Islam attributes great importance to the institution of the family. When we look at the Qur'an and the Traditions of the Prophet Muhammad we see that regulations about the family system occupy a prominent place. The family's importance in these central Islamic sources is reflected in Islamic Law and Islamic culture. Muslim jurists explain the main aims of Islamic Law according to the following five principles. All of the rules in Islam were set up to protect at least one of them.3 The fifth of these principles, the protection of the family, is one of the main goals of Islam. And this principle is connected directly with Islamic Family Law, which from the Islamic perspective is the only sure guardian of the family. Consequently, Islam demands that Muslims set up strong families in which mentally and physically healthy individuals can grow up, and that they approach relationships within the family in a respectful manner. The institution of marriage is therefore of critical importance in Islam4, but exactly what a religiously sound marriage looks like in Islam is a complex matter. If the family is a sacred and respectable institution, does this mean that the rfiarriage contract or wedding ceremony must also be a sacred process or religious activity? Or, conversely, is the marriage contract nothing more than a legal and civil procedure that has no .sacred meaning? The traditional Islamic position on the question is that the marriage contract is a civil contract which has a religious aspect *(ma’na al-’ibadah).5* On the one hand, the marriage contract, like other contracts, legally binds the parties involved to one another and commits them to the fulfillment of certain objective conditions. On the other hand, the marriage contract has a religious aspect. This does not mean that the marriage ceremony is inherently religious, or that the ceremony must be conducted in a religious fashion. It is rather the intention of the parties entering into the marriage contract, the creation of an Islamic family, that imparts a religious quality to the contract. In other words it is the intention and not the contract itself that lends the institution of marriage its sacred air. If two people intending on creating an Islamic family are married, Allah will reward them and bless their union.

### 3 Abu ’Abdillah Muhammad aI-Razi; *aI-Mahs”ul,* ed. Taha Jaber at-’AIwani, 3th ed., (Beirut:

Mu’assasat al-

Risalah, 1997.), vol. 5, p. 160; Abu aI-Hasan All b. Muhammad at-Amidi', *al-lhkam fi Us”ul ah-Ahkam,* ed.

’Abdurrazzak ’Aii”ii, (Beirut: aI-Maktab at-lslami), vol. 4, pp. 275-276; Abu Ishaq Ibrahim b. Musa al-Shatibi;

*al-Muwafaqatfi Us“ul at-Shari ’ah,* ed. Abu 'Obaydah Mashour b. Hasan Al Salman, lth ed., (Saudi Arabia: Dar

Ibn ’Allan, 1997.),

vol. 2, p. 20.

° The marriage contract is described in the Qur’an as "a solemn covenant". See, the Qur'an (The Women/an-

Nisa, 4:21.)

5 Zayn al-Di”n b. Ibrahim Ibn Nujaym, *aI-Bahr at-Raiq Sharh at-Kanz aI-Daqaeq,* (Beirut: Dar at-

Kitab al-

Arabi'), vol. 3, p. 222; Damad Afandi ’Abd aI-Rahman b. Muhammad, Mojm ’a’ *aI-Anhurfi Sharh Multaqa al-*

*Abhur,* (Beirut: Dar lhya aI-Turath aI-Arabi”), vol. 1, p. 315.



If two people marry for other reasons, without any religious intention in mind, their marriage contract remains valid from a legal standpoint 6 even though they do not acquire any merit in the eyes of Allah. According to a tradition (hadith), The Prophet Muhammad (Pbuh)

did not ask couples who were already married to enter into a new marriage contract after they embraced Islam.7 This means that he validated the marriage contracts between non-Muslims as long as the objective formal conditions of the marriage contract were fulfilled. If such a couple work to conduct their marriage according to Islamic principles after they embrace Islam, then their marriage will gain the characteristics of the Islamic farfiily.

To sum up, according to Islamic Law, contracts that meet their objective formal conditions are considered legally valid.’ For a marriage contract to be considered valid the parties to it have to declare their consent to the marriage in the presence of witnesses, and there must be no religious obstacles preventing them from getting married. If these conditions are met then the marriage contract is valid regardless of the authority conducting it, the extent of the parties' religious knowledge, or the religious quality of the marriage ceremony itself

**The Historical Background of the Unofficial Marriage Contract in Turkey**

The traditional rationale underpinning the marriage contract in Islam, outlined above, is quite different from that of contemporary marriage contracts in modern Turkey and other Muslim societies. People living in these societies believe that there are two types of marriage: a civil marriage recognized by the legal system that ensures the marital and divorce rights of married couples, and what is called a religious marriage that is seen as legitimizing the relationship between a man and a womañ in the presence of Allah. According to popular belief, a civil marriage cannot take the place of a religious marriage9 because the two have different ceremonial structures. Religious marriage, for example, is presided over by a person with religious credentials, like an imam, and certain prayers and verses from the Qur’an are read during ceremony.

6 Zayn at-Di”n b. Ibrahim Ibn Nujaym, *al-Ashbah wa at-Nazair,ed.* Zakariya ’Omayrat, lth ed.,

(Beirut: Dar aI-Kutub al-llmiyyah 1999.) p. 20.

### 7 Ahmad Ibn Hanbal, *aI-Musnad,* ed. Shuaib aI-Arnaut, Adel Murshid, Ith ed., (Beirut:

Muassasat aI-RisaIah, 2001.), vol. 8,p. 224.

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Abu Zakariyya Mohyi at-Din Yahya b. Sharaf at-DTn aI-Nawawi”, *Minhaj at-Talibi“n wa 'Omdat aI-Mufi’i”n fi al- ”*

*Fiqh,* ed. ’Iwad Qasem Ahmad, Ith ed., (Beirut: Dar al-Fikr, 2005.), v. 1, p.213; Ibn Nujaym,

*al-Bahr aI-Raiq*

*Sharh al-Kanz al-Daqaeq,* vol. 3, p. 138.

Halil Cin, *islam ve Osmanh Hukuku’nda Evlenme,* 2th ed., (Konya: 1988) p. 348.

