

## **Federal Law No. (28) of 2005**

### **Regarding personal status**

**We, Khalifa Bin Zayed Al Nahayan,                      President of the United Arab Emirates,**

- Having perused the constitution; and
- Federal Law No. (1) of 1972 concerning the jurisdictions of ministries and powers of ministers as amended; and
- Federal Law No. (10) of 1973 establishing the Federal Supreme Court as amended; and
- Federal Law No. (6) of 1978 concerning the establishing of federal courts and transferring the jurisdictions of local judicial bodies of certain emirates thereto as amended; and
- Federal Law No. (17) of 1978 regulating the cases and procedures of objection by cassation before supreme federal courts as amended; and
- Federal Law No. (3) of 1983 concerning the federal judicial authority as amended; and
- Penal code promulgated by Federal Law No. (3) of 1987; and
- Civil transactions law promulgated by Federal Law No. (5) of 1985 as amended; and
- Federal Law No. (22) of 1991 on Notary Public as amended; and
- Law of Evidence in Civil and Commercial Transactions promulgated by Federal Law No. (10) of 1992; and
- Civil Procedures Law promulgated by Federal Law No. (11) of 1992; and
- Federal Law No. (21) of 1997 specifying dowries and expenses of marriage in

marriage contracts; and

- Acting upon the submissions made by the Minister of Justice, Islamic Affairs and Endowments, the approval of the Cabinet and the Federal National Council and ratification of the Federal Supreme Council;

**issue the following law:**

## **General Provisions**

### **Article (1)**

1. The provisions of this Law shall apply to all events that occurred after the entry into force of its provisions. In addition, the provisions of this Law shall apply retrospectively to deeds of divorce and divorce proceedings for which a final judgement has not been issued.
2. The provisions of this Law shall apply to UAE citizens unless non-Muslims among them have provisions specific to their religious community or denomination.
3. The provisions of this Law shall apply to non-citizens unless one of them insists on the application of their law, without prejudice to the provisions of Articles 12, 13, 14, 15, 16, 17, 27 and 28 of the Law on Civil Transactions issued by UAELEG-FED-LAW 1985, 5 .

### **Article (2)**

- 1) Principles and rules of Islamic jurisprudence (fiqh) shall be referred to for understanding, interpreting and construing the legal texts herein.
- 2) The provisions of this law shall apply to all the matters they deal with in terms of purport. Such matters shall be referred to the juristic doctrine they are derived from for interpretation and completion of their rulings.
- 3) Where this law contains no relevant text, rulings shall be given according to the

well-know rulings in the doctrines of Imams Malik, Ahmed, Shafie, and Abu Hanifa respectively.

### **Article (3)**

Lunar calculation shall prevail for the periods set forth herein unless stipulated otherwise.

### **Article (4)**

Matters for which no provision is contained herein shall be subject to the provisions of the Civil Procedures Law and the Law of Evidence in Civil and Commercial Transactions.

## **Jurisdictions of Courts**

### **Article (5)**

The state courts shall be competed to try personal status actions initiated against citizens or foreigners having a domicile, residence or workplace in the state.

### **Article (6)**

The state courts shall be competed to try personal status actions initiated against foreigners having no domicile, residence or workplace in the state in the following cases:

1. If the action for objecting to a marriage contract to be concluded in the state.
2. If the action is for dissolving, invalidating a marriage contract, or granting or asking for divorce if the actions is filed by a citizen wife or a wife who lost the state nationality, if any of them has a domicile or residence within the state, or if the action is filed by a wife having a domicile or residence in the state against her husband who has a domicile, residence or workplace abroad or who has been deported from the state.

3. If the action is for demanding maintenance for parents, the wife or the minor if they have a domicile, residence or workplace in the state.
4. If the action concerns the filiation of a child having a domicile or residence in the state, or if it concerns a matters of guardianship of the person or property if the minor or the person to interdicted has a domicile or residence in the state, or if the last domicile, residence or workplace of the absent person is in the state.
5. If the action concerns a personal status matter and the claimant is a citizen or a foreigner having a domicile, residence or workplace in the state if the respondent has no well-known domicile or residence abroad, or if the national law is to be applied in the state.
6. If there are several respondents and one of them has a domicile, residence or workplace in the state.
7. If the claimant has a chosen domicile in the state.

### **Article (7)**

In cases where the state courts are the competent authority pursuant to Article 6 hereof, the court having the claimant's domicile, residence or workplace within its precinct shall be the competent authority, otherwise such competence shall devolve to the court of the capital.

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1. The court of first instance composed of one judge shall be competent to decide on personal status matters.
  2. The judge of legalizations shall be competed to legalize the certificates issued by the court.
- The minister of justice, Islamic affairs and wakfs shall issue regulations on the procedures of conducting attestations and their legalizations.

### **Article (8)**

1. The court of first instance composed of one judge shall be competent to decide on personal status matters.
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### **Article (9)**

1. The court having the respondent's domicile, residence or workplace within its precinct shall be the competent authority. Where there are several respondents, competence shall devolve to the court having within its precinct the domicile, residence or workplace of any of them.
2. The court having within its precinct the claimant's or respondent's domicile, residence, workplace, or the conjugal house shall be competent to try actions filed by the children, wife, parents, nurturing female guardian according to conditions in the following cases:
  - a. Maintenance, wages and matters regards as such.
  - b. Custody, seeing and related matters.
  - c. Dowry, paraphernalia, gifts and matters regarded as such.
  - d. Granting divorce to the wife, redemptive divorce (khul), absolution, dissolution, and separation of the spouses of all kinds.
3. The court having within its precinct the decendent's domicile, residence, workplace in the state shall be competent to verify the entitlement to inheritance proofs and testaments and liquidate the succession. Where the decedent has no domicile, residence or workplace in the

state, such competence shall devolve to the court having a realty of the succession within its precinct.

4. The local jurisdiction in the matters of guardianship shall be determined:

a. depending on the domicile or residence of the guardian or minor in matters of guardianship, and on the last domicile or residence of the decedent or minor.

b. depending on the domicile or residence of the person to be interdicted in matters of interdiction.

c. depending on the last domicile, residence or workplace of the absent person in matters of absenteeism.

d. If none of the persons mentioned in paragraphs a, b and c has a domicile or residence in the state, competence shall devolve to the court having in its precinct the applicant's domicile or residence or to the court having within its precinct the property of the person to be protected.

e. The court that rules for interdiction or stripping off or discontinuing the guardianship shall refer the case to the court having within its precinct the domicile or residence of the minor in order to appoint someone to supervise him be he a curator or guardian if the domicile or residence of the minor or the person to be interdicted changes.

5. If the respondent has no domicile, residence or workplace in the state, and no court of competent jurisdiction can be determined under the provisions of the above paragraphs, jurisdiction shall devolve to the court having within its precinct the claimant's domicile, residence or workplace, otherwise to the court of the capital.

## **Article (10)**

1. In cases where the law requires obtaining the court permission or approval or referring

the matter to the judge, the motion shall be submitted to the court having within its precinct the petitioner's domicile or residence on a petition order unless the law stipulates otherwise.

2. Any interested party may complain against such order within one week of the date he is served a notice thereof. The court shall deliver its judgment on the complaint to sustain, amend or rescind it, and such judgment shall be appealable by the means of appeal prescribed in the law.

3. The motion for appointing a curator shall be on a petition order, and the prosecution and potential successors shall be informed thereof.

### **Article (11)**

Any impediment connected with the execution of resumption of urgent or summary judgments, decisions, executed or legalized reports or attested conciliation records pertaining to an alimony or custody shall not result in discontinuing the executions procedures unless the court decides otherwise.

### **Article (12)**

In case of demanding a ruling considering a person lost, litigation shall be addressed to potential successors of the lost person or his representative or the person who has appointed a representative for him and to the public prosecution.

### **Article (13)**

If the cassation court cassates the appealed judgment in part or in whole, it shall decide on the matter.

The provision of the above paragraph shall not apply:

1. If the attacked judgment is cancelled on grounds of nullity and such nullity is due to a cause relative to the initiatory pleading, the court shall decide, besides nullity, remanding the case to the court of first instance for trial after notifying the litigants. Filing appeals shall be regarded as notices of motions submitted in the case.
2. If the attacked judgment has decided lack of jurisdiction or sustaining a subsidiary plea, this shall result in discontinuing the case or supporting the judgment appealed in both matters. If the court of cassation decides revoking the attacked judgment, it shall refer the case to the court that has delivered the attacked judgment unless it decides that the case be heard by another circuit composed of other judges, or that it be referred to the court of competent jurisdiction for a new decision. The court above shall cassate the matter decided unless the appeal is submitted for the second time. If the court of cassation cassates the attacked judgment, it shall then decide on the matter.

### **Article (14)**

1. The respondent or the person to be notified shall be sent a copy of the notice to his domicile, residence, workplace, chosen domicile or wherever he is found. Where it is impossible to inform him, the court may notify him by fax, e-mail, registered mail or any other means.
2. If the notice server fails to find the person to be notified at his domicile, he shall deliver a copy of the notice to any of those persons living with him such as the spouse, relatives, or affines, or to his supervisor or the person who decides that he is his manager if he fails to find him at his workplace. In all cases, the copy of the notice shall be delivered only to the person whose appearance indicates that he has completed eighteen years of age and that neither he nor the person he represents has an evident interest that conflicts with that of the

person notified.

3. If the notice server fails to find any right person to receive the copy or if a person of those mentioned therein refuses to sign the original for receipt or receive the copy after he has been identified, or if the place is closed, the notice server shall deliver the copy on the same day to the officer or deputy officer of the police station having within its precinct the domicile, residence or workplace of the person to be notified according to conditions. The sever shall also send the person to be notified within twenty four hours after delivering the copy to the police station a registered letter at his domicile, residence or workplace or his chosen domicile to inform him that the copy has been delivered to the police station.

4. By way of exception from the above paragraph, the court may order posting a copy of the notice on the notice board and on the door of the place where the person to be notified resides or on the door of the last place where he lived or publishing the notice in two dailies appearing in the state or abroad in Arabic and English, as appropriate, if required.

5. If the court becomes sure that the person to be notified has no domicile, residence, workplace, fax, e-mail or postal address, it shall notify him through publication in two dailies appearing in the state or abroad in Arabic or a foreign language as appropriate. The date of publications shall be the date of serving the notice.

6. In respect to persons having a known domicile, residence or workplace abroad, the copy of the notice shall be delivered to the undersecretary of the ministry of justice to notify them by diplomatic means or by registered mail with acknowledgment of receipt.

7. The notice shall be legally binding from the date of communicating the copy, sending the fax or the e-mail, delivering the registered mail with acknowledgment of receipt or the date of publication according to the above provisions.

## **Article (15)**

1. The judgment shall be communicated to the convict in person or to his workplace or residence, failing which he shall be notified by the means prescribed in Article 14 hereof on the order of the court that has pronounced the judgment and at the request of the judgment beneficiary.
2. The period for challenging the judgment shall commence from the day following the date of pronouncement if has been pronounced in presence, and from the following date of serving the notice on the convict if it is regarded as an in presence judgment.
3. The period for objecting by appeal and cassation shall be thirty days each.
4. The party receiving a favorable judgment of divorce, separation, nullity of contract or for considering the lost person dead shall notify the convict or the person the judgment is delivered against of such judgment if it is regarded contradictory in order to be subject to the period prescribed.

## **Article (16)**

1. Actions of person status matters shall be heard by the court only after they have been submitted to the family guidance committee, except matters of testaments, inheritance, matters regarded as such, urgent and summary cases, urgent and summary orders relative to alimony, custody, guardianship and actions concerning which conciliation can not be imagined such as those filed for proving marriage or divorce.
2. If the parties reconcile before the family guidance committee, this reconciliation shall be established in a report to be signed by the parties and the committee officer and approved by the competent judge, whereupon it shall have the power of the executive writ that may not be objected to by any means except if it contradicts the provisions hereof.

3. The minister of justice, Islamic affairs and wakfs shall issue the executive regulations governing the mission of the family guidance committee.

## **Book One**

### **Marriage**

#### **Part One**

#### **Engagement**

##### **Article (17)**

1. Engagement is a proposal for and promise of marriage, not considered actual marriage.
2. No woman who is deemed "prohibited" (under Shariah law) may be engaged, even if such a prohibition is temporary. A woman observing a mourning period may, however, be engaged.

##### **Article (18)**

1. Each party may withdraw from the engagement. However, if unnecessary prejudice results from either party's withdrawal, the other party may claim indemnity for the prejudice he/she suffers. The party responsible for withdrawal shall be considered withdrawing.
2. If either party withdraws from the engagement or passes away, the dowry paid in kind or its value shall be redeemed on the day of payment if it cannot be returned in kind.
3. If the fiancée has bought paraphernalia with the amount of her dowry or a portion thereof and then the suitor withdraws, she may choose between refunding the dowry or delivering a portion of the paraphernalia equal to it at the time of purchase.
4. Gifts presented customarily shall be considered part of the dowry.
5. If one party withdraws from the engagement without any condition or usage, he/she shall

not be entitled to recover anything he/she has presented to the other if there is no ground for such withdrawal, while the other party shall have the right to recover anything he/she has given.

6. If one party withdraws from the engagement for some cause, he/she may recover what he/she has presented if existent, or on the day of payment if it has perished or is being consumed and the other party cannot recover it.

7. If engagement is terminated because of the withdrawal of both parties, they may recover anything they have presented to each other if existent.

8. If engagement is terminated because of death or a reason beyond the control of either party, or an impediment that prevents marriage, nothing of the gifts may be recovered.

## **Part Two**

### **General Provisions on Marriage**

#### **Article (19)**

Marriage is a contract entitling one spouse to have legal enjoyment with the other in order to protect his/her chastity and build a stable family under the husband's care on grounds that enable them to muster its burdens in affinity and mercy.

#### **Article (20)**

1. Husbands shall adhere to their conditions except any conditions that sanction anything prohibited or forbid anything permissible.

2. If a marriage contract stipulates a contrary condition to its essence, the contract shall be invalid.

3. If the marriage contract contains a condition that is not contrary to its essence but to its

purport or that is legally invalid, the condition shall be invalid while the contract shall be valid.

4. If the marriage contract contains a condition that is not contrary to its essence or its purport and that is legally valid, the condition shall be valid and enforceable. If the party placed under such condition breaches it, the stipulating party may ask for dissolving the marriage whether on the part of the wife or husband. The husband shall be exempted from the waiting period (idda) alimony if the condition is breached by the wife.

5. If one spouse requires a specific description in the other but he/she finds something contrary, the stipulator may ask for dissolving the marriage.

6. In case of denial, no conditions shall be valid except if it is expressly provided for in the legalized marriage contract.

7. The right to dissolution shall abate if its holder extinguishes it or if he agrees to its breach expressly or implicitly. The lapse of one year after the occurrence of violation while having knowledge thereof and irrevocable divorce shall be regarded as implicit consent.

## **Article (21)**

1. For marriage to be contracted, the man must be suitable for the woman at the time of contracting only. Both the woman and her guardian shall have the right to ask for dissolving the marriage if such suitability is missing, whereas the loss of suitability afterwards shall not affect the contract.

2. If both of the engagement parties are not suitable for each other in age, i.e., if the suitor's age is double or more than that of the fiancée, the marriage shall be contracted only with the consent and knowledge of both parties after obtaining permission from the judge who may forbid the marriage if it serves no interest.

### **Article (22)**

The criterion of suitability shall be the husband's religious righteousness. Usage shall be considered for determining suitability in matters other than religion.

### **Article (23)**

1. Suitability is a right that may be required by the woman and her fully capacitated guardian.
2. Distant guardians may not object to the lack of suitability except in the absence of close relatives or if they are incapacitated.

### **Article (24)**

If the man pretends to be suitable or affects anything to give an impression of such suitability, or if suitability is stipulated in the contract and then he turns out to be unsuitable, both the wife and her guardian shall have the right to ask for dissolution.

### **Article (25)**

The right to ask for dissolution due to lack of suitability shall abate if the wife becomes pregnant, or a year elapses after learning about the marriage, or if the person having the right to ask for dissolution has agreed before to the marriage.

### **Article (26)**

The guardian may not ask for dissolution on the ground that the dowry is less than appropriate dowries.

### **Article (27)**

1. Marriages shall be officially legalized and may be established by legal proof for a specific fact.
2. As a condition for concluding a marriage contract, a report from a specialist medical committee formed by the minister of health shall be submitted confirming freedom from the diseases because of which this law allows for demanding separation.
3. Marriage contracts shall be legalized by marriage solemnizers concerning whom the minister of justice, Islamic affairs and wakfs shall issue the relevant regulations.

### **Article (28)**

1. No guardian may conclude the marriage contract of an insane or a mentally deficient person or persons having similar conditions without the permission of the judge and after fulfilling the following conditions:
  - a. The other party agrees to marry him after learning about his condition.
  - b. His disease shall not be transmitted to his posterity.
  - c. His marriage shall realize an interest for him.
2. Conditions mentioned in B and C shall be confirmed by a report from a competent committee to be formed by the minister of justice, Islamic affairs and wakfs in coordination with the minister of health.

### **Article (29)**

Males who reach the legal age may marry themselves even if they are or become prodigal.

The guardian over the property may object in case of exceeding appropriate dowries. This

shall not include the forfeiture of the financial rights resulting from the marriage.

### **Article (30)**

1. Marriage eligibility shall be completed by reason of maturity and adolescence. The age of adolescence is eighteen years for those who have not been legally adolescent prior to that age.
2. A person who is legally adolescent prior to reaching the age of eighteen shall not marry, except in accordance with the controls issued by a Cabinet resolution at a proposal of the Minister of Justice.
3. A person who is eighteen years old wishing to marry but the guardian thereof refuses to let him marry may refer the matter to the Judge.
4. The Judge shall specify a period for the guardian, after being notified, to appear to present his statements. If he does not appear at all or if his objection is not convincing, the Judge shall allow the marriage.

### **Article (31)**

Any person who gets married according to Article 30 hereof shall acquire capacity in all matters relative to marriage and its effects, except forfeiture of financial rights resulting from marriage.

### **Article (32)**

A matrimonial guardian shall be the father, then the Agnates by themselves according to the order of inheritance including the son, the brother and then the paternal uncle. Where any two guardians are equal in relationship, any of them may conclude the marriage on his

conditions and shall be the representative appointed by the fiancée.

### **Article (33)**

A guardian must be male, sound in mind, major, not wearing the clothes of ihram for hajj or omra and Muslim if the guardianship is over a Muslim.

### **Article (34)**

If the closer guardian is absent permanently, or if his whereabouts are not known, or if he cannot be called, guardianship shall devolve to the next guardian by the judge's permission, or to the judge himself in case of prevention from marriage.

### **Article (35)**

The judge shall be the guardian of any person no guardian.

### **Article (36)**

The judge may not marry the person he is a guardian over to himself, his ancestors or descendents.

### **Article (37)**

1. Appointing a representative for concluding a marriage contract is permissible.
2. No representative may marry his female constituent to himself unless this is stipulated in the proxy instrument.
3. If the representative in marriage exceeds the limits of his proxy, the contract shall be pending.

## **Part Three**

### **Elements and Conditions**

#### **Article (38)**

The elements of the marriage contract are:

1. The contracting parties (the husband and the guardian)
2. Object
3. Proposal and acceptance

## **Chapter One**

### **Spouses**

#### **Article (39)**

The major woman's guardian shall conclude her marriage contract with her consent and the marriage solemnizer shall sign the contract. Contracts concluded without a guardian shall be invalid. If marriage is consummated, the spouses shall be separated and the child's filiation shall be established.

#### **Article (40)**

The woman must not be permanently or provisionally prohibited for the man to marry so that marriage can be valid.

## **Chapter Two**

### **Contract Formula**

#### **Article (41)**

The following conditions must be fulfilled in the proposal and acceptance:

1. They must be expressed verbally in the terms of marriage.
2. They must be binding, not indicative of timing. Marriages depending on an uncertain condition, or contingent marriages, or enjoyment marriages or temporary marriages shall not be valid.
3. The acceptance must be expressly or implicitly congruent with the proposal and the contracting parties must remain eligible till finalization of the contract.
4. There must be verbal consensus at the contract session among present parties and acceptance following the proposal, and among the absent parties by acceptance at the session of reciting the contract before witnesses or letting them hear its content or informing the messenger. Acceptance shall not be considered slower than proposal if they are not separated by anything indicative of objection.
5. The proposal must remain valid till the acceptance is expressed. The proposer shall have the right to withdraw before the acceptance is expressed.
6. The contracting parties must hear the speech of each other and know that it is intended for marriage even if the meanings of words are not understood.
7. In case of inability to speak, speech shall be replaced by writing, otherwise by understandable signs.

## **Chapter Three**

### **Prohibited Women**

#### **First branch**

#### **Permanently prohibited women**

##### **Article (42)**

It is prohibited for a person to marry because of blood kinship:

1. His ancestors however high in lineage
2. His descendents however low in lineage
3. The descendents of either or both parents however low in lineage
4. The first class of the descendents of one of his grandfathers or grandmothers.

##### **Article (43)**

It is prohibited for a person to marry because of kinship through marriage:

1. The woman who was married to one of his ancestors however high in lineage, the wife of any one of his descendents however low in lineage.
2. The ancestors of his spouse however high in lineage.
3. The descendents of his spouse he consummates marriage with however low in lineage.

##### **Article (44)**

It is prohibited for a person to marry his descendents from adultery however low in lineage or his daughter whose filiation to him is refuted by li'an.

##### **Article (45)**

It is prohibited for a person to marry the woman he accuses of adultery after the spouses

have taken the oath.

### **Article (46)**

Women prohibited because of suckling shall also be prohibited because of blood kinship and marriage connection, except the legally excepted cases on two conditions:

1. Suckling must take place in the first two years
2. Suckling must reach five separate times.

## **Section Two**

### **Provisional Prohibition**

### **Article (47)**

Cases of provisional prohibition:

1. Combining two women even if in the waiting period, and if any one of them is supposed to be male, the man shall be prevented from marrying another woman.
2. Combining more than four women.
3. The woman married to another person
4. The woman observing a waiting period for another person
5. The woman divorced irrevocably; her divorcer may not marry her until she has observed the waiting period after being divorced by another husband who has consummated a valid marriage with her.
6. The woman wearing an Ihram for a hajj or an omra.
7. The non-Muslim women unless she is a kitabiya (Jewish or Christian).
8. The marriage by a Muslim woman to a non-Muslim

## **Chapter Four**

### **Conditions of the Contract**

#### **Article (48)**

1. As a condition for the validity of marriage, two witnesses of legal age and sound mind, capable of hearing the speech of the contracting parties and understating that it is intended for marriage must be present.
2. The witnesses must be Muslim. In case a Muslim marries a kitabiya, the testimony of two kitabis (Jewish or Christian) shall be sufficient.

## **Chapter Five**

### **Dowry**

#### **Article (49)**

A dowry is the money or property offered by the husband to his wife for the purpose of marriage. There is no minimum for the dowry but its maximum limit is subject to the dowry determination law.

#### **Article (50)**

The dowry is the woman's right that she can dispose of the way she likes. No contrary condition shall be valid.

#### **Article (51)**

1. If a dowry is properly specified in the marriage contract, it shall be due to the woman.
2. If no dowry is specified in the contract or if a dowry is improperly specified or deleted, the woman shall be entitled to an appropriate dowry.

### **Article (52)**

1. The dowry may be paid promptly or it may be deferred wholly or partially at the time of concluding the marriage contract.
2. The dowry shall be due if the marriage contract is valid and shall be confirmed upon consummation of marriage, valid seclusion, or death. The deferred part of dowry shall become payable upon death or an irrevocable divorce.
3. A divorcee shall be entitled before the consummation of marriage to half the dowry if it is specified, otherwise the judge shall decide for her enjoyment maintenance not exceeding half the appropriate dowry.

### **Article (53)**

1. The wife shall have the right to prevent the consummation of marriage till she is paid her prompt dowry.
2. If the wife agrees to the consummation of marriage before receiving her dowry from her husband, it shall become a debt due from him.

## **Chapter Six**

### **Mutual Rights**

### **Article (54)**

Mutual rights and duties between spouses:

1. Each spouse shall have the right to enjoy the other within the legally permitted limits.
2. Legal cohabitation
3. Good treatment, mutual respect, kindness and protecting the welfare of the family.

4. Caring for and educating the children to ensure their good raising.

### **Article (55)**

The Wife's rights due from her husband:

1. Maintenance
2. Not preventing her from continuing her education.
3. Not preventing her from visiting her ancestors, descendents or sisters and allowing them to visit her with kindness.
4. Not interfering with her personal properties.
5. Not hurting her physically or morally.
6. Treating her equally with the other wives if the husband has more than one wife.

### **Article (56)**

A Husband's rights on his wife:

1. House supervision and maintaining its assets.
2. Breastfeeding his children unless she has an excuse.

## **Part Four**

### **Types of Marriage**

### **Article (57)**

Valid marriage and invalid marriage. An invalid marriage includes void (batil) marriage and irregular (fasid) marriage

### **Article (58)**

1. A valid marriage is that the elements and conditions of which are fulfilled and the impediments of which are absent.
2. A valid marriage shall produce its effects from the time it is concluded.

### **Article (59)**

1. An invalid marriage is that the conditions of which are beached.
2. An invalid marriage shall not produce any effects before it is consumed.

### **Article (60)**

An invalid marriage shall produce the following effects after consummation:

1. The lower of the specified or the appropriate dowries.
2. The establishment of filiation.
3. The prohibition of connection by marriage.
4. The waiting period (idda)
5. An alimony as long as the woman is unaware that the contract is invalid.

### **Article (61)**

1. A void (batil) marriage is that an element of which is breached.
2. A void marriage shall not produce any effect unless this law stipulates otherwise.

**Part Five**  
**Effects of Marriage**  
**General Provisions**  
**Article (62)**

1. A major woman shall be free to dispose of her property. The husband may not dispose of her property without her consent; each of them shall have impendent financial assets. If one of them shares the other in developing his/her property or building a residence, etc, he /she may claim his/her share from the other upon divorce or death.
2. Equality shall be required in donations and matters regarded as such among the children and wives, unless a certain interest is determined by the judge. If no equality is observed, the judge shall achieve such equality and exclude this interest from the succession.

**Chapter One**  
**Maintenance**  
**Article (63)**

1. Maintenance shall cover food, clothing, the house, treatment, a servant for the wife if she is served in her family's house and what is kindly required by conjugal relationship.
2. Maintenance shall be determined according to the financial ability of the maintainer and the condition of the dependent and the economic situations in terms of place and time. However, maintenance shall not be less than the sufficient limit.
3. The exploration (inspection) certificate shall be sufficient for deciding the kinds of maintenance, the amount of custody, the house and the conditions on which any decided thing of what is mentioned depends.

### **Article (64)**

1. Maintenance may be increased or decreased according to any change in conditions.
2. Actions for increasing or decreasing the maintenance shall be heard only after the elapse of one year after it has been imposed, except in exceptional cases.
3. The increase or decrease of maintenance shall be calculated from the date of the judicial claim.

### **Article (65)**

A continuous maintenance shall have precedence over all debts.

## **Section One**

### **Wife's Alimony**

#### **Article (66)**

The wife shall deserve alimony from her husband under the valid contract if she yields herself to him even if by a judgment.

#### **Article (67)**

The wife's alimony shall start from the date the husband abstains from supporting her. It shall be considered a debt due from him without dependence on the judiciary or mutual consent, but it shall be extinguished by payment or absolution.

Actions for calming alimony for a previous period exceeding three years from the date of filing the action shall not be heard unless it is imposed by mutual consent.

### **Article (68)**

The judge may at the wife's request decide her a provisional alimony and his decision shall be self-executing by the force of law.

### **Article (69)**

The woman observing a revocable divorce idda and the wife observing an irrevocable divorce idda while being pregnant shall deserve alimony and a residence, while the woman observing an irrevocable divorce idda without being pregnant shall deserve a residence only.

### **Article (70)**

No alimony shall be due to the woman observing a mourning idda, but she shall be entitled to live in the conjugal house during the idda period.

### **Article (71)**

The wife's alimony is forfeited in the following events:

1. If she abstains from copulation with her husband without a legal excuse.
2. If she refrains returning to the conjugal domicile without a legal excuse.
3. If she prevents her husband from entering the conjugal domicile without a legal excuse.
4. If a judgment or decision of the court is issued, restraining her freedom, in a matter to which the husband is not entitled, and said judgment or decision is being enforced.
5. If she breaches her conjugal obligations stipulated by law.

### **Article (72)**

The spouses' departure from the house or to work in accordance with the law or Sharia or custom or necessity shall not be deemed as a violation to the conjugal obligations and the Judge must take into account the family's interest in this regard.

### **Article (73)**

The commitment to the wife's alimony shall lapse upon:

1. Payment
2. Absolution
3. The death of one spouse unless a judicial ruling has been passed for it.

### **Article (74)**

The husband shall prepare his wife a residence in his domicile. The residence shall be suitable for their condition.

### **Article (75)**

The spouses shall live in the conjugal domicile unless otherwise stipulated in the marriage contract; and the Judge shall take into account the interest of the family in the event of a dispute between the spouses.

### **Article (76)**

1. The husband shall be entitled to live with wife in the conjugal house and his children by his other wives if he is commanded to support them, as long as this shall not cause any harm to her.

2. The wife may not allow her children by another husband to live with her in the conjugal house except if they have another custodian than her, or if they will suffer harm if they separate from her, or if the husband agrees expressly or implicitly, but he may refuse if he suffers any resulting harm.

### **Article (77)**

The husband may not allow his other wife to live with his wife in the same house unless she agrees. She may also refuse if she suffers any resulting harm.

## **Section Two**

### **Maintenance for Relatives**

#### **Article (78)**

1. Maintenance of the youngster having no financial resource shall be borne by his father. Girls shall be maintained till they get married, while boys shall be maintained till they reach an age at which his equals can earn money, unless he is student pursuing his study with usual success.
2. Maintenance of the old boy who is unable to earn money due to an infirmity or another impediment shall be borne by his father unless he has a financial resource from which he can spend.
3. The female shall be maintained by her father if she is divorced or if her husband dies unless she has no financial resource or another person required to maintain her.
4. If the boy's financial resource is not sufficient for maintaining him, his father shall be obligated to supplement such maintenance pursuant to the above conditions.

### **Article (79)**

The costs of suckling the child shall be due from his father if his mother cannot suckle him. These costs shall be regarded as maintenance.

### **Article (80)**

The child's maintenance shall be due from his wealthy mother if he loses his father or has no financial resource, or if he cannot support himself. However, the mother may claim the amounts she pays from the father if he becomes solvent and if this payment is permitted by him or by the judge.

### **Article (81)**

1. The wealthy child, be male or female, old or young, shall maintain his parents if they have no financial resource from which they can support themselves.
2. If the parents' financial resources are not sufficient for maintenance, the wealthy children shall supplement it.

### **Article (82)**

1. The parental maintenance shall be shared by the children according to their respect wealth.
2. If one of the children maintains his parents willingly, he may not have recourse against his brothers.
3. If maintenance occurs after passing a judgment of maintenance against them, he may have recourse against each of them by virtue of the judgment if he has maintained them with the intention of recourse.

### **Article (83)**

If the money the child earns does not exceed his need and that of his wife and children, he shall join his parents who are entitled to maintenance to his family.

### **Article (84)**

The maintenance of any person deserving such maintenance shall be borne by his inheritors from among his wealthy relatives according to their order and inheritance shares. If the inheritor is poor, the maintenance shall be imposed on the next inheritor subject to the provisions of Articles 80 and 81 hereof.

### **Article (85)**

Where there are several persons entitled to maintenance and the person required to bear the maintenance cannot maintain them all, priority shall be given to the wife's alimony, the parental maintenance, and the relative's maintenance respectively.

### **Article (86)**

1. The maintenance of the relatives excluding the children shall be imposed from the date of filing the judicial claim.
2. Actions for claiming the children's maintenance from their father for a previous period exceeding one year from the date of the judicial claim shall not be heard.

### **Section Three**

#### **Maintenance of persons having no maintainer**

##### **Article (87)**

The state shall be responsible for maintaining any person having no maintainer.

##### **Article (88)**

A foundling of unknown parents shall be maintained from his financial resources, if any. Where there is no financial resource or where nobody volunteers to maintain him, the state shall bear his maintenance.

### **Chapter Two**

#### **Filiation**

##### **Article (89)**

Filiation shall be established by the matrimonial bed, acknowledgment, evidence or scientific methods if it is proved by the matrimonial bed.

##### **Article (90)**

1. The child shall be filiated to the conjugal bed if the least pregnancy period has elapsed after concluding a valid marriage contract and the impossibility of a sexual intercourse between the spouses is not proved.
2. The filiation of the child of a suspicious copulation shall be established if he is born after the minimum pregnancy period from the last copulation.
3. Filiating any child to his mother shall be established as soon as delivery is established.
4. If filiation is established legally, no action for refutation shall be heard.

### **Article (91)**

The minimum pregnancy period shall be one hundred and eighty days, and the maximum period shall be three hundred and sixty five days, unless otherwise decided by a medical committee formed for this purpose.

### **Article (92)**

1. Recognizing filiation even in the last illness shall be proof of that filiation unless the child is illegitimate, subject to the following conditions:

- a. The recognizee must be of unknown paternity.
  - b. The recognizer must be of legal age, sound mind and free-willed.
  - c. The difference in age between the recognizer and the recognizee must allow for believing the recognition.
  - d. The recognizee must believe the recognizer, provided that he is of legal age and sound mind.
2. Istilhaq is a recognition of filiation made by the father for a legitimate child. Filiation may not be recognized by the grandfather.

### **Article (93)**

If the recognizer is a married woman or observing an idda, filiating the child to her husband shall be established only if he believes her or if she proves it.

### **Article (94)**

If a person of unknown lineage recognizes paternity or maternity, this relation shall be established if the recognizee believes him or if evidence is produced as long as the difference in age admits it.

### **Article (95)**

Recognizing another relation than filiation, paternity or maternity shall apply only to the recognizer if he is believed or if evidence is produced.

### **Article (96)**

Li'an (accusing the spouse of adultery) shall occur only before the court and according to the legally prescribed rules.

1. Separation due to li'an shall be permanent.

### **Article (97)**

1. The man may refute the filiation of the child to him by li'an within seven days from the date of learning about his delivery provided that he has not admitted his paternity expressly or implicitly. The li'an action shall be filed within thirty days from the date of learning about the delivery.
2. If li'an is for refuting the filiation and the judge decides it, the filiation shall be refuted.
3. If the husband takes the oaths of li'an and if the wife refuses to swear or appear or absents herself or if it is impossible to notify her, the judge shall issue a ruling refuting the filiation.
4. The filiation of the child refuted by li'an after a ruling refuting this filiation shall be established if the man belies himself.

5. The court may use scientific methods to refute the filiation provided that it has not been established before.

## **Book Two**

### **Separation General Provisions**

#### **Article (98)**

1. The contract marriage shall be dissolved if it contains an impediment contrary to its requirements or if something prevents its legal continuation.
2. Separation shall occur between the spouses by divorce, dissolution or death.
3. The court shall try to reconcile the spouses before it decides separating them.
4. If the divorced woman marries another man, consummation of marriage shall destroy the repudiations of the previous husband.

## **Part One**

### **Divorce**

#### **Article (99)**

1. Divorce is the dissolution of the marriage contract in the legally prescribed form.
2. Divorce shall occur verbally or in writing, or by an understandable sign in case of inability to express them.

#### **Article (100)**

Divorce occurs from the husband or his legal representative holding a special POA, or from the wife or her legal representative holding a special POA in accordance to what was agreed in the marriage contract, and shall be registered in accordance with the followed procedures

at the court.

Divorce is confirmed before the judge by a testimony of two witnesses, or by acknowledgment, and the judge shall issue his decision after verifying the availability of either of the two conditions.

Divorce is based on the date of acknowledgment, unless a previous date has been proven to the court, and the consequences of divorce by acknowledgment shall be referred to Sharia rules.

### **Article (101)**

1. The divorcer must be of sound mind and free-willed.
2. The divorce pronounced by an inebriated person shall not be valid.

### **Article (102)**

Divorce shall not apply to the wife unless she is validly married and is not observing any waiting period.

### **Article (103)**

1. Divorce made conditional on doing or giving up something shall not be valid unless the divorce means actual divorce.
2. Breaking the oath of divorce or tahreem (oath taken for not copulating) shall not result in divorce unless the divorce means actual divorce.
3. Repeated pronouncements or repudiations coupled with a number, words, writing or signs shall result in one divorce only.
4. No contingent divorce shall be valid.

## **Article (104)**

Divorce is of two kinds: Revocable and irrevocable:

1. The revocable divorce shall not terminate the marriage contract except if the waiting period elapses.
2. The irrevocable divorce shall terminate the marriage contract when it occurs. There are two kinds of irrevocable divorce:
  - A. Minor irrevocable divorce: The divorcee may be taken in marriage by her divorcer after this divorce only under a new contract and for a new dowry.
  - B. Major irrevocable marriage: The divorcee may not be taken in marriage by her divorcer after that marriage unless she observes a waiting period concerning another husband after actual consummation of a valid marriage with her.

## **Article (105)**

Any divorce shall be revocable except the third repudiation, the divorce pronounced before consummation and the irrevocable divorces provided for.

## **Article 106**

### **(Repealed by FED DECREE BY LAW No. 5 of 2020)**

1. The divorce authorized by the husband shall be valid and shall be legalized by the judge.
2. Any divorce contrary to the above clause shall be proved before the court by evidence or declaration, whereupon the divorce shall be attributed to the date of declaration, unless the court finds a previous date. Effects resulting from divorce by recognition shall be governed by the rules of Islamic law.

### **Article (107)**

After divorce occurs, the competent judge shall issue at the request an order specifying alimony for the wife during her waiting period and the maintenance of children and the person having the right to custody and allowing the visit of the child taken in custody. This order shall be considered self-executing by the force of law. The party affected may challenge this order by the legally prescribed methods of appeal.

### **Article (108)**

The husband may restore his revocably divorced wife as long as she has not completed the waiting period. Waving this right shall not extinguish it. If the waiting period has elapsed, she may return to him without her guardian's permission if he refuses to marry her to him, provided that her first marriage to him was concluded with the consent of her guardian or a court order.

### **Article (109)**

1. Restoration may be expressed in words or writing, otherwise by an understandable sign in case of inability to express them. Restoration may be also expressed by action and intention.
2. Restoration shall be legalized and the wife shall be notified about it during the waiting period.

## **Part Two**

### **Khul (redemptive divorce)**

#### **Article (110)**

1. Khul (redemptive divorce) is a contract under which the spouses mutually agree on terminating their marriage contract for some consideration paid by the wife or another person.
2. The portion that may be specified in the dowry may be specified in the khul compensation, but it may not exclude the children's maintenance or custody.
3. If the khul compensation is not valid, the khul shall be valid and the husband shall be entitled to the dowry.
4. Khul shall dissolve the marriage contract.
5. By way of exception from the provisions of clause 1 of this Article, if the husband refuses the khul due to obstinacy and it is feared that they may not observe the limits ordained by Allah Almighty, the judge shall decide this khul for some proper compensation.

#### **Article (111)**

For the khul compensation to be valid, the person paying this compensation must be capacitated and the husband must be eligible for divorcing.

## **Part Three**

### **Separation by the Judge's Order**

#### **Chapter One**

#### **Separation for Defects**

### **Article (112)**

1. If one spouse finds that the other has some defect that is irremediable or disgusting such as insanity and leprosy, or that impedes sexual enjoyment such as Impotence, or vaginal occlusion, he/she may ask for dissolving the marriage whether such defect exists before or occurs after concluding the contract.
2. The right to dissolution shall abate if the spouse learns about the defect before the contract and accepts it expressly or purportedly afterwards.
3. The wife's right to ask for dissolution due to a sexual impediment shall not abate in any way.
4. The court shall hear the action filed for dissolving the marriage due to a sexual impediment in a secrete session.

### **Article (113)**

If the defects mentioned in Article 112 hereof are irremovable, the court shall dissolve the marriage promptly without any respire.

If they are removable, the court shall defer the case for a suitable period not exceeding one year. If the defect is not removed during that year and the claimant insists on dissolution, the court shall dissolve the marriage.

### **Article (114)**

Both spouses shall have the right to ask for separation in the following cases:

1. If deception leading to the conclusion of the marriage contract occurs from the other spouse or with his knowledge. Keeping intentional silence about a certain fact shall be considered an act of deception if it is proved that the deceived party would not have

concluded the marriage contract had he learnt about this fact.

2. If it is proved by a medical report that the other spouse is sterile after remaining married for five years and after medical treatment. The dissolution claimant must not have children, or exceed forty years of age.

3. If the other spouse is convicted of adultery or a crime regarded as such.

4. If it is proved that the other spouse is infected with a fatal disease such as AIDS or any disease regarded as such. If it is feared that the disease may transmit to the other husband or his/her posterity, the judge shall separate the spouses.

### **Article (115)**

1. A specialist medical committee shall be engaged to identify the defects due to which separation may be demanded.

2. Separation meant in this chapter shall be considered dissolution.

## **Chapter Two**

### **Separation for failure to pay the prompt dowry**

#### **Article (116)**

1. Separation shall be decided for the wife whose marriage has not been consummated due to her husband's failure to pay her prompt dowry in the following cases:

A. If the husband has no obvious financial resource the dowry can be taken from.

B. If the husband is obviously unable to pay and the term fixed by the judge for paying the prompt dowry expires without payment.

2. No separation due to failure to pay her prompt dowry shall be decided for the wife after consummation, but the husband shall be indebted to her for this dowry.

## **Chapter Three**

### **Separation for Prejudice and Dissension**

#### **Article (117)**

1. Both of the spouses shall have the right to ask for divorce due to prejudice that makes the continuation of their kind association impossible. They shall not forfeit this right unless their conciliation is proved.
2. The family guidance committee shall try to conciliate the spouses according to Article 16 hereof. If it fails to do so, the judge shall offer them conciliation. If conciliation is impossible and prejudice is proved, divorce shall be decided.

#### **Article (118)**

1. If damage is not proved, and the dispute is continued between the spouses, the damaged party may file a new case, and if the Family Orientation Committee and the Judge cannot reach reconciliation, the Judge shall issue a judgment appointing two Arbiters from the relatives of each, if possible, after asking each of the spouses to nominate his Arbiter as much as possible at the next session. Otherwise, the Judge may appoint someone who have the experience and ability to reconcile if a spouse fails to name his Arbiter or fails to appear at this session. The judgment shall not be subject to appeal.
2. The judgment appointing Arbiters shall include the commencement and ending dates of the assignment provided that it shall not exceed ninety days, that may be extended by a decision of the court. The court shall notify the two Arbiters and the litigants of the judgment appointing the Arbiters and shall ask each of them to take the oath that he shall perform his assignment with equity and honesty.

### **Article (119)**

The two arbitrators shall investigate the causes of dissension and exert their efforts to conciliate the spouses. The arbitrators' mission shall not be affected if either spouse refuses to attend the arbitration session after being informed of the session fixed or the sessions following if they are interrupted.

### **Article (120)**

1. If the two Arbiters are unable to reconcile, the court shall present the recommendation of both Arbiters to the spouses and invite them to reconcile before issuing the judgment of divorce. If the spouses reconcile after the recommendation of both Arbiters to divorce prior to the issuance of the judgment, the court shall establish such reconciliation.
2. If it is not possible to reconcile between the spouses, and the abuse is all on the part of the husband, and the wife is the one asking for divorce, or each of them asks for divorce, the two Arbiters shall recommend one irrevocable divorce and a adequate compensation paid by the husband without prejudice to any of the wife's rights resulting from marriage or divorce.
3. If it is not possible to reconcile between the spouses, and the abuse is all on the part of the wife, and the husband is the one asking for divorce or each of them asks for divorce, the two Arbiters shall recommend divorce with a compensation deemed adequate by them to be paid by the wife unless the husband adheres not to divorce her, and the court shall take into account the family's interest.
4. If it is not possible to reconcile between the spouses and abuse is mutual, the two Arbiters shall recommend divorce without compensation or with compensation that is

proportionate to each one's share of abuse.

5. If it is not possible to reconcile between the spouses, and it is not clear as to who is the abuser among them, if the husband is the one asking for divorce, the two Arbiters shall propose to dismiss his case and if the wife or both of them ask for divorce, the two Arbiters have the right to decide what they deem suitable for the situation of the family and children whether to divorce them without compensation or to reject divorcing them.

### **Article (121)**

1. The two Arbiters shall submit to the Judge their reasoned recommendation, which includes the extent of the abuse of either spouse or one against the other.
2. Subject to the provisions of Paragraph (1) of Article (120) of this Law, the Judge shall rule upon the recommendation of the two Arbiters if they agree and if they disagree, the Judge shall appoint other Arbiters, or combine a third judgment to decide which opinion to recommend. The court shall ask the new Arbiter or the umpire to take an oath that he shall perform his assignment with equity and honesty.
3. The Judge shall amend the recommendation of the two Arbiters in the event of violation of the provisions of this Law.

### **Article (122)**

In actions filed for divorce due to prejudice, such prejudice shall be proved by the legitimate ways of proof and the adjudications issued against any spouse.

Hearsay testimonies shall be accepted as the court may decide if a witness testifies that the spouses' married life is well known for prejudice.

Hearsay testimonies denying prejudice shall not be heard.

The witness's testimony shall be heard, whether male or female, except the ancestors' testimony for descendents or the descendents' testimony for ancestors if the witness fulfills the legal requirements of testimony.

### **Article (123)**

If the wife asks for divorce before consummation or valid seclusion after returning the dowry she has received, the gifts she has taken and the money the husband has spent for marriage, and if the husband refuses to divorce her, the judge shall separate them on the basis of khul if he fails to conciliate them.

## **Chapter Four**

### **Separation for Non Maintenance**

### **Article (124)**

1. If the present husband abstains from maintaining his wife without having an apparent financial resource from which obligatory maintenance can be executed within a close period, his wife may ask for separation.
2. If the husband claims that he is financially unable without proving his financial inability, the judge may divorce his wife from him immediately. If he does not claim that he is financially able or unable, or if he claims that he is financially able and insists on not maintaining his wife and his financial inability is proved, the judge shall give him a period not exceeding one month. If he fails to maintain her, the judge shall divorce her from him.

### **Article (125)**

1. If the husband is absent at a known place:

The maintenance judgment shall be executed from his financial resources if he has any apparent financial resource.

If he does not have an apparent financial resource, the judge shall warn him and give him a respite not exceeding one month plus the prescribed distance period. If he fails to pay or produce the maintenance, the judge shall divorce his wife from him after the period elapses.

2. If the husband is absent at an unknown place, or if it is not easy to reach him, or if he is lost and it is proved that he has no financial resource from which maintenance can be taken, the judge shall divorce his wife.

### **Article (126)**

The husband may avoid the forced divorce by submitting proof of his financial ability and capability of maintenance, in which case, the judge shall give him the respite prescribed in Article 125 hereof.

### **Article (127)**

The husband may restore his wife within the waiting period if he proves his financial ability and shows his willingness for maintenance by paying the usual maintenance, failing which the restoration shall not be valid.

### **Article (128)**

If the action for non-payment is filed repeatedly more than twice and the court finds each time that no maintenance is paid and the wife asks for divorce for non-maintenance, the judge shall divorce her irrevocably.

## **Chapter Five**

### **Separation for Absence and Loss**

#### **Article (129)**

The wife may apply for divorce due to her husband's absence whose domicile or residence is known. If he has a financial resource, maintenance can be charged from it. The wife shall not be granted this judgment except after warning the husband to reside with his wife, move her to him or divorce her, provided that he shall be respited for a term not exceeding one year.

#### **Article (130)**

The wife of the lost husband whose domicile is not known may apply for divorce, but she shall not be granted a favorable judgment except after investigation and search for him and the lapse of one year from the date of filing the action.

## **Chapter Six**

### **Separation for Detention**

#### **Article (131)**

1. The wife of the husband sentenced conclusively to a custodial punishment for three years or more may apply to the court after the elapse of one year after his detention for irrevocable divorce. If he has a financial resource, she may spend from it.
2. If the wife is also detained and gets released before him, she may apply for separation after the elapse of one year after her release on the same conditions in item 1 of this Article.
3. As a condition for granting the wife a favorable judgment in the above two cases, the husband must not be released from prison while the action is being heard or the remaining period of his detention must not be less than six months.

## **Chapter Seven**

### **Separation for Ila'a and Zihar**

#### **Article (132)**

The wife may apply for divorce if her husband swears not to have a sexual intercourse with her four months or more (case known as ila'a) unless he goes back on his oath before the elapse of the four months. Divorce in this case shall be irrevocable.

#### **Article (133)**

The wife may apply for divorce due to zihar (a case where the husband likens his wife to his mother and hence regards her equally preposterous carnally).

#### **Article (134)**

The judge shall warn the husband to atone for his zihar within four months from the date of the oath. If he abstains for no excuse, the judge shall decide an irrevocable divorce.

#### **Article (135)**

While trying the action for forced divorce, the judge shall decide the summary measures he deems necessary for guaranteeing the maintenance of the wife and the children, and the matters pertaining to their custody and visitation at the request of any of them.

**Part Four**  
**Effects of Separation**  
**Chapter One**  
**Waiting Period (Idda)**  
**Article (136)**

The idda is a compulsory waiting period the wife spends without marriage following a separation.

**Article (137)**

1. The waiting period shall start from the time of separation.
2. In case of a suspicious copulation, the waiting period shall start from the last suspicious copulation.
3. The marriage waiting period shall start from the date of abandonment or the judge-decided separation or the husband's death.
4. In case of deciding a divorce, separation, dissolution, the nullity of the contract or adjudging the lost husband dead, the waiting period shall start from the date the judgment becomes final.

**Article (138)**

1. The wife whose husband dies after a valid marriage contract even before consummation shall spend a waiting period of four months and ten days unless she is pregnant.
2. The pregnant wife's waiting period shall elapse upon delivery or abortion.
3. The wife whose marriage is consummated under a null or suspicious contract shall spend a divorce waiting period if her husband dies and it is proved that she is not pregnant.

### **Article (139)**

1. No waiting period for the woman divorced before consummation and valid seclusion.
2. The non-pregnant divorcee's waiting period:
  - a. Three full cycles for the woman who is still having a menstrual cycle.
  - b. Three full months for the woman who has never had menstrual cycles or for the woman who has reached menopause, but if she menstruates before the end of the three months, she shall continue her waiting period for three additional cycles.
  - c. Three months for the woman whose menstrual cycle is long if her menstrual cycle is irregular. If she has a regular cycle that she remembers, she shall calculate the waiting period accordingly.
  - d. The lesser of the three cycles or one year without menstruation for the woman whose menstrual cycle stops before menopause.

### **Article (140)**

If the husband divorces his wife whose marriage is commutated under a valid contract with his individual will without her request, she shall deserve enjoyment maintenance plus the waiting period maintenance depending on the husband's condition and subject to a maximum of the maintenance of her equals. The judge may allow the payment in installments of this maintenance depending on the husband's financial ability and inability, but he shall also consider the prejudice caused to the wife when he estimates it.

### **Article (141)**

1. If the husband dies while the wife is spending a revocable divorce waiting period, she shall move into a mourning waiting period without calculating the period she spent.
2. If the husband dies while the wife is spending an irrevocable divorce or a dissolution waiting period, she shall complete this waiting period without being obliged afterwards to spend the mourning waiting period except if the divorce occurs in the last illness, in which case she shall spend the waiting period of the furthest term.

## **Chapter Two**

### **Custody**

#### **Article (142)**

Custody is keeping, bringing up and taking care of the child without interfering with the right of the guardian of the person.

#### **Article (143)**

The custodian must be:

1. of sound mind.
2. of legal age and major.
3. honest.
4. capable of brining up, protecting and caring for the child taken in custody.
5. safe from dangerous infectious diseases.
6. He shall not have been convicted of any dishonorable crime before.

### **Article (144)**

In addition to the above conditions, the custodian:

1. If she is a woman:
  - a. must not be married to a foreign husband who has consummated marriage with her unless the court decides otherwise for the interest of the child.
  - b. must unite with the child in religion subject to the provisions of Article 145 hereof.
3. If the custodian is a man,
  - a. he must have a female qualified for custody.
  - b. he must be a mahram (unmarriageable) relative to the child if female.
  - c. he must unite with the child in religion.

### **Article (145)**

If the custodian is a mother embracing another religion than the child's, she shall forfeit the right to custody unless the judge decides otherwise for the child's interest, provided that her custodial period shall not exceed the time he competes five years, whether male or female.

### **Article (146)**

1. The right to the child's custody shall be awarded to his mother, then to mahram women, provided that maternal relatives shall have precedence over paternal relatives, that the closest relative on the two sides shall be considered except the father in the following order, and that the judge shall consider the child's interest when he decides this right:
  - a. The mother
  - b. The father
  - c. The mother's mother however high in lineage.

- d. The father's mother however high in lineage.
  - e. The sisters by giving precedence respectively to the full sister, the sister on the mother's side, and the sister on the father's side.
  - f. The full sister's daughter.
  - g. The daughter of the sister on the mother's side.
  - h. Maternal aunts in the above order of sisters.
  - i. The daughter of the sister on the father's side.
  - j. The brother's daughters in the above order of sisters.
  - k. Paternal aunts in the said order.
  - l. The mother's maternal aunts in the said order.
  - m. The father's maternal aunts in the said order
  - n. The mother's paternal aunts in the said order.
  - o. The father's paternal aunts in the said order.
2. If there is no custodian among those women or if none of them is qualified for custody, the custodial right shall pass to male agnates according to the order of entitlement to inheritance, and on the basis of giving precedence to the real grandfather over brothers.
3. If there is no custodial among those agnates, the custodial right shall pass to the child's mahram males other than the agnates in the following order:
- The grandfather on the mother's side, the maternal brother, the maternal brother's son, the mother's paternal uncle, maternal uncles by giving precedence to the full maternal uncle, then to the father's maternal uncle, then the mother's maternal uncle.
4. If any male or female having the right to custody rejects it, the right shall pass to the following person and the judge shall be notified. If the judge refuses or fails to express his opinion within fifteen days, right shall pass to the following person and so on.
5. In all cases, the custodial right shall not be awarded in case of difference in gender to the

persons who are not mahrams for the child, male or female.

6. The mother shall have the right of her children's custody in case of a dispute over the custody unless the judge decided otherwise for the child's interest.

7. Both of the father and mother may join the children to them if they have a dispute and the mother has left the conjugal house even if the their conjugal relation is still existent. The judge shall decide on their application depending on the children's interest.

### **Article (147)**

If parents are not existent and the persons entitled to custody reject it, the judge shall choose a suitable person from the child's relatives or others or a qualified institution for such purpose.

### **Article (148)**

1. The father or else another tutor of the fostered child must look after his affairs, discipline, orientation and education.
2. Whoever is in charge of the fostered child's alimony must provide the rent of a dwelling for a woman fosterer unless the latter owns a dwelling in which she resides or allotted for this purpose.
3. The woman fosterer is not entitled to remuneration if she is the wife of the fostered child's father or is in her waiting period during which she is entitled to alimony from him.
4. As an exception from clause (1) of this Article, the foster mother shall have the educational tutelage over the fostered child in a way that achieves the interest of the fostered child.
5. If there is a dispute concerning the interest of the fostered child, such dispute shall be presented by the relevant persons to the judge of summary matters in order to render his decision in the form of an order on a petition, taking into account the financial condition

of the tutor and without affecting the right of the foster mother concerning the educational tutelage.

6. If the interest of the fostered child requires the transfer of the educational tutelage from the foster mother to the father or another person whose tutelage over the fostered child is proved, any one of them may present the matter to the judge of summary matters in order to render his decision in the form of an order on a petition concerning the person who should have the educational tutelage over the fostered child.
7. If the right of fostering of the fostered child is for females, within the prohibited degrees of kinship, other than the mother, and tutelage is for a male other than the father, the woman fosterer may, according to the interest of the fostered child, may present the matter to the judge of summary matters in order to render his decision in the form of an order on a petition concerning the person who should have the educational tutelage over the fostered child.
8. Provisions of this Article shall not violate the duty of alimony decided for the fostered child subject to this Law.

### **Article (149)**

The custodian may not take the child for travel outside the state without the written consent of the guardian of the person. If the guardian abstains from approving, the matter shall be referred to the judge.

### **Article (150)**

1. The mother may not take her child for travel or move him from the conjugal house during the existence of a conjugal relation or during the revocable divorce waiting period without his father's written consent.
2. After irrevocable divorce, the mother may move with the child to another city within the state unless such movement affects the child's education or causes harm to the father or

makes him suffer unusual hardship or costs for visiting the child.

### **Article (151)**

1. If the custodian is another person than the mother, she may not take child for travel without his guardian's written consent.
2. No guardian, father or otherwise, may take the child for travel in the custody period without the written consent of his custodian.
3. The irrevocably divorced mother's custody may not be extinguished just due to the father's movement to other than the residence town of the custodian except if such movements is for settlement, not aimed at harming the mother, and the distance between the two towns does not prevent the seeing of the child and returning on the same day by the ordinary means of transport.

### **Article (152)**

The custodians right to custody shall abate in the following cases:

1. If one of the conditions mentioned in Articles 143 and 144 is breached.
2. If the custodian settles in a country where it will be difficult for the child' guardian to perform his duties.
3. If the person having the right to custody fails to claim it six months for no excuse.

### **Article (153)**

Custody shall return to the person who loses it after the reason for forfeiting it disappears.

### **Article (154)**

1. If the child is in one parent's custody, the other shall have the right to visit and ask to be visited by the child as decided by the judge, provided that the place, time and the person responsible for bringing the child are specified.
2. If one of the child's parents is dead or absent, the child's mahram relatives shall have the right to visit him as decided by the judge.
3. If the child is in the custody of other than his parents, the judge shall designate the mahram relative entitled to visit him.
4. The judgment shall be executed compulsorily if the custodian refuses to execute it.
5. The Minister of Justice, Islamic Affairs and Wakfs shall issue the regulations determining the measures of seeing, delivering and visiting the child, provided that police stations and jails shall be excluded.

### **Article (155)**

If there are several persons having the right to custody and being of the same degree, the judge shall choose the most suitable custodian for the child.

### **Article (156)**

1. The custody awarded to women shall terminate when the male child reaches eleven years of age and the female thirteen, unless the court decides for the child's interest to extend this period till the male becomes of age and the female gets married.
2. The custody awarded to women shall last if the child is demented or infected with a disabling disease unless the child's interest requires otherwise.

### **Article (157)**

1. Without prejudice to the provisions of Article (149) of this Law, the tutor may keep with him the passport of the fostered child, except in case of travel, where he should hand it over to the woman fosterer.
2. The judge may order to keep the passport in the hands of the woman fosterer if the judge observes an obstinateness from the tutor's part to refuse delivering the passport to the woman fosterer in case of necessity.
3. The woman fosterer may keep the originals, or true official copies of the birth certificate and any other evidential documents, pertaining to the fostered child, as well as his identity card.
4. Whoever is (18) eighteen years old and does not have anything that prevents his full capacity, whether a male or female, is entitled to keep his/her passport and any other evidential documents, unless the judge decides otherwise.

### **Article (158)**

Judgments delivered for embracing, keeping, delivering the child to a trustee and separating the spouses and matters pertaining to personal status shall be executed compulsorily even if this execution leads to using force or entering houses. The execution officer shall follow the instructions given by the executor judge of the court having within its precinct the place where execution shall take place. Re-execution of the judgment may take place whenever necessary.

No ruling issued against the wife for following up may be executed compulsorily.

## **Book Three**

### **Legal Capacity and Guardianship**

#### **Part One**

#### **Legal Capacity**

#### **Chapter One**

#### **General Provisions**

#### **Article (159)**

Any person shall have the legal capacity to enter into contracts unless his capacity is stripped off or restricted by the force of law.

#### **Article (160)**

The following persons shall be considered minors:

1. The fetus
2. The mad, idiotic and prodigal persons
3. The lost and absent persons

#### **Article (161)**

The following persons shall be considered incapacitated:

1. The youngster who is incapable of discerning.
2. The insane and idiotic persons.

#### **Article (162)**

The following persons shall be considered incompletely capacitated:

1. The youngster capable of discerning.
2. The prodigal person.

### **Article (163)**

The minor's affairs shall be handled by his representative who according to conditions shall be called a guardian or a trustee (including the chosen trustee and the judge's trustee) or a curator.

## **Chapter Two**

### **Provisions Concerning the Youngster**

#### **Article (164)**

The youngster may be capable or incapable of discerning.

According to the provisions hereof, the discerning youngster shall be the person who has not completed seven years of age, whereas the undiscerning youngster shall be the person who has completed seven years of age.

#### **Article (165)**

Without prejudice to the provisions of Article 30 and 31 hereof,

1. The undiscerning youngster's verbal disposals shall be absolutely ineffective.
2. The discerning youngster's verbal and financial disposals shall be effective if purely beneficial for him, but ineffective if purely harmful for him.
3. The discerning youngster's verbal and financial disposals ranging between harm and benefit shall depend for their effect on approval.

### **Article (166)**

1. The guardian may permit the minor who has completed eighteen years of age to receive all or some of his property for management.
2. The court may after hearing the trustee's statements permit the minor who has completed eighteen years of age to receive all or some of his property for management.

### **Article (167)**

The youngster permitted to transact the disposal falling under the permission shall be regarded as a major.

### **Article (168)**

If the discerning youngster has completed eighteen years of age and found that he is able to dispose wisely but the trustee abstains from permitting him to manage any part of his property, the matter shall be referred to the judge.

### **Article (169)**

The person permitted by his trustee to dispose of his property shall submit the judge a periodical account of his disposals.

### **Article (170)**

The judge and the trustee may rescind or restrict the permission if the youngster' child so requires.

## **Chapter Three**

### **Majority**

#### **Article (171)**

Any person attaining the age of majority and enjoying his mental powers without being interdicted shall be fully capacitated for exercising his rights stipulated herein.

#### **Article (172)**

The person shall attain the age of majority if he has completed twenty-one lunar years.

#### **Article (173)**

After reaching the age of majority, the minor may hold the trustee responsible for his disposals during the guardianship period.

## **Chapter Four**

### **Impediments of Legal Capacity**

#### **Article (174)**

##### **Impediments of Legal Capacity**

1. **Insanity:** An insane person is the one who loses his mind completely or intermittently and suffers dementia.
2. **Prodigality:** A prodigal person is the one who squanders his money for useless purposes.
3. **Last illness:** The illness during which man cannot handle his usual business and in which he is most likely to die in this condition before one year. If his illness extends one year or more while he is in the same condition, his disposals shall be regarded as effective as those of a healthy person.

4. Cases in which man is threatened with the danger of death and in most cases similar to which death is most probable even if he is not ill shall be regarded as last illnesses.

### **Article (175)**

1. The insane person's financial disposals shall be valid as soon as he recovers, but invalid after being interdicted.
2. The prodigal person's financial disposals committed after being interdicted shall be governed by the provisions pertaining to the discerning youngster's disposals.
3. The prodigal person's financial disposals committed before being interdicted shall be valid unless they are committed as a result of exploitation or conspiracy.

### **Article (176)**

The patient's disposals committed in the last illness and cases regarded as such shall be referred to the provisions of Islamic jurisprudence according to Article 2 hereof.

### **Article (177)**

The interdict shall have the right to file an action himself to lift his interdiction.

## **Part Two**

## **Guardianship**

### **Chapter One**

### **General Provisions**

### **Article (178)**

1. Guardianship includes guardianship of the person and guardianship of property.

A. Guardianship of the person is the care for all the minor's affairs including supervising, protecting, raising, educating him, directing his life, preparing him well and agreeing to get him married.

B. Guardianship of property is:

1. The care for all matters relative to the minor's property, its protection, management and investment.

2. Guardianship shall also include wardship, curatorship and legal representation.

### **Article (179)**

Subject to the provisions on the female's marriage contained in Article 39 hereof, the guardianship of the person shall apply to the youngster till he reaches the legal age and majority, and the insane and idiotic adults.

## **Chapter Two**

### **Conditions of Guardianship**

#### **Article (180)**

1. The guardian must be of legal age, sound mind, major, honest and capable of performing the guardianship requirements.

2. The guardian of the person must be honest for the minor, capable of handling his affairs and untied with him in religion.

## **Chapter Three**

### **Guardianship of the Person**

#### **Article (181)**

1. Guardianship of the person shall be awarded to the father, then to the agnate by himself according to the order of inheritance.
2. If there are several persons entitled to guardianship of the same degree, same strength of relation and equal in majority, guardianship shall be awarded to the oldest among them. If they are different in majority, the court shall choose the most suitable among them for guardianship.
3. If there is no person entitled to guardianship, the court shall appoint a guardian of the person from the minor's relatives if it finds a suitable one among them for guardianship, otherwise from others.

## **Chapter Four**

### **Stripping off the Guardianship of the person**

#### **Article (182)**

Guardianship of the person shall be stripped off in the following cases:

1. If some conditions of guardianship stated herein are breached.
2. If the guardian jointly with the minor or another person commits rape or indecent assault or leads the minor to debauchery or to any crime of a similar status.
3. If the guardian suffers a decisive sentence for an intentional felony or misdemeanor committed by him or by another against the minor
4. If the guardian is sentenced to a more than one-year custodial punishment.

### **Article (183)**

1. Guardianship of the person may be stripped off totally or partially, permanently or temporarily, in the following cases:

A. If the guardian is sentenced to a custodial punishment for a period of one year or less.

B. If the minor's safety, health, honor, character or education is exposed to serious danger due to the guardian's maltreatment or bad example resulting from the guardian's fame for ill conduct or addiction to intoxicants or drugs, or due to carelessness. In this case, no judgment punishing the guardian because of any mentioned reason shall be required.

2. The court may instead of stripping off the guardianship in the foregoing cases entrust the minor to a specialist social institution without discontinuing the guardianship.

### **Article (184)**

In the cases mentioned in Articles 182 and 183 hereof, the court may of its own initiative or at the request of the investigation authority entrust the minor temporarily to an honest person or a specialized social institution till the guardianship is decided.

### **Article (185)**

If the guardian is stripped of the guardianship of some of the minors, guardianship of the others shall be also stripped.

### **Article (186)**

If the court decides to strip off or limit or discontinue the guardianship of the person, the guardianship shall pass to the one following him in order if he is eligible. If he refuses or if he is not eligible, the court may entrust the guardianship to any person it deems eligible even if

he is no relative of the minor, or it may entrust this guardianship to a specialized social institution.

### **Article (187)**

In other than the cases where guardianship is stripped off compulsorily, the court may restore to the guardian of the person his guardianship it has stripped off partially or totally at his request, provided that six months has elapsed for the disappearance of the reason for this stripping off.

## **Chapter Five**

### **Guardianship of Property**

#### **Article (188)**

The guardianship of property shall be granted to the father alone, then to his trustee if any, then to the real grandfather, then to his trustee if any, then to the judge. None of those may assign his guardianship without the court permission.

#### **Article (189)**

The guardianship of property shall not include whatever devolves to the minor by donation if the donor so stipulates.

#### **Article (190)**

The minor's property or benefits may not be lent or donated. If anything of these is disposed of, the disposal shall be void and resultant in responsibility and security.

### **Article (191)**

The guardian may not dispose of the minor's property in a way resulting in alienation or a real right from it without the court permission and unless it shall serve an apparent necessity or interest estimated by the court.

### **Article (192)**

The guardian may not borrow for the minor's interest without the court permission and without contravening the rules of Islamic Sharia (law).

### **Article (193)**

The guardian may not lease the minor's real estates for a period extending one year after his becoming major without the court permission.

### **Article (194)**

The guardian may not continue carrying on any trade devolving to the minor without the court permission and within the limits of such permission.

### **Article (195)**

The guardian may not accept any donation for the minor or any will burdened with obligations without the court permission.

### **Article (196)**

1. The guardian shall prepare a list of the minor's property and devolutions and deposit such list at the clerical office of the court having within its precinct his domicile, within two

months from the start of guardianship or devolution of such property to the minor.

2. The court may consider the failure to submit or delay in submitting such list exposure of the minor's property to danger.

### **Article (197)**

The guardian may with the court permission maintain the minor from the minor's property if he is required to support him. He may also maintain the persons the minor is required to maintain.

## **Chapter Six**

### **Stripping off the Guardianship of Property**

#### **Article (198)**

If the minor's property becomes endangered due to the guardian's misconduct or any other reason, the court shall strip or restrict his guardianship.

#### **Article (199)**

The court shall decide to discontinue the guardianship if it considers the guardian absent, or if he is imprisoned in execution of a custodial punishment for one year or less.

#### **Article (200)**

A judgment stripping off the guardianship of the minor's person shall result in forfeiting or terminating as regards property.

### **Article (201)**

If the guardianship is stripped off, restricted or discontinued, it shall not be restored without a court judgment after making sure that the reasons calling for such stripping off, restriction or discontinuation have disappeared.

### **Article (202)**

Previously rejected motions for restoring the guardianship shall be accepted only after the elapse of one year from the final dismissal judgment.

## **Chapter Seven**

### **Disposals of the Father and Grandfather**

#### **Article (203)**

The guardianship granted to the father over his minor child shall include safekeeping, managing and investing his property.

#### **Article (204)**

The guardianship granted to the father shall include his son's minor children if their father is interdicted.

#### **Article (205)**

The father's disposals shall be deemed effective especially in the following cases:

1. Entering into contracts in his child's name and disposal of his property.
2. Carrying on trade for his child's account in case of apparent benefits only.
3. Accepting legitimate donations for his child's interest if they are free from detrimental

obligations.

4. Spending from his child's property on those he is required to maintain.

### **Article (206)**

If the father's disposals shall be dependent on the court permission in the following cases:

1. If he buys his child's property for himself, his wife or all his children.
2. If he sells his own or his wife's or all his children's property to his son.
3. If he sells his child's property to invest its price for himself.

### **Article (207)**

1. The father's disposals shall be void if it is proved that his disposal is bad or does not serve any interest for the minor.
2. The father shall be responsible as regards his property for the serious error that results in harming his child.

### **Article (208)**

The father's guardianship shall be stripped off or restricted if the judge finds that the minor's property has become endangered due to his father's disposal.

### **Article (209)**

The provisions prescribed for the father in this part shall apply to the grandfather.

## **Chapter Eight**

### **Termination of Guardianship**

#### **Article (210)**

Guardianship shall terminate once the minor child attains majority unless the court decides continuing the guardianship over him.

#### **Article (211)**

If a guardianship over any person is terminated, it shall not be restored unless a reason for interdiction arises.

#### **Article (212)**

The guardian or his inheritors shall restitute the minor's property to him upon the termination of the guardianship through the competent court.

## **Chapter Nine**

### **Trustee**

#### **Article (213)**

1. The father may appoint a chosen trustee for his minor child or dormant gestation and for the minor children of his interdicted son. This appointment may be exercised by the donor in the cases stated in Article 189 and trusteeship shall be submitted to the court for confirmation.
2. Both of the father and the donor may retract such choice at any time.
3. The choice and the retraction shall be established by an official or a customary document.
4. If there is no chosen trustee or real grandfather for the minor or the dormant gestation,

the court shall appoint a trustee.

5. The trustee may not dispose of the dormant gestation property till the fetus is born alive by delivering it to his legal guardian.

### **Article (214)**

The judge shall appoint a special or temporary trustee whenever the minor's interest so requires.

### **Article (215)**

The trustee, whether chosen or appointed by the judge, must be just, competent, honest, fully capacitated, united in religion with the minor, capable of performing the trusteeship requirements. The following persons may not be appointed as trustees in particular:

1. Any person the minor's father decides to deprive of such appointment before his death if such deprivation is built on strong reasons deemed by the court after verification as a justification and provided that such deprivation is established by an official or a customary document.
2. Any person who has in person or one of whose ancestors, descendents or wife has a judicial dispute with the minor, or any person having enmity with the minor or his family if fear arises from all this for the minor's interest.
3. Any person sentenced to a custodial punishment for a crime prejudicial to manners, honor or integrity. However, this condition may be overlooked in case of prejudice upon the elapse of five years.
4. Any person having no legitimate means of livelihood.
5. Any person divested of guardianship or removed as a trustee over another minor.

### **Article (216)**

The trustee shall abide by the conditions and the tasks assigned to him under the trusteeship instrument unless they are illegal.

### **Article (217)**

The trustee may be a male or a female, a natural or an artificial person, several or joint, independent or together with a supervisor.

### **Article (218)**

1. If there are several trustees, none of them may dispose solely except if the legator has specified their respective authorities. If the will is created for a number of joint trustees, none of them may dispose without the others' consent. However, each trustee may take such procedures as necessary, urgent for, or resulting in a benefit for the minor, dispose of any part feared for due to damage or delay, or dispose of undisputed things such as restituting the minor's fixed deposits.

2. If a dispute arises among the trustees, it shall be referred to the court.

### **Article (219)**

The will shall be enforceable if it is accepted expressly or purportedly. No trustee may waive the will if he accepts it expressly or purportedly except through the competent court.

### **Article (220)**

If the father appoints a supervisor to monitor the trustee's acts, the supervisor shall take whatever is required for such purpose as required by the minor's interest. The supervisor

shall be responsible to the court for such acts.

### **Article (221)**

The conditions applying to the trustee shall apply of the supervisor.

### **Article (222)**

1. The provisions applying to the trustee shall apply to the supervisor as regards his appointment, removal, accepting his resignation, the wage for his acts and his responsibility for his omission.
2. The court shall decide to terminate supervision if its reasons disappear.

### **Article (223)**

The trustee shall manage, protect and invest the minor's property and shall exert as much care as that exerted for similar purposes.

### **Article (224)**

The trustee's disposals shall be controlled by the court; he shall submit it periodical accounts of his disposals concerning the management of the minor's property and the persons regarded as such.

### **Article (225)**

The trustee may not carry out the following acts without the court permission:

1. Disposing of the minor's property by sale, purchase, barter, partnership, mortgage, or any other kind of disposal resulting in alienation or a real right.

2. Disposing of instruments, shares or any portions thereof, or any significant movable or that is not feared for due to damage unless it is of low value.
3. Assigning the minor's property or accepting any assignment to him if he is indebted.
4. Investing the minor's funds for his own account.
5. Borrowing funds for the minor's interest.
6. Leasing the minor's real estates.
7. Accepting or rejecting conditional donations.
8. Spending from the minor's funds on the persons he is required to maintain unless the maintenance is decided by an enforceable judgment.
9. Performing the current obligations due from the estate or the minor.
10. Recognizing a right due from the minor.
11. Concluding conciliation or arbitration.
12. Filing actions unless their delaying them causes harm to the minor or the loss of his rights.
13. Waiving actions and not using the legally prescribed ways of appeal.
14. Selling or leasing the minor's property to himself, his wife, any of their ancestors, descendents or to any person represented by the trustee.
15. Paying the dowry or any other expenses for the minor's marriage according to applicable laws.
16. Educating the minor if he required maintenance.
17. Paying maintenance to the minor for practising a specific profession.

### **Article (226)**

Neither the entity entrusted with handling the minors' affairs nor any official thereof may purchase or lease anything for himself, his wife, any of their ancestors or descendants from the minor's property, or sell for the minor anything of what is owned by the minor, his wife, or any of their ancestors or descendants.

### **Article (227)**

Trusteeship shall be unpaid except if the court decides at the trustee's request to determine him a wage or grant him some remuneration for a specific task or if the trustee fixes himself a customarily acceptable wage.

## **Chapter Ten**

### **Termination of Trusteeship**

### **Article (228)**

The trustee's mission shall terminate in the following cases:

1. If he dies, becomes incapacitated or incompletely capacitated.
2. If his loss or absence is proved.
3. If his request for renouncing his mission is accepted or if he removed.
4. If he fails to perform the duties of trusteeship.
5. If the minor is considered major or if he becomes major and sound-minded.
6. If interdiction is lifted.
7. If the minor's father restores his capacity.
8. If the minor or the interdict dies.
9. If the task for which the trustee is appointed to perform or if the period timed for it

terminates.

### **Article (229)**

If the boy attains his adulthood in a state of insanity or untrustworthiness for his property, the trustee shall notify the court to consider continuing the trusteeship after his adulthood.

### **Article (230)**

A judgment shall be issued for removing the trustee:

1. If he has a reason rendering him non-eligible for trusteeship even if such reason exists at the time of his appointment.
2. If he mismanages or neglects the minor's property or if his stay is dangerous for the minor's interest.

### **Article (231)**

1. The trustee shall when his mission terminates deliver the minor's property and all its related accounts and documents to the parties concerned under the court supervision no later than thirty days from termination. He shall deposit at the competent court clerical office within the said period a copy of the account and the property delivery report. The court shall observe the provisions of penal responsibility if necessary.
2. Any undertaking, release or quittance obtained by the trustee from the minor who reaches majority within one year from the date the account is legalized by the court shall be null and void.

### **Article (232)**

If the trustee dies, is interdicted or considered absent, his successors or representatives or those taking possession of the property according to conditions shall notify the court immediately to take the necessary procedures to protect the minor's rights, deliver his property and submit the relevant account.

## **Part Three**

### **The Absent and the Lost Persons**

#### **Article (233)**

1. The absent person is the one whose domicile or residence is not known.
2. The lost person is the one who is not known to be alive or dead.

#### **Article (234)**

If there is no representative for the absent or the lost person, a judicial representative shall be appointed to manage his property.

#### **Article (235)**

The absent or the lost person's property shall be calculated when a judicial representative is appointed and shall be managed the way the minor's property is managed.

#### **Article (236)**

Loss shall end:

1. If the lost person's life or death is established.
2. If a judgment is passed for considering the lost person dead.

### **Article (237)**

1. The judge shall in all cases search for the lost person by all means to know if he is alive or dead before adjudging him dead.
2. The judge shall adjudge the lost person dead if evidence for his death exists.
3. The judge may adjudge the lost person dead in the cases where his death prevails, or if one year elapses after announcing his loss at the request of the persons concerned, or if four years elapse in normal cases.
4. The property of the lost person adjudged dead shall not be distributed except upon the elapse of fifteen years from the date of declaring him lost.

### **Article (238)**

The day the lost person is adjudged dead shall be the date of his death.

### **Article (239)**

If the lost person adjudged dead reappears alive,

1. He may restore his wife in the following cases:
  - A. If her second husband has not consummated her marriage under a valid contract.
  - B. If her second husband learns about her first husband's life.
  - C. If her second husband marries her during the waiting period.
2. He shall claim his estate from his successors save any perished portions.

**Book Four**  
**Wills**  
**Part One**  
**General Provisions**  
**Article (240)**

A will is a disposal of an estate that is enforceable after death.

**Article (241)**

Wills that are absolute, contingent, dependent on or restricted by a valid condition shall be valid.

**Article (242)**

If the will is coupled with a condition contrary to the Islamic intents or the provisions hereof, the condition shall be void while the will be valid.

**Article (243)**

The will shall be executed within the third of the legator's estate, after paying the rights related thereto. Any excess above the third shall be executed from the shares of the legally aged inheritors who approve it.

**Article (244)**

Any disposal occurring in the last death for the purpose of donation or preference shall be governed by the provisions on wills whatever the name given to such disposal.

## **Part Two**

### **Elements and Conditions of the Will**

#### **Chapter One**

##### **Elements**

##### **Article (245)**

Elements of the will are: The formula, the legator, the legatee and the bequeathed object.

##### **Article (246)**

The will shall be concluded verbally or in writing, otherwise by an understandable sign if the legator is unable to express.

##### **Article (247)**

In case of denial, actions for probating or retracting the will shall be heard only if such denial or probate is proved by the legally prescribed methods of proof.

##### **Article (248)**

1. The will created by persons having the capacity to donate even in their last illness shall be valid, provided that the provisions of Articles 174 and 176 hereof shall be observed.
2. The will created by persons interdicted for prodigality or unconsciousness shall be valid by the court permission.
3. The legator may amend or retract his will or retract in whole or in part.
4. Loss by the legator of the bequeathed property shall be considered retraction from the will on his part.

### **Article (249)**

Wills created for persons eligible for owning the bequeathed object shall be valid even if there is a difference in religion.

### **Article (250)**

Without prejudice to Article (243) of this Law, a will may not be made to an heir unless in the following two cases:

1. If it is approved by other major heirs, and it is then executable on the share of the one who consented.
2. If it is required by a likely interest acknowledged by the court. In this case, the will shall be executed even if other heirs do not approve it.

## **Chapter Two**

### **Conditions of the Validity of Wills**

#### **Article (251)**

1. The will created for a specified person whether alive or a dormant gestation shall be valid.
2. The will created for a specified or unspecified group of people shall be valid.
3. The will created for legally permissible charitable purposes shall be valid.

#### **Article (252)**

1. For the will created for a specified person to be valid, it must be accepted after the legator's death or during his life, and this acceptance must remain after his death.
2. If the legatee is a fetus or a minor or interdicted, his property guardian must accept the will, or he may reject it after obtaining the judge's permission.
3. The will created for an unspecified person shall not need accepting, nor shall it be

rejected.

4. The will created for entities, establishments or institutions shall be accepted by their legal representatives who may reject it after obtaining the judge's permission.

### **Article (253)**

1. Accepting the will immediately after the legator's death shall not be required.
2. If the legatee remains silent for a period of thirty days after he learns about the will, his silence shall be considered acceptance of the will. If the will is burdened with an obligation, the period shall be extended to fifty days unless there is an admissible impediment for his failure to reply.

### **Article (254)**

The fully capacitated legatee may reject the will in whole or in part.

### **Article (255)**

If the legatee dies after the legator without expressing acceptance or rejection, the will shall devolve to the legatee's heirs unless it is burdened with obligations.

### **Article (256)**

1. The specified legatee shall possess the bequeathed object from the date of the legator's death subject to his acceptance.
2. The successor of the legatee who dies before the division shall replace him.
3. The bequeathed object shall be divided equally if there are several legatees unless the legator stipulates disparity.

4. The survivor of the twins shall solely possess the object bequeathed for gestation if one of them is delivered dead.

### **Article (257)**

1. The will created for an unspecifiable group shall include in the future the persons of them who are present on the day of the legator's death and those to be present.
2. The number of the unspecified group shall be restricted if all their fathers die or if it is no longer hoped that any of those surviving of them will have children.
3. If it is no longer hoped that any legatee is present, the bequeathed object shall be a succession.

### **Article (258)**

The present persons of the group that is not specified in the will shall utilize the bequeathed object. The shares of utilization shall change whenever a birth or a death occurs.

Proceeds of the object bequeathed for the unspecified group who cannot be defined shall be distributed to the present persons of them.

### **Article (259)**

The object bequeathed for the unspecified group shall be sold if it is feared that it may be lost or decrease in value, and its price shall be used for buying something that can benefit the legatees.

### **Article (260)**

1. The will created for charities shall be paid for their legally permissible interests.

2. Proceeds of the object bequeathed potential institutions shall be paid to the most similar institutions till they exist.

### **Article (261)**

The bequeathed object must be owned by the legator and legitimate.

### **Article (262)**

1. The bequeathed object must be common or specific.
2. The common bequeathed object shall include all the legator's present and future property.

### **Article (263)**

The will concerning a joint share shall be executed if this execution takes place within the third of succession.

### **Article (264)**

1. The specific bequeathed object shall include properties and movables, fungible things, valuable things, realties, utilities and utilization of a realty or movable for a specific or unspecific period.
2. Any legator who bequeaths a specific object to a specific person and then bequeaths the same object to another shall divide that object between them equally unless he intends by that act to retract the will has created for the first.

## **Chapter Three**

### **Bequeathing Utilities and Lending**

#### **Article (265)**

1. If the value of the specific property bequeathed for utilization or benefit is less than the third of succession, the realty shall be delivered to the legatee for utilization according to the will.
2. If the value of the specific property bequeathed for utilization or benefit, as well as the value of utilizing it for the specified period is more than the third of succession, inheritors shall be asked to choose between approving the will or giving the legatee a portion equal to the third of succession.
3. If the will concerning the utility extends throughout the legatee's life, the will shall be estimated at the value of the realty.
4. The will created for lending the legatee a defined amount of money shall be valid, but it shall not be executed in respect to any portion above the third of succession without inheritors' approval.

#### **Article (266)**

The legatee bequeathed the utilization of a specific object may use or exploit this object even if in a different way from that shown in the will, provided that no damage shall be caused to the realty.

## **Chapter Four**

### **Bequeathing an Equivalent of the Inheritor's Share**

#### **Article (267)**

If a portion equivalent to the share of a specific inheritor of the legator is bequeathed, the legatee shall be entitled to as much as the share of this inheritor plus the legal share.

#### **Article (268)**

If the share of an unspecified inheritor of the legator or if a portion equal to that share is bequeathed, the legatee shall be entitled to the share of one inheritor plus the legal share if they inherit on an equal basis. If they are preferred to one another, the share of the least inheritor shall be estimated plus the legal share.

#### **Article (269)**

The legatee bequeathed as much as the inheritor's share, be he male or female, shall be entitled to a portion not exceeding the third. Any portion in excess shall be executed from the share of the legally aged inheritor approving this excess.

## **Chapter Five**

### **Nullity of the Will**

#### **Article (270)**

The will shall be null in the following cases:

1. If the legatee retracts his will expressly or purportedly.
2. If the legatee dies during the legator's life.
3. If the legatee rejects the will during the legator's life or after his death.

4. If the legatee kills the legator whether the legatee is the principal perpetrator, accomplice, or a causative party, provided that he is of sound mind, and attains the age of penal responsibility at the time of commission, whether killing occurs before or after creating the will.
5. If the specific bequeathed object perishes or is deserved by a third party.
6. If the legator or the legatee deflects from Islam without re-conversion.

### **Article (271)**

If the legatee acquires the capacity of the legator's inheritor, this shall make his entitlement dependent on the approval of all the other inheritors.

## **Chapter Six**

### **Mandatory Wills**

### **Article (272)**

1. Whoever dies even if according to a judgment and has a child, boy or girl, and this boy or girl dies before or with him, their grandchildren shall be entitled to the third of succession according to the following portions and conditions:
  - A. The mandatory will created for those grandchildren shall be estimated at their share of what their father inherits from his decedent ancestor on the assumption that their father dies following the death of his mentioned ancestor, provided that the share shall not exceed the third of succession.
  - B. Those grandchildren shall not be entitled to the will if they are inheritors of their father's ancestor, whether the grandfather or grandmother, or if he has bequeathed or given them in his life for no consideration something equal to the share they deserve in this mandatory

will. If he has given them a lower portion, it shall be supplemented. If greater, the portion in excess shall be an optional will. If he confines the will to some of them only, the will shall be due to the others according to their shares.

c. This will shall be due to the son's children and the daughter's children however low in lineage, one or more, the male deserving the share of two females, the ancestor excluding the descendent, and each descendent taking the share of his ancestor only.

2. The mandatory will shall have precedence over the optional one for recovery from the third of inheritance.

3. Killers and apostates shall be deprived of mandatory wills according to the provisions hereof concerning wills.

## **Chapter Seven**

### **Overlapping of Wills**

#### **Article (273)**

If the third of inheritance is not sufficient for the wills of equal degree and the legally aged inheritors do not approve the portion in excess of the third, this portion shall be shared by them on a pro rata basis. If one of the wills concerns a specific object, its value shall be subject to clearing so that the person entitled to it can take his share of the specific object, and the others take their shares from the remainder of the third.

**Book Five**  
**Estates and inheritance**  
**Part One**  
**Estates**  
**Chapter One**  
**General Provisions**  
**Article (274)**

An estate is the property and financial rights the decedent leaves behind.

**Article (275)**

The estate is subject to rights some of which have precedence above others according to the following order:

1. Expenses for preparing the decedent for burial.
2. Paying the decedent's debts.
3. Execution of wills
4. Distribution of the estate remainder to successors

**Article (276)**

Confirmation of Death and Inheritance

1. Applicants for probating death and inheritance shall submit a relevant request to the court of competent jurisdiction stating the date of death, the decedent's last domicile, names and addresses of successors, legatees and all movables and property of the estate.
2. The clerks office shall notify the successors and legatees to appear before the court on the

date to be determined for such purpose. The judge shall hear the testimony of a trustworthy person. He may also assign him to carry out the administrative enquires he determines.

3. The probation of death and inheritance shall serve as evidence unless a ruling to the contrary is issued or unless the competent court decides to stop its determinative effect. The court shall issue an attestation for the limitation of successors and determination of the each inheritor's legal share in inheritance.

### **Article (277)**

Procedures for liquidating the estate

1. If the legator has not appointed a trustee for his estate, any concerned party may ask the judge to appoint a trustee to be unanimously chosen by all successors from them or others, failing which the judge shall elect the trustee after hearing their statements.

2. The provisions of special laws shall be observed if there is dormant gestation among successors or a person who is incapacitated, semi-capacitated or absent.

### **Article (278)**

If the legator has appointed a trustee for his estate, the judge shall confirm such appointment if requested by a successor. The trustee may relinquish this appointment.

### **Article (279)**

The judge may, at the request of a concerned party or the public prosecution or without being asked, remove the trustee and appoint another in his place if a justification for such act is established.

### **Article (280)**

1. The court shall enter in a special record the orders issued for appointing or removing trustees for the estate if the legator appoints or removes them or they resign.
2. This entry shall be effective for third parties who deal with the successors in respect of the estate realties.

### **Article (281)**

1. The estate trustee shall receive its property after his appointment and liquidate such property under the control of the judge for whom he may ask for remuneration to be determined by the judge.
2. The estate shall sustain the liquidations expenses and such expenses shall have the lien right of juridical expenses.

### **Article (282)**

The judge shall, if necessary, take all necessary measures for preserving the estate. He may also order that funds, securities and valuable things be deposited in the treasury of the court having within its precinct all or most of the estate property till the liquidation takes place.

### **Article (283)**

The estate trustee shall pay from the estate funds:

1. Costs for preparing the decedent for burial
2. An adequate maintenance to the successor in need pending completion of liquidation after obtaining a court order for payment, provided that the cost taken by each successor shall be deducted from his share in the estate.

3. The judge shall decide on any dispute in this regard.

### **Article (284)**

1. From the time of appointing a trustee for the estate, creditors may not take any procedure regarding the estate or pursue any procedure they have taken except vis-à-vis the estate trustee.

2. All procedures taken against the legator shall be discontinued pending settlement of all the debts of the estate once any concerned party so requests.

### **Article (285)**

No successor may, before receiving the certificate attesting his share in the net estate, dispose of the estate property or recover the debts owing to the estate or conclude a debt on him as clearance with the succession debt.

### **Article (286)**

1. The estate trustee shall take all measures necessary for protecting the estate property, carry out all necessary administrative tasks, represent the estate in actions and recover the debts owing to the estate.

2. The estate trustee, even if he is not hired, shall be as responsible as a hired proxy. The court may ask him to submit an account of his administrative tasks at periodical intervals.

### **Article (287)**

1. The estate trustee shall invite the estate creditors and debtors to submit a statement of their rights and debts within two months from the date of publishing this order.

2. This order shall be pasted on the notice board of the court having within its precinct the last domicile of the legator and the court having within its precinct all or most of the estate realties and publish this order in a daily newspaper.

### **Article (288)**

The estate trustee shall deposit at the court issuing the decision of his appointment within three months from the date of appointment an inventory statement of the estate assets and liabilities and an estimation of these funds. He shall also notify the persons concerned about this deposit by a registered letter. He may also ask the court to extend this period if relevant justifications exist.

### **Article (289)**

The estate trustee may, for estimating and inventorying the estate property, seek the services of an expert and record the findings revealed by the legator's papers and the information he receives about them. Successors shall inform the trustee of all debts and rights of the estate they know.

### **Article (290)**

Any person who seizes by fraud anything of the estate property shall be liable to the penalty provided for the breach of trust in the penal code even if he is a successor.

### **Article (291)**

Any dissension concerning the validity of inventory shall be lodged before the court of competent jurisdiction within thirty days from the date of depositing the inventory

statement.

## **Chapter Two**

### **Settlement of the Estate Debts**

#### **Article (292)**

1. Following the lapse of the period set for contending against the inventory statement, the estate trustee shall proceed with settling the estate debts concerning which no litigation is raised after obtaining the court permission.
2. Litigious debts shall be settlement after a final decision is issued on the succession validity.

#### **Article (293)**

In case of insolvency or probable insolvency of the estate, the estate trustee shall discontinue settling any debt even if no litigation arises in respect thereof pending a final decision is issued on all litigations connected with the estate debts.

#### **Article (294)**

1. The estate trustee shall settle the estate debts from the proceeds he collects from its claims and from the money of which they consist as well as the price of the movables of the estate, or from the price of the realty of the estate if these are not sufficient.
2. The estate movables and realties shall be sold by public auction according to the terms and on the dates prescribed in mandatory sales in the Civil Procedures Law, unless successors agree on another method. If the estate is bankrupt, the approval of all creditors of the method agreed by the successors shall be required. In all cases, successors shall have the

right to participate in the auction.

### **Article (295)**

Debts not guaranteed by a real security shall fall due upon the legator's death. The judge may, at the request of all successors, decide the maturity of the debt guaranteed by a real security and determine the amount due to the creditor.

### **Article (296)**

Any successor may, after distributing the deferred debts guaranteed by a real security, pay the amount allotted to him before the due date.

### **Article (297)**

Creditors who have not recovered their rights because of not having been recorded in the inventory list or who have no security guaranteed by the estate property may not have recourse against any person who has acquired in good faith a real right on such property, but they may have recourse against successors within the limits of the enrichment they realize from the estate.

### **Article (298)**

The estate trustee shall, after settling the estate debts, implement the legator's wills, legacies and other assigned tasks.

## **Chapter Three**

### **Delivering and Dividing the Estate Property**

#### **Article (299)**

After performing the estate-related obligations, the remaining property of the estate shall devolve to the successors, each according to his/her legitimate share.

#### **Article (300)**

1. The estate trustee shall deliver to the successors all the estate property that has devolved to them.
2. Immediately upon expiry of the period determined for litigations connected with the estate inventory, successors may ask to be handed the objects or moneys not required for liquidating the estate or receive some of them on an interim basis in return for or without submitting a warranty.

#### **Article (301)**

Each successor may ask the estate trustee to deliver to him his share sorted out from the legacy unless that successor is obligated to remain in the joint property according to an agreement or a provision of the law.

#### **Article (302)**

1. The estate not consumed by debts may be divided before settling the debts owing from it, provided that a portion of the estate shall be allocated for paying the estate debts including those guaranteed by a real security.
2. If the request for division is enforceable, the estate trustee shall carry out the division

amicably provided that it shall become final only after it is unanimously approved by the successors.

3. If the successors fail to reach such unanimity, the estate trustee shall ask the court for a procedure according to the provisions of the law and the costs of the action shall be deducted from the successors' shares.

### **Article (303)**

The division of the estate shall be governed by the rules prescribed for division as well as the provisions of the following Articles:

### **Article (304)**

If the estate property comprises an agricultural, industrial or commercial enterprise that is considered an independent entity of others and the successors fail to agree on operating it any further and with which no right of a third party is connected, such enterprise shall be appropriated in its entirety to the successor who asks for it if he the most capable of handling it provided that its value shall be determined and deducted from his share in the estate. If the successors' abilities to handle the enterprise are equal, it shall be appropriated to the successor who offers the highest price provided that it shall not be less than that of a similar enterprise.

### **Article (305)**

If in dividing the estate property one of the successors exclusively assumes the task of paying a debt owing from the legacy, the rest of successors shall not guarantee such debt if he goes bankrupt after division unless they agree otherwise.

### **Article (306)**

A testament dividing the estate realities among the testator's successors shall be valid, so that a part shall be defined for each one or some successors equal to his or their shares and shall be considered a bequest to a successor.

### **Article (307)**

A division enforceable after death may be retracted and shall become imperative upon the death of the testator.

### **Article (308)**

If the division does not comprise all the testator's property at the time of his death, the property not included in the division shall devolve to the successors as a joint property according to the rules on inheritance.

### **Article (309)**

In the case of death of one or more potential successors included in the division before the testator's death, the shorted shares that has been appropriated to the dead successor shall devolve to the remaining successors as a joint property according to the rules of inheritance without prejudice of rules of compulsory wills.

### **Article (310)**

A division enforceable after death shall be governed generally by the provisions of division except the provisions of injustice.

### **Article (311)**

If the division does not include the debts of the estate, or if it comprises them but the creditors do not accept such division, any successor, if no agreement is reached with the creditors, may ask the court to conduct the division and settle the debts provided that the division bequeathed by the testator and the considerations on which it based shall be considered.

## **Chapter Four**

### **Provisions on the Non-Liquidated Estate**

#### **Article (312)**

If the estate has not already been liquidated according to the foregoing provisions, the ordinary creditors of the estate may levy an execution with their rights or with those bequeathed to them on the realties of the estate that are disposed of or on which real rights accrue in favor of a third party if they have attached them against their debts before registering such disposals.

## **Part Two**

### **Inheritance**

#### **Chapter One**

##### **General Provisions**

#### **Article (313)**

Inheritance is an imperative devolution of property and pecuniary rights upon the death of their owner to their beneficiaries.

### **Article (314)**

Elements of inheritance

1. The legator (inheritee)
2. The inheritor
3. The inheritance

### **Article (315)**

Causes of inheritance: Marriage and kinship

### **Article (316)**

Conditions required for entitlement to inheritance:

Death of the legator in realty or by a judgment

The real or discretionary survival of his inheritor at the time of his death

Knowing the sides of inheritance.

### **Article (317)**

Impediments to inheritance:

Murdering the devisor intentionally whether the murderer is a principal perpetrator, or a causative accomplice. Murder must be committed without legal cause or excuse and the murderer must be of sound mind and of legal age.

### **Article (318)**

There shall be no inheritance if there is difference in religion.

### **Article (319)**

If two or more persons who are allowed to inherit one another die but it is not known who died first, no one of them shall be entitled to inherit from the other's succession.

### **Article (320)**

Inheritance shall be distributed according to the shares fixed, then the rules of ta'sib or both, then according to kinship.

## **Chapter Two**

### **Shares and their Holders**

### **Article (321)**

1. Fard : A fixed share for the inheritor in the succession
2. Fixed shares : A half, a fourth, an eighth, two thirds, one third, one sixth, the third of the remainder.
3. Persons entitled to fixed shares : Parents, the spouses, the paternal grandfather, the grandmother, daughters, the son's daughters, sisters in general, the uterine brother.

### **Article (322)**

Persons entitled to the half:

1. The husband provided that there is no inheriting descendant for the wife.
2. The daughter provided that the decedent has no child, male or female.
3. The daughter of the son however low in lineage provided that the decedent has no son, that there is no son's son equal to or higher than her in lineage.

4. The full sister if there is no brother, no other sister, no descendent inheriting the decedent, no father, or no paternal grandfather.
5. The paternal sister if she is alone, or if there is no paternal brother, no brother, no sister, no descendant inheriting the decedent, no father or no paternal grandfather.

### **Article (323)**

Persons entitled to the fourth:

1. The husband if there is a descendent inheriting the wife.
2. The wife even if there are several wives and if the husband has no inheriting descendants.

### **Article (324)**

Persons entitled to the eighth:

The wife even if there are several wives and the husband has an inheriting descendent.

### **Article (325)**

Persons entitled to two thirds:

1. Two daughters or more if the decedent has no son.
2. The two daughters of the son however low in lineage if there is no bodily son of the decedent, or a son's son equal to them in degree, or a son's son higher than them.
3. Two sisters or more if there is no brother or a descendent inheriting the decedent or father or paternal grandfather.
4. Two paternal sisters or more if there is no father, brother, sister, descendants inheriting the decedent, father or paternal grandfather.

## **Article (326)**

Persons entitled to the third:

1. The mother when there is a descendent inheriting the decedent and there are not two or more of brothers or sisters in general. Unless the here inheritance is limited to one spouse and the father, she shall be entitled then to the remainder of the third.
2. Two or more of the mother's sons if there is no descendent inheriting the decedent, or father or paternal grandfather. In this case, inheritance shall be divided equally, males and females having equal shares.
3. The paternal grandfather if he has full brothers or paternal brothers or if both number than two brothers, or an equal number of sisters and there is no heir with a fixed share.

## **Article (327)**

Persons entitled to the sixth:

1. The father if there is an inheriting descendent.
2. The paternal grandfather in the following cases:
  - a. If there is a descendent inheriting the decedent with him.
  - b. If there are heirs entitled to fixed shares with him and his share falls below one sixth or the remainder of a third, or nothing is left over from them.
  - c. If there is an inheritor with a fixed share or if there are more than two brothers or equal sisters, full or paternal, and the sixth is better for him than the remainder of the third.
3. The mother in the presence of inheriting descendents, two or more brothers and sisters in general.
4. The real grandmother however high in lineage, one or more, provided that no inheritor

excludes her from inheritance.

5. The son's daughter whether there is one or more, however low her father is in lineage, in the presence of one own daughter or the son's single daughter higher in degree, if there is no son or son's son higher than or equal to her in degree.

6. The paternal sister, one or more, in the presence of the single sister if there is no descendent inheriting the decedent or father or paternal grandfather or full or paternal brother.

7. One maternal brother or sister if there is no descendent inheriting the decedent or father or paternal grandfather subject to the provisions of Article 347 hereof.

### **Article (328)**

Persons entitled to the remainder of the third:

1. The mother in the presence of one spouse and the father, if there is no descendent inheriting the decedent or two or more brothers or sisters in general.

2. The paternal grandfather if there are heirs entitled to fixed shares or more than two brothers or equal sisters, full or paternal, and if the remainder of the third is better for him than the sixth.

## **Chapter Three**

### **Asabas (Agnates)**

#### **Article (329)**

1. Ta'sib is an indefinite entitlement in the succession.

2. Agnates are of three types:

a. Agnates by themselves

b. Agnates by others

c. Agnates with others

### **Article (330)**

Agnates by themselves are four sides some of which have presence over the other according to the following order:

1. Filiation including the sons and the son's sons however low in lineage.
2. Paternity including the father and the paternal grandfather however high in lineage.
3. Fraternity including full or paternal brothers and their sons however low in lineage.
4. Paternal unclehood including the decedent's uncles, parental or paternal, his father's uncles, the full or paternal uncles of the paternal grandfather however high in lineage, and the sons of the full or paternal uncles however low in lineage.

### **Article (331)**

An agnate by himself shall be entitled to the succession in the absence of heirs entitled to fixed shares, and to the remainder of the succession in their presence, while to nothing if the fixed shares exhaust the succession.

### **Article (332)**

1. Precedence shall be given to the agnate who is the most precedent in the order mentioned in Article 330 hereof, then to the closest in the degree of kinship to the decedent when considering the lineage side, then to the strongest in the degree of kinship in case of equality in the degree.
2. Agnates shall share in entitlement to their share of the succession when they are of the

same side and equal in the degree and strength of kinship.

### **Article (333)**

If the paternal grandfather is present in combination with full or paternal brothers or both male or female or mixed, whether they have or don't have an inheritor with a fixed share, the grandfather shall inherit as an agnate on the consideration that he is a brother of the decedent unless the sixth or the remainder of the third is better for him subject to the provision of Article 346 hereof.

### **Article (334)**

1. Agnates by others:

- a. One daughter or more with one or more sons.
  - b. The son's daughter however low in lineage whether one or more, in the presence of one son's son or more whether he is equal to or lower than her in degree if she needs him, but he shall exclude her if he is higher.
  - c. One full sister or more with one full brother or more.
  - d. One paternal sister or more with one paternal brother or more.
2. In this case, the male shall inherit a share equal to that of females.

### **Article (335)**

Agnates with others: the full or paternal sister, whether one or more, with the daughter or the son's daughter, whether one or more. In this case, she shall be equal to the brother in deserving the remainder and excluding the other agnates.

## **Chapter Four**

### **Inheritors by Fard and Ta'sib (as persons entitled to fixed shares or as agnates)**

#### **Article (336)**

Inheritors by Fard and Ta'sib:

1. The father or the paternal father with the daughter or the son's daughter however low her father is in lineage.
2. The husband if the decedent's cousin takes his share by fard (the legally fixed share) and what he deserves by the filiation of unclehood as a residuary.
3. The maternal brother, whether one or more, if the decedent's cousin takes his share by fard what he deserves by the filiation of unclehood as a residuary.

## **Chapter Five**

### **Exclusion and Deprivation**

#### **Article (337)**

1. Exclusion: Depriving an inheritor of inheritance partially or totally because of the presence of another inheritor who is more entitled to inheritance.
2. Exclusion is of two kinds: Total exclusion and partial exclusion.
3. Persons excluded from inheritance may exclude the others.
4. Persons deprived of inheritance shall not exclude the others.

#### **Article (338)**

1. The real grandfather shall be excluded by the father and every agnate grandfather

descending from him.

2. The closer grandmother shall exclude the distant one unless kinship is on the father's side, in which case the distant grandmother on the mother's side shall not be excluded. The mother shall exclude the real grandmother absolutely. The father shall exclude the paternal grandmother, and the real grandfather shall exclude the grandmother if she is his ancestor.

### **Article (339)**

The mother's sons shall be excluded by the father and the real grandfather however high in lineage, and the son and the son's son however low in lineage.

### **Article (340)**

Both of the son and the son's son however low in lineage shall exclude the son's daughter lower in degree. She shall be excluded as well by two daughters or two daughters of the son higher in degree unless an agnate inherits with her.

### **Article (341)**

The father, the son and the son's son however low in lineage shall exclude the paternal brothers and sisters.

### **Article (342)**

The father, the son, and the son's son whoever low in lineage shall exclude the paternal sister. She shall be excluded as well by the full brother and the full sister if she inherits with other agnates subject to the provision of Article 335 hereof, and by the full two sisters if there is no paternal brother. Paternal brothers shall exclude the father, the son and the son's

son however low in lineage, and the full brother and the full sister if she inherits with other agnates.

## **Chapter Six**

### **Radd and Awl**

#### **Article (343)**

Radd: A pro rata increase occurring in the shares of persons entitled to fixed shares when the original question exceeds the total of its portions.

#### **Article (344)**

If the fixed shares do not exhaust the succession and if there is no agnate through affinity, the remainder shall be returned to those entitled to fixed shares other than the spouses according to their shares. The remainder of the succession shall be returned to the spouses if there is no agnate through affinity or a person entitled to a proportional share or a blood relative.

#### **Article (345)**

1. Awal: A pro rata shortage that occurs in the portions of the persons entitled to fixed shares when the shares exceed the original question of legacy.
2. The shortage that occurs in the question shall be considered a basis on which the succession shall be divided.

## **Chapter Seven**

### **Special Questions**

#### **Section One**

##### **Akdariya**

##### **Article (346)**

The grandfather shall inherit as an agnate with the full or paternal sister, whereas she may not inherit with him as a person entitled to a fixed share except in Al-Akdariya, i.e., a question involving a husband, a mother, a grandfather, a full or a paternal sister.

The father shall take the half, the mother the third, the grandfather the sixth. The sister shall be fixed the half that shall be added to the sixth of the grandfather, and the total shall be divided between them on the basis that the male shall take the share of two females.

#### **Section Two**

##### **Mushtaraka (Shared Question)**

##### **Article (347)**

The full brother shall inherit as an agnate except in the question of Mushtaraka, i.e, a question involving a husband, a mother or a grandmother, a number of maternal brothers, a full brother (full brothers).

The husband shall take the half and the mother or the grandmother shall take the sixth. The third shall be divided between the maternal brothers and full brothers on the basis that the male shall take the share of two females.

## **Section Three**

### **Malikiyat and Similar Doctrines**

#### **Article (348)**

The grandfather shall not exclude the full or paternal father except in the question of Malikiyat and similar doctrines:

Malikiyat: In a question involving a husband, a mother, a grandfather, maternal brothers, a paternal brother, the mother shall deserve one sixth and the grandfather shall deserve the remainder as an agnate.

Similar doctrines: In a question involving a husband, a mother, a grandfather, maternal brothers, a full brother, the husband shall deserve the half, the mother one sixth, and the grandfather the remainder as an agnate.

## **Chapter Eight**

### **Inheritance of Blood Relatives**

#### **Article (349)**

Blood relatives are four types:

First type:

Sons of daughters however low in lineage and the sons of the son's daughters however low in lineage.

Second type:

Uterine grandfathers however high in lineage and uterine grandmothers however high in lineage.

Third type:

1. Sons of the maternal brothers and their sons however low in lineage.

2. Sons of sisters in general however low in lineage.
3. Daughters of brothers in general however low in lineage.
4. Daughters of brothers' sons in general however low in lineage and their sons however low in lineage.

Fourth type:

This type includes six groups:

1. The paternal uncles of the decedent on the mother's side, his paternal and paternal uncles and aunts in general.
2. The sons of those males mentioned in the above paragraph however low in lineage, the daughters of the decedent's paternal uncles on the side of one or both parents, the daughters of their sons however low in lineage, and the sons of those mentioned females however low in lineage.
3. The uncles of the decedent's father on the mother's side, the maternal aunts of his father in general "paternal kinship), the paternal and paternal uncles and aunts of the decedent in general "maternal kinship".
4. The sons of those mentioned in the above paragraph however low, the daughters of the paternal uncles of the decedent on the side of one parent or both parents, the daughters of their sons however low in lineage, and the sons of those mentioned however low in lineage.
5. The paternal uncles of the parents of the decedent's father on the mother's side, the paternal uncles of his father's mother, the paternal aunts of his father's parents, their maternal uncles and maternal aunts in general (maternal kinship), the paternal uncles of the parents of the decedent's mother, her paternal aunts, their maternal uncles and maternal aunts in general (maternal kinship).
6. The sons of those mentioned in the above paragraph however low in lineage, the daughters of the parents of the decedent's father on the side of one parent or both parents,

the daughters of their sons however low in lineage, and the sons of those mentioned however low in lineage.

### **Article (350)**

1. Concerning the first type of blood relatives, the closest person of them in degree to the decedent shall have the most right to inheritance. If they are equal in degree, the son of the person entitled to a fixed share shall have precedence over the son of the blood relative. If they are all sons of a person entitled to a fixed share, or if there is no son of a person entitled to a fixed share among them, they shall share the inheritance.

2. Concerning the second type of blood relatives, the closet person of them in degree to the decedent shall have the most right to inheritance. If they are equal in degree, precedence shall be given to the person who is an ancestor to a person entitled to a fixed share descends. If they are all equal in degree and none of them is an ancestor to a person entitled to a fixed share, or if they are all ancestors to a person entitled to a fixed share, they shall all share the inheritance if they all descend from the mother's or father's side. If their sides are different, the paternal relatives shall take two thirds and the maternal relatives shall take one third.

3. Concerning the third type of blood relatives, the closet person of them in degree to the decedent shall have the most right to inheritance. If they are equal in degree, and some of them are sons of an inheritor and some are sons of a blood relative, the former shall have precedence over the latter, otherwise precedence shall be given to the strongest in kinship. The person descending from both parents shall be more entitled than the one descending from one parent. The one descending from a father shall be more entitled than the one descending from a mother. If they are united by the same degree and strength of kinship,

they shall share the inheritance.

### **Article (351)**

1. If the paternal kinships including the uncles of the decedent on the mother's side, his aunts in general or the maternal kinship including the uncles of the decedent and his aunts in general are the only inheritors in the first group of the fourth type indicated in Article 349 hereof, precedence shall be given to the strongest in kinship; persons descending from both parents shall be more entitled to persons descending from one parent, persons descending from a father shall be more entitled to persons descending from a mother. If they are equally strong in kinship, they shall share the inheritance. When the two parties are united, the paternal kinship shall take two thirds and the maternal one shall take one third. Shares of each party shall be divided as indicated above.

The provisions of the above paragraph shall be applied to the third and fifth groups.

2. Concerning the second type, the closest person in degree to the decedent shall have precedence over the most distant even if not from his kinship side. In case of equality and unity on the kinship side, precedence shall be given to the strongest if they are all an agnate's or a blood relative's sons. If they are different, the agnate's son shall be given precedence over the blood relative's son. In case of difference in the kinship side, two thirds shall be given to the father's kinship, and one third to the mother's kinship. The shares obtained by each side shall be divided among them in the above way.

The provisions of the above paragraph shall be applied to the fourth and sixth groups.

3. No consideration shall be given to the plurality of the kinship sides of one inheritor from the blood relatives except if the side is different.

### **Article (352)**

With regard to the inheritance of blood relatives, the male shall have the share of two females except the sons of the maternal brother whose inheritance shall be divided equally between males and females.

## **Chapter Nine**

### **Inheritance by Judgment**

#### **Article (353)**

The lost person shall be allocated his share from the estate according to the judgment on his life. If he appears alive, he shall take his share. If he is adjudged dead, his share shall be restituted to his inheritor entitled to it at the time of judgment.

#### **Article (354)**

Gestation shall be allocated from the estate the share of two males or two females, whichever is greater, on the assumption that it is twins. The remaining inheritors shall be given the lesser of the two shares. After delivery, the estate shall be distributed according to legal shares.

#### **Article (355)**

If the share allocated for gestation is less than the due share, the remainder shall be recovered from the inheritor whose share has been increased. If the share allocated for gestation exceeds the due share, the increase shall be returned to the deserving inheritor.

## **Chapter Ten**

### **Takharuj**

#### **Article (356)**

1. Takharuj is an agreement under which some inheritors relinquish their known shares of the succession to others for a known consideration.
2. If one inheritor agrees to relinquish his shares to another, the latter shall deserve his share and replace him in the succession.
3. If one inheritor agrees to relinquish his shares to the other inheritors, the shares of the relinquishing inheritor shall be deducted from the original question while the remaining shares shall remain unchanged if the amounts paid to him are from the succession. If the amounts paid to him are from their funds without the takharuj agreement providing for a method for dividing the shares of the relinquishing inheritor, such amount shall be divided among them according to the proportion he has paid. Where the portion paid by each of them is not known, the amount shall be divided among them equally.

## **Chapter Eleven**

### **Miscellaneous Questions**

#### **Article (357)**

1. If the decedent recognizes in his life any person as his lawful heir, his recognition shall not affect the other heirs unless it fulfills the conditions of its validity.
2. If the decedent recognizes in his life any person as his unlawful heir without proof according to Article 93 hereof or retracting his recognition, the person recognized as such shall be entitled to the succession of the recognizer if he has not inheritor.
3. If some inheritors recognize any person as a lawful heir of their deviser, the person

recognized as such shall share the recognizer only in entitlement to inheritance unless he is excluded by him.

### **Article (358)**

An illegitimate son or the son of parents accusing each other of adultery shall inherit from his mother and her relatives. Similarly, the mother and her relatives shall inherit them.

### **Article (359)**

A hermaphrodite shall take a half of the two shares depending on estimating his masculinity or femininity.

### **Article (360)**

The succession of a decedent having no inheritor shall be allocated as a charitable endowment in his name for the poor, the needy, knowledge seekers under the supervision of the General Endowments Authority.

### **Article (361)**

Any circumvention of the provisions of inheritance by sale, donation, bequest or other disposals shall be null and void.

## **Conclusive Provisions**

### **Article (362)**

Any provision contravening or contradicting the provisions hereof shall be repealed.

## **Article (363)**

This law shall be published in the official gazette and applied from the date of publication.

**Khalifa Bin Zayed Al Nahayan**

**President of the United Arab Emirates**

**Issued by us in the Presidential Palace in Abu Dhabi**

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