

201106 - The marriage contract is not valid if the man's sister asks for the hand of the woman for her brother, in the presence of the woman's guardian

the question

The sister of a young man told me over the Internet that her brother wanted to ask for my hand in marriage, and after consulting my parents, they let me choose, so I agreed and I told the young man that I agreed, but I stipulated some conditions before that. Then after that, that young man came with his parents and his sister, and his sister asked for my hand, mentioning me by name, for her brother, mentioning him by name, in the presence of his parents and my parents, and my father responded by saying that the girl is your daughter. According to our traditions, we give the answer a few days later for the purpose of confirmation, so they called us and we told them that we had not changed our minds.

Does this count as a marriage contract? Please note that we will document it as a civil contract in three months' time.

Detailed answer

If the matter happened as mentioned in the question, then the marriage contract has not yet been done, for two reasons:

1. it is not sufficient, with regard to a marriage contract, for the families of the spouses only to be present; rather it is essential to have the proposal, which refers to words to be spoken by the woman's guardian or his deputy, and the acceptance, which refers to words to be spoken by the husband or his deputy, in order for the marriage contract to be valid. It is also stipulated in the marriage contract that the proposal should come before the acceptance, according to the view of a number of scholars. However the majority of scholars do not stipulate that the proposal should come before the acceptance, and this is the correct view.

2. Regardless of whether we say that the proposal must come first or not, the marriage contract cannot be valid on the basis of the man's sister requesting the woman's hand in marriage for her brother, even if she specified their names, or even if the wording of the proposal and acceptance

for marriage were spoken, because it is not valid for a woman to do the marriage contract either for herself or anyone else.

Ibn Qudaamah (may Allah have mercy on him) said: If a person does not have the right to dispose of affairs on his own behalf, it is not valid for him to act as a proxy in such matters, such as a woman with regard to doing the marriage contract or accepting it.

End quote from al-Mughni (5/52)

It says in al-Mawsoo‘ah al-Fiqhiyyah (45/22): It is not permissible to appoint a woman as a proxy for the purpose of marriage according to the majority of fuqaha’, because she cannot give herself in marriage, so she cannot be appointed as a proxy for the purpose of marriage. End quote.

Based on that, what you must do now is do the marriage contract first of all, which should be done by the woman’s guardian (her father) or another man whom he appoints as his proxy, and the acceptance must be done by the man or another man whom he appoints as his proxy.

We ask Allah to bring you together on the basis of good.

And Allah knows best.