm. The evidence was wholly insufficient to meet this standard. The provision was vacated.

Zummo v. Zummo, 5748, 2d 1130 (PA. Super. 1990).



Slide 61

The trial court order also contained a provision, requiring the father to present the children at Synagogue for Sunday School during his periods of weekend timesharing.

The opinion stated that that the trial court did not impermissibly evaluate the relative merits of the two religions but instead considered the parties' concerns about the father's obligations during his periods of timesharing. The trial judge reasoned that the two restrictions placed upon Husband, that he could not take his children to church and that he must bring his children to their synagogue were motivated by the best interests of the children and that are no more intrusive than necessary to accomplish that objective. If during the timesharing, the father and the children were not in the area, he did not need to bring the children and that this was a fair balance between the "important and appropriate rights of the father to visit and interact with his children, and the children's normal progression within their chosen religion." The appellate court opined that the trial court properly focusing on the paramount concern, the best interests of the children exercised "utmost care to frame the issue" and to understand the role of religion in the dispute. The appellate court affirmed that part of the order.

Slide 62

CIVIL COURT AND RELIGIOUS LAWS

Issues arising out of religious laws in the context of marital and family law may involve disputes relating to a Jewish *get* or Islamic *mahr*.

Slide 63




The traditional Jewish marriage contract is the "Ketubah"

Some couples include a provision within their "Ketubah" that the husband agrees to provide the *get* in the case of a civil divorce, or in the alternative agree to appear before the religious tribunal or the Jewish arbitration panel known as the "Beth Din."

Slide 64

Beth Din

The Beth Din is a Rabbinical Court that has been the foundation for Jewish law and living throughout history and around the globe.




Slide 65

Under certain branches of Judaism, a civil divorce is not final until the husband voluntarily gives a *get* to his wife.

Without the *get*, the wife becomes an "*angunah*," a tied woman, and is, therefore, unable to marry again.


If a Jewish woman whose branch of Judaism requires the *get*, and she marries again without a *get*, she will be stigmatized, and her children referred to as "*manzerim*" or illegitimate.

[Aflalo v. Aflalo](#), 685 A.2d 526-7, 523 (N.J. Supra. Ct. Ch. Div. 1996).




Slide 66

Three (3) general categories wherein the Court will be called upon to render a decision regarding the *get*.



Slide 67


1. The parties entered into an **agreement with explicit language** that the husband would grant a get or would appear before the Beth Din .



Slide 68


Courts are generally willing to grant a request for specific performance based upon an express agreement between the parties.

The court is determining a matter of religious nature but applying neutral principles of law to determine if there is a valid contract compelling the husband to execute the *get*



Slide 69

2. The parties have not entered into an express agreement however, there is a argument that the language of the **ketubah**, the traditional Jewish marriage contract is an **implied contractual obligation** for the husband to execute the get.



Slide 70

The courts are more divisive in the determination as to whether to determine whether in the absence of an express agreement, the "*ketubah*" gives rise to an implied contractual agreement requiring the husband to give a *get*.

As a part of the *ketubah*, the parties agree to be bound by laws of "Moses and Israel."

Therefore, the court's decision may turn on whether the laws of Moses and Israel mandate the *get*.



Slide 71

Some courts may decline to make a decision based on the premise that secular determination or interpretation of the religious text is unconstitutional.

Other courts accept jurisdiction and apply the neutral principle of law approach to interpret the secular aspects of the *ketubah*.



Slide 72


An analysis under the Lemon test would find that the entry of an order for specific performance for the husband to grant a *get* has a secular purpose, to wit, the completion of a dissolution of marriage. Under the second prong of Lemon, a court may reason that specific performance requiring the husband to grant a *get* neither advances nor inhibits religion, and the principle effect is to further the secular purpose i.e. in this instance, completion of the dissolution of marriage. Similarly, the order compelling appearance before the *Beth Din* does not advantage Judaism but has a primary effect of supporting the secular goal of completion of the dissolution of marriage. Under the third prong of the Lemon test, excessive government entanglement with religion, the court's determination passes constitutional muster if it does not involve excessive entanglement with religion. As with the first two prongs, the court is deciding as to the enforcement of a contract. In the excessive entanglement cases, there was ongoing state involvement. In the instance of the *get*, once the determination is made, the state is not involved.

In Re the Marriage of Goldman, 554 N.E.2d 1016, 1020 (Ill. App. Ct. 1990).



Slide 73


3. The party **requests** that the **court order** the other party to abide by an agreement to **resolve any disputes** arising out of Jewish law **before the Beth Din** and that the **decision is enforceable**.



Slide 74


In Avitzur, the court recognized that the judiciary could not determine or consider disputes centered on purely religious beliefs, however, the court could use neutral principles of law to resolve disputes that do not involve doctrinal matters. The Avitzur court determined that the contractual agreement to submit disputes to the *Beth Din* was a secular agreement. The court bypassed an argument as to excessive entanglement by relying on neutral principles of law, in this instance, contract law.

Avitzur v. Avitzur, 446 N.E.2d 136 (N.Y. 1983).



Slide 75

Florida Case Law – get



Slide 76

Turner v. Turner, 192 So.2d 787 (Fla. 3rd DCA 1966)

Third DCA held that the judge had no authority to order the husband to participate in a religious ceremony by cooperating with wife in obtaining Jewish divorce. The trial court entered an order requiring the husband to cooperate with the wife in obtaining the Jewish divorce. The mandate was enforceable by contempt. The Court relied upon the provisions of Florida Statutes Chapter 61 which provides for only one kind of divorce, to wit, a civil divorce 'from the bonds of matrimony.' The statute does not authorize the Court to require the parties to secure a religious divorce. The Third DCA struck the provision of the Final Judgment that required the Husband to cooperate in granting the wife a *get*.



Slide 77

Fleischer v. Fleischer, 586 So.2d 1253 (Fla. 4th DCA 1991).

At trial the Former Husband testified he would agree to grant the *get* if he got what he wanted in the property division. The trial court ordered the husband to approve the *get* and allowed the wife to withhold money until he gave approval. The Former Husband raised First Amendment challenge for the first time on the appeal. The court did not address the constitutional challenge due to the "raise it or waive it rule." The Fourth DCA affirmed.

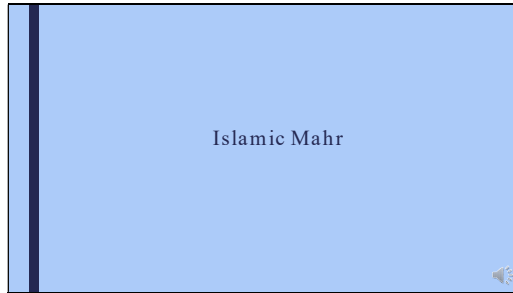


Slide 78

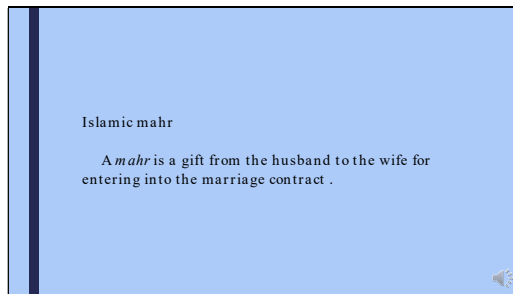
Bloch v. Bloch, 688 So.2d 945 (Fla. 3rd DCA 1997). The trial court entered the final Judgment and ordered the former husband to provide the former wife with a "get." The terms provided that "in the event the [former] Husband does not, within fifteen (15) days of this date, initiate and cooperate in the obtaining of a GETT [sic]-which he specifically is NOT Ordered [sic] to do-the Court reserves jurisdiction to re-consider and re-compute the Equitable Distribution, Alimony, Child Support and other economic provisions of this Judgment in order to make them more equitable in the light of the [former] Wife's changed status." The Third DCA held that the court lacks authority to order the former husband to participate in a religious ceremony. However, the Court affirmed provision allowing for reconsideration and re-computation and deemed it nothing more than a permissible reservation of jurisdiction.



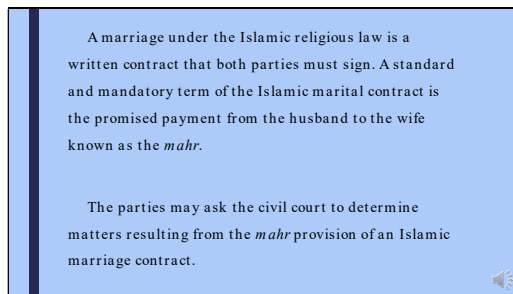
Slide 79



Slide 80



Slide 81



Slide 82

Issue	Religion	Secular
Tender as a factor in parenting	Yes. Expressly gendered	No. Fla. Stat. §61.13(2)(b)(1) No presumption for or against the father or mother of the child.
Tender Years Doctrine	Yes. The male child with the mother until the age of seven to nine.	No. Tender years doctrine has been abolished.
Parental Responsibility	Father is the legal guardian to the exclusion of the mother	Shared parental unless it is detrimental to the child. Fla. Stat. §61.13(2)(a)(2)
Best Interest of the Child	Not a factor	Primary factor in determining all matters relating to parenting and time-sharing. Fla. Stat. §61.13(2)(a) The best interest of the child shall be the primary consideration. Fla. Stat. §61.13(3)
Child Support	Father has sole obligation for maintaining for the financial obligations for the child	An obligation of both parents. Statutory guidelines specifically consider the incomes of both parents and each parent's time-sharing.
Property Distribution	Does not recognize marital or community property, each party owns his or her assets individually.	Equitable Distribution. Express statutory factors to determine marital and non-marital property. The court begins with the premise that the distribution should be equal, unless there is a justification for an unequal distribution. (Fla. Stat. 61.075)

Slide 83

Concerns when court decides mahr cases :

Whether adjudication by the civil court is an excessive entanglement in religion .

Whether decision interferes with the individual's right to practice their religion.

Slide 84

Analysis regarding the *mahr* provision is similar to that of the *get* cases but requires further analysis to determine a secular tool that would parallel the religious provisions.

Analysis is more complex and opens the door for error if the court does not understand the religious provision and attempts to analogize the *mahr* provisions to a prenuptial agreement.

Falsa fi, Shiva, "Religion, Women, and The Holy Grail of Legal Pluralism," *Cardozo Law Review* Vol. 35:1881, p.1881-1937, 1883.

Slide 85

The attempt to equate the *mahr* provision to a prenuptial agreement is flawed.

Prenuptial Agreement	Mahr Provision
<ul style="list-style-type: none">■ The prenuptial agreements are negotiated in advance of the marriage.■ There are certain requirements including, but not limited to disclosure of assets.■ Purpose to determine distribution of assets in the event of a divorce.	<ul style="list-style-type: none">■ The mahr may be negotiated at the actual marriage ceremony.■ The <i>mahr</i> is a simple contract with mandatory terms that are a prerequisite to the marriage. A <i>mahr</i> is more analogous to a gift in expectation of the marriage.■ Purpose of the mahr is not to determine the distribution of assets in the event of a divorce.

Slide 86

A potential disastrous result of the error in the court in determining that the *mahr* is the equivalent of a prenuptial agreement is that the decisions only affords the wife that which was gifted to her as part of the *mahr*, even if the parties have accumulated substantial assets.

The determination that the *mahr* is the equivalent of a prenuptial agreement precludes the Wife the right to equitable distribution of the marital property.

Slide 87

