Bahraini Supreme Court Accepts the Applicability of "Foreign" Jewish Customs in a Succession Case Involving Bahraini Jews

I. Introduction

This is certainly a genuinely interesting case from Bahrain, involving the application of "foreign" Jewish customs in a succession dispute that appears to be between Jewish Bahraini nationals. Although the case seems to lack any foreign element, its relevance to conflict of laws is nonetheless clear, since – to my knowledge – this is the first case in which the applicability of "foreign" religious customs in matters of personal status has been explicitly admitted in what appears a purely domestic case. The case also provides a broader analytical framework, raising questions about the place and applicability of non-state law in private international law (this contrasts of the recent decision of the French Supreme Court denying the applicability of Jewish law, albeit in a different context) and, more generally, about the compatibility of non-Islamic religious norms with domestic public policy frameworks in Muslim-majority legal systems.

II. Facts

The case concerns a domestic succession dispute involving Jews in Bahrain. Although the ruling does not expressly state this, the absence of any reference to choice-of-law rules strongly suggests that the parties involved were Bahraini Jews and that the case contained no foreign elements.
Following their brother's death, Y1 (the deceased's brother) brought proceedings in 2024 before the High Civil Court against Y2 (the deceased's nephew) and Y3 (the deceased's sister), seeking the opening of the estate, the identification of the heirs, an inventory of the assets, and the devolution of the estate. The court ordered the opening of the estate and held that Y1 and Y2 were entitled to equal shares.

X et al. (the deceased's sisters), who were not parties to the original proceedings,

filed a third-party objection seeking annulment of the judgment and a redistribution of the estate among all heirs, including themselves, in equal shares, based on Jewish inheritance customs or, subsidiarily, Islamic law. The objection was dismissed on the merits, and this outcome was upheld on appeal. X et al. then appealed to the Supreme Court of Bahrain, challenging their exclusion from the inheritance.

Before the Supreme Court, X et al. argued that the lower courts had relied on Chapter 27 of the Torah (the Old Testament), a text which, they contended, no longer reflects contemporary Jewish social or religious practice. They maintained that Jewish inheritance rules have evolved over time and that current customs within Jewish communities grant women equal inheritance rights in the absence of a will, an approach adopted by many rabbinical courts worldwide. In the absence of established Jewish inheritance rules or locally recognised custom in Bahrain, they argued that prevailing foreign custom should apply, since it does not conflict with Bahraini public policy.

III. Ruling

In its decision of 1 December 2025, the Supreme Court ruled in favor of X et al. holding as follows (detailed summary):

> *Under Bahraini law, the High Civil Courts have jurisdiction over all personal status matters concerning non-Muslims. Where no statutory rule applies, Article 1 of the Civil Code requires courts to apply the customs of the religious community concerned.*
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> *Such customs are not limited to those established locally in Bahrain. If no local custom is proven, courts may apply general or foreign customs, provided that they are genuinely observed by the members of the religion concerned. The application of foreign custom is subject to two conditions: first, that it is actually and consistently followed and regarded as binding within the community, that is, it has not fallen into disuse; and second, that it does not conflict with public policy in Bahrain. Where these conditions are met, the relevant foreign custom governs matters of personal status concerning members of the religion in question.*

In this case, the lower court applied Chapter 27 of the Torah on the ground that no local Jewish custom governing the distribution of inheritance existed in Bahrain, thereby excluding any consideration of customs prevailing outside the Kingdom. However, once its existence is established, foreign custom may be disregarded only where it conflicts with a statutory provision or with public policy. The failure to examine whether relevant foreign Jewish inheritance customs existed and satisfied the required conditions—namely, that they are applied in a consistent, continuous, and well-known manner among members of the Jewish faith, that they are regarded by them as binding, and that they do not violate public policy—justifies the quashing of the decision and the remittal of the case.

III. Comments

Generally speaking, the application of foreign law in the MENA region has long been a challenging issue question marked by uncertainty and resistance in practice (for a general comparative overview, with a special focus on civil and commercial matters, see Béligh Elbalti, "Choice of Law in International Contract and Foreign Law before MENA Arab Courts from the Perspective of Belt and Road Initiative", *in* Poomintr Sooksripaisarnkit, Sai Ramani Garimella (eds.), *Legal Challenges of China's One Belt One Road Initiative – Private International Law Considerations* (Routledge, 2025), pp. 145-150). Against this background, the acceptance by the Bahraini Supreme Court of the application of foreign customs in matters of personal status in a purely domestic case is all the more noteworthy, insofar as certain conditions are met.

The case raises in particular two fundamental questions: (1) the applicability of non-Muslim legal norms in Bahrain; and (2) the relevance of public policy in this context.

1. The applicability of non-Muslim legal norms in Bahrain

a) General Applicable framework

Unlike some non-neighboring countries in the region, where matters of personal

status of non-Muslims—whether foreigners or nationals—may be governed by special legislation (see, for example, UAE federal legislation on Civil Personal Status), Bahrain has not adopted any specific legal framework applicable to non-Muslims.

There are, however, a few notable exceptions.

First, the 1971 Code of Civil and Commercial Procedure (CCCP) sets out conflict-of-laws rules that are expressly applicable to personal status matters involving non-Muslims (Article 21 of the Bahraini CCCP).

Second, Legislative Decree No. 11 of 1971 regulates inheritance and the devolution of estates of foreign non-Muslims.

Third, Legislative Decree No. 42 of 2002 on Judicial Jurisdiction provides, in Article 6, that disputes relating to the personal status of non-Muslims fall within the jurisdiction of the civil courts, as opposed to the Muslim Sharia courts, which, by contrast, have subject-matter jurisdiction over all disputes relating to the personal status of Muslims, with the exception of certain disputes relating to succession, which fall within the jurisdiction of the civil courts (Article 13). In this context, the Muslim Sharia courts are required to apply Bahrain's Family Law of 2017 (Law No. 17 of 2017), which to date constitutes the only legislative framework governing family law matters in Bahrain. This law, however, applies exclusively before the Muslim Sharia courts, which lack jurisdiction over disputes involving non-Muslims.

Accordingly, while the civil courts have jurisdiction *ratione materiae* to hear personal status disputes involving non-Muslims, Bahraini law does not specify the substantive law to be applied by those courts in such matters—except where the parties are foreigners and foreign law is applicable pursuant to Bahraini choice-of-law rules, or where the dispute concerns the succession of foreign non-Muslims, in which case Legislative Decree No. 11 of 1971 applies.

b) Customs as a source of law

It is in this context that the Bahraini Supreme Court relied on Article 1 of the Bahraini Civil Code of 2001, which authorizes courts to apply customs (*'urf*) in the

absence of legislative provisions. The reference to customs is significant, given that Bahraini family law does not contain any provision allowing non-Muslims to invoke the application of their own religious law, unlike several neighbouring jurisdictions in the region (see Article 1(2) of the UAE Personal Status Law of 2024; Article 364 of the Kuwaiti Personal Status Law of 2007; Article 4 of the Qatari Family Law of 2006; and Article 282 of the Omani Personal Status Law of 1997).

The Bahraini Supreme Court's case law is consistent on this point. In a previous decision of 4 April 2023, the Supreme Court quashed a lower court judgment that had applied the 2017 Bahraini Family Law to a dispute involving spouses of the Bahá'í faith, without examining whether there existed any laws or regulations among members of the Bahá'í faith in Bahrain governing their personal status matters, or whether any customs regulated such matters. Unlike the case discussed here, the 2023 decision did involve a conflict-of-laws issue in the sense of private international law, which was resolved by applying Bahraini law as the *lex patriae* of the husband (Article 21(3) of the CCCP). It was at then that the Supreme Court emphasized the absence of Bahraini legislation governing personal status matters for non-Muslims and justified recourse to Article 1 of the Civil Code, thereby overruling the lower court's decision for failing to consider the applicability of Bahá'í law or custom.

However, what is remarkable in the present case is that the court extended the scope of the "customs" referred to in Article 1 of the Civil Code to include "general and foreign (external) customs", in the absence of a local one (*'urf mahalli*). Reference to foreign (external) customs is, however, subject to two cumulative conditions: (1) the foreign customs must be generally observed by members of the relevant religious community, in the sense that they must not have fallen into disuse; and (2) they must not be inconsistent with public policy in Bahrain. With respect to the first condition, the appellants argued that the classical Jewish rule prioritizing male heirs and allowing women to inherit only in the absence of sons has become obsolete in contemporary Jewish social and religious communities. They contended that it has become common practice across Jewish communities worldwide to allow women to inherit on an equal basis, a practice consistently endorsed by rabbinic courts in various legal systems worldwide.

2. Consistency with public policy

Another key question concerns whether succession rules that depart from Islamic Sharia should be regarded as contrary to public policy. Given the centrality of Islamic Sharia in the legal systems of many MENA countries, succession rules raise a particularly sensitive issue when they diverge from its principles. This is more so, knowing that, in some jurisdictions, such as Egypt, where non-Muslims are permitted to apply their own religious rules in matters of family law, succession remains governed by a unified regime based on Islamic Sharia, which applies equally to Muslims and non-Muslims.

In the present case before the Bahraini courts, the applicable Islamic Sharia rules would have entitled the deceased's sisters to inherit, but only on the basis of the principle that a male heir receives a share equal to that of two female heirs (Quran 4:176). In addition, remote male agnates, such as nephews, will be excluded. It is therefore understandable that X et al. invoked Islamic Sharia in the alternative, since, unlike the classical Jewish rule at issue, it would at least secure them a share in the estate, albeit an unequal one (on the reliance of Jewish community on Islamic Sharia courts, see Jessica M. Marglin, "Jews in Shari'a Courts: A Family Dispute From the Cairo Geniza", *in* A. E. Franklin et al. (eds.), *Jews, Christians and Muslims in Medieval and Early Modern Times – A Festschrift in Honor of Mark Cohen* (Brill, 2014), pp. 207-25).

The central issue, however, is whether an equal division of the estate among all potential heirs, without gender distinction, would raise concerns of Islamic public policy. On this point, comparative practice in the region shows a consistent reluctance to treat divergence from Islamic Sharia rules as such a violation. Courts across the Middle East have generally held that, in disputes involving non-Muslims, the application of foreign or religious rules differing from Islamic inheritance principles does not, in itself, offend public policy (for a detailed analysis from a private international law perspective, see Béligh Elbalti, "Applicable Law in Succession Matters in the MENA Arab Jurisdictions – Special Focus on Interfaith Successions and Difference of Religion as Impediment to Inheritance", *RabelsZ*, Vol. 88(4), 2024, pp. 734). Against this background, it is unlikely that the Bahraini courts would consider an equal distribution of the estate among heirs to be contrary to public policy, particularly where the applicable framework already permits recourse to religious or customary norms in the absence of specific legislation.