Introduction

The parties to the agreement comprise Fāṭima, widow of the late Shutaywī al-ʿAwwād and guardian of her two minor sons as the First Party; and Ahmad and his brothers, the issue of the aforementioned Shutaywī al-ʿAwwād (possibly by another wife),¹ as the Second Party. The scant details in the document do not convey a clear picture of the content of the agreement pertaining to the mahr. It seems, however, that we are dealing here with an agreement between the legal heirs of Şafiyya who died leaving behind an estate consisting of her mahr.² As is usual under tribal customary law, her father, Shutaywī al-ʿAwwād, seems to have received the mahr of his daughter Şafiyya from her husband in her lifetime and to have invested it in the family patrimony. When the father died his son Ahmad and some of his brothers of age (no mention is made of their names, but it is possible that their signatures appear in the end of the document) took control of the patrimony while depriving their minor brothers, Muḥammad and Nawfān (and their mother Fāṭima) of the management and proceeds of the estate.

Şafiyya seems to have died some time before the conclusion of this agreement. There is no explicit reference to her death; all we know from the document is that Fāṭima, widow of the late Shutaywī al-ʿAwwād, by virtue of her capacity as guardian of her minor sons, Muḥammad and Nawfān, demands Şafiyya’s mahr from Ahmad. We have no information as to whether Fāṭima challenged the domination of the patrimony by Ahmad and his brothers; now, however, she insists on treating Şafiyya’s mahr as a debt on the family estate that should be defrayed before the patrimony is divided between Shutaywī al-ʿAwwād’s legal heirs.³ It is agreed that any of the parties that infringes the agreement shall be deprived of his share in the property left by the late Shutaywī al-ʿAwwād.

It is further agreed that Ahmad will give his minor brothers, through Fāṭima, an amount of money in cash in return for their shares in Şafiyya’s mahr. This amount consists of one-half of the value of a house jointly owned by the brothers (including the minors), to be complemented by another amount in cash. In other words, the minor brothers will be compensated with money in return for the loss of their shares in immovable property. Since Fāṭima does not demand her share in the mahr (she is entitled to one-sixth of the inheritance in the presence of a child), it seems safe to conclude that her initiative is based on customary rather than shariʿa law. No mention is made of the shariʿa inheritance law nor of the shariʿa court. No sureties were appointed to ensure implementation of the agreement.

This document attests to the woman’s capacity to act as guardian and representative of her minor children, to be a party to an agreement and to dispose of money (though not to the extent of being able to benefit from her inheritance rights under the shariʿa).
In the name of Allāh the Merciful the Compassionate.

First Party, Muḥammad Shutaywī, his brother Nawfān [and their mother] Fātima ʿAlī al-Salāma;
Second Party, Aḥmad Shutaywī and his brothers.

The [two parties] hereby agree (la-qad ittafaqā) that [Fātima] shall receive 80 Jordanian dinars from Aḥmad Shutaywī as the mahr of her daughter Ṣafiyya Shutaywī. This amount [shall be given in the form of] {5}half of a house jointly owned (mushtaraka)4 [by the brothers], worth 50 dinars, and 30 dinars in cash (naqdan). The two parties hereby agree (wa-qad ittafaqā) on this idea (raʾy).5 And if one [of the parties] trumps up [empty claims] (yaftarī) against the other party [with a view to infringing the agreement], he shall be deprived of all the property (milk) that their father, the late Shutaywī al-ʿAwwād, left them.

[The agreement is hereby signed] in the presence of witnesses (shuhūd al-ḥāl); but Allāh is the best of witnesses.
Witnesses: Mūsā Muḥammad ʿAwdat Allāh, Mahmūd Shutaywī, Maḥmūd Shutaywī [Rubber stamp]

{10}Witnesses
Thumbprint of Fātima al-ʿAlī al-Salāma, guardian (wāliya [sic!]) of Nawfān and his brother Muḥammad Shutaywī
Nawfān Shutaywī ʿAwwād, Ḥamdān ʿId[?], Shutaywī ʿAwwād
Thumbprints of Maḥmūd ʿAwwād Shutaywī and Jābir[?] al-ʿAwwād Shutaywī
Witnessed by the scribe (kātib al-ahrf): {15}Mūsā [Muḥammad ʿAwdat Allāh ʿAṣā]

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4 That is, the family mushā (cf. al-ʿAbbādī, al-farāʾim al-kubrā, 74–75; Fariq al-Muzhir Āl Firʿawn, 149) is part of the estate left by the late Shutaywī al-ʿAwwād. For a case where two brothers sharing immovable property through inheritance conclude an agreement for the purpose of financing the mahr for their respective wives out of the family household, see above, doc. 20.

5 That is, the compensation of the minor brothers with money in return for their shares of their sister’s mahr.