**Mut’a marriage**

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Translated by David S. Powers

A marriage case from the city of Batliyus: the jurist, imam, qadi Abu al-Walid--may God have mercy on him--Ibn Rushd, was asked about a scholar (*rajul min ahl al-‘ilm wa’l-ma’rifâ*) who married a woman by means of *// a mut’a [marriage]*, for a specified time-period, without a marriage guardian (*wali*), and without a dower (*sadaq*) --except for half a dirham of Yusufiya qirats. He made an acknowledgement (*aqarra*), in the presence of the judge, to the effect that he had had intercourse with her, and, after being charged with establishing testimonial evidence regarding the claim that he made with regard to that marriage, he summoned witnesses (*shahidayn*) who were not professional witnesses (*‘adlayn*). At that point, one of the [councilors] present at the session said to him, "Was it not sufficient that you married by way of mut’a, which is forbidden, but you also plunged into it without a marriage guardian (wali) and without a dower? You are nothing but an adulterer." To which the man who contracted the marriage replied, "I do not deny that mut’a is forbidden. However, I was adhering to the disagreement that is related about it on the authority of Ibn ‘Abbas and others.¹ And the reason for that marriage is that I fell in love with her, but my situation made me unable to marry her in a valid manner, for fear of my father, who would not let me do it, for she was not [socially] suitable for the likes of me. Thus, I reasoned that my adherence to the aforementioned disagreement was better than committing adultery. As for your (pl.) statement, "without a dower," those who hold that mut’a is permissible place no limit on the minimum amount of dower [that is required]. As for your (pl.) statement, "He did not summon upright

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¹ Ibn #Abbas initially held in favor of mut’ah-marriage (*Bukhari, Nikah*, bab 31; *Muslim, Nikah*, tr.18; *Tayalisi*, no. 1792; *Razi, Mafath al-ghayb*, Cairo 1324, iii. 195). In Mecca and in Yaman, according to Ibn Rushd (*Bidaya*, Cairo 1339, ii. 54), he also had followers; but before his death he is said to have been converted to the opposite view (*Tirmidhi, Nikah*, bab 28; *Razi, Mafath al-ghayb*). In later times people still spoke derisively of a marriage by a fatwa of Ibn ‘Abbas. See *Encyclopaedia of Islam*, 2nd, s.v. mut’ah.
witnesses," I was unable to uncover any [witnesses] other than the two of them, and I thought that I might do all that // without committing adultery. Perhaps God will accept that excuse." A response to this question is requested from the honorable jurist.

A response to it--may God be pleased with him: I have studied--may God preserve us and you--this question of yours and I have occupied myself with it. The mut'a-marriage that the Prophet prohibited and declared to be forbidden, with regard to which there exists a consensus among the scholars regarding its prohibition--apart from one exception whose disagreement with them should not be taken into consideration, is of the following type: a man marries a woman for a specific time-period--with a wali, a dower, and two professional witnesses; all of the conditions of marriage exist between them until the expiration of that time-period--with the exception of inheritance. As for the man who makes an agreement with a woman, between him and her, to have intercourse with her and to enjoy her [sexually] for a period of time in return for an amount that he pays her out of his wealth, this is not mut'a-marriage, even if the two of them refer to it as "marriage." Rather, it is adultery. Thus, it is obligatory that that man about whom you asked be given the hadd-punishment for adultery [rather than the lesser punishment for mut'a]: He should be stoned if he is muhsan and flogged if he is a virgin, on the strength of his acknowledgement of having had intercourse with the woman with whom he was discovered, because his claim, namely, that he married her by means of a mut'a-marriage in the manner that he described, does not constitute a shubha on the basis of which the hadd-punishment may be dropped. This is because testimony in that matter was not given by those whose testimony is permitted, and the intercourse that he had with her by means of the "marriage" that he claimed was not spread about, widespread, and well-known. It is [therefore] appropriate, if he is a virgin, that he be beaten severely after the hadd-punishment has been applied, and he should be put in prison for a long time, because of his distain for religion and his deception of the Muslims. And your specification that he is a scholar (min [ahl] al-ma’rifa wa’l-talab) is a proof against him which makes his shame obligatory in both this world and the next and which causes him to descend to the worst of all levels [of Hell], because he knew
what is right, but opposed it; and what is correct, but contradicted it; and what is forbidden, but he rushed into it, in order to slander the Exalted God, distain His limits, and mock His religion. It has been related that "among the people who have the worst status in the eyes of God on the Day of Resurrection is the scholar who did not derive any benefit from his knowledge."\(^2\) How much the more so one whose knowledge (ma'\(\text{r}i\)fa) caused harm to him, and he used it to gain access to having prohibited intercourse and to contradict the masses (jum\(h\)ur). By God, I ask for protection and guidance.

\(^2\)Related on the authority of Abu Hurayra. See Tirmidhi, mawq\(i\)it, 149; Bukhari, libas, 89, 91, 93, 95; al-Tabarani, al-Saghir; al-Bayhaqi.