

Contents

Acknowledgements	v
Illustrations	xi
List of abbreviations	xiii
Note on transliteration	xv

Chapters

I. Introduction	1
II. Historical, social, and religious context.....	7
A. Zoroastrianism and the Sasanians.....	7
B. Christianity and the Church of the East	11
C. Early Islam and the Arabs	13
III. Literature review	17
IV. Methodology	29
V. Jurisprudence in Late Antiquity.....	33
A. Jurisprudence, legal practice, and the modality of lawmaking	33
B. Legal sources: a survey	37
VI. Matrimony.....	41
A. Sasanian law: utilizing female reproductive capacities	41
1. Cosmogony and eschatology: the origins and benefits of marriage	41
2. Marriage types.....	43
a. Full marriage (<i>pādiḥšāy</i>).....	43
b. Auxiliary marriage (<i>čagar</i>)	45
c. Consensus marriage (<i>brwasrāyēn</i>).....	47
d. Temporary marriage (<i>nē az ān ī hamēig</i>).....	49
3. Intermediary (<i>ayōkēn</i>) and substitute-successors (<i>stūr</i>)	51

4.	The practice of next-of-kin matrimony (<i>ḥwēdōdah</i>)	54
5.	Sustaining elite households.....	55
B.	East Syrian law: challenging traditions of matrimony	56
1.	On the nature of Christian marriage: marrying strangers (<i>masbā d-nukrāyātā</i>) and monogamy	56
2.	Filing for divorce (<i>purshānā</i>)—the impossible?	60
3.	The Sasanians accommodating their interests?— the Synods of 486 and 497	64
4.	(Re)negotiating matrimony: the prohibitions of Mar Aba.....	68
5.	Reclaiming legal space?	69
C.	Early Islamic law: fiscal emancipation of women?.....	70
1.	The conditions of marriage (<i>shurūṭ al-zawāj</i>).....	70
2.	Women forbidden to marry (<i>muḥarramāt al-nisā</i>)	75
3.	Saḥnūn's types of marriage	78
a.	Unprotected (exchange) marriage (<i>nikāḥ al-shighbār</i>)	78
b.	Marriage of the daughter without her consent (<i>bi-ghayr riḍāhā</i>).....	80
c.	Marrying without a legal guardian (<i>bi-ghayr walī</i>).....	81
d.	Fixed-term marriage (<i>al-nikāḥ ilā ajal</i>)	83
4.	Stipulating the bridal dower (<i>ṣadāq/mahr</i>)	85
5.	Situating the Islamic law on matrimony.....	87
D.	Preliminary conclusion.....	87
VII.	Slaves	91
A.	Sasanian law: slave trade—a risky financial venture.....	91
1.	Prelude: basic legal concepts in Sasanian property law	91
a.	Substance (<i>bun</i>) and fruit/increase (<i>bar</i>).....	91
b.	Ownership (<i>ḥwēših</i>) and possession (<i>dārišn</i>)	91
2.	Transacting slaves.....	92
a.	Selling and pledging slaves	92
b.	Selling children into slavery	95

3. Manumitting slaves	96
a. Full and partial manumission.....	96
b. Reclaiming former slaves into slavery	98
4. Locating the slave in <i>Ērānšahr</i>	98
B. East Syrian law: rather enslaved than manumitted?	99
1. Slavery—a corollary of the original sin?	99
2. Sketching the legal status of the slave.....	100
a. Root (<i>‘eqārā</i>) and fruit (<i>pirā</i>).....	100
b. The <i>peculium</i> of the slave	101
3. Manumitting slaves	103
4. Eternal slavery?	104
C. Early Islamic law: from slaves to clients	105
1. Islamic justifications for slavery	105
2. The legal (in)capacity of the slave to property.....	106
3. Manumitting slaves	108
4. From slaves to clients (<i>marwālī</i>).....	110
D. Preliminary conclusion.....	111
VIII. Conclusion: towards a shared framework of Late Antique legal epistemes?	115
Bibliography	121
A. Sasanian law.....	121
B. East Syrian law.....	127
C. Early Islamic law.....	133
Index	137