THE PERSONAL STATUS LAW

(According to Jafari jurisprudence)

(THIRD EDITION)

By

Shaikh Mohsin Al Asfoor

Chairman of Jaffaria Waqf Board

Translated by:

Dr. Noaman M. Saleh Al-Musawi

Hessa Khalifa Jassim Al-Haiki

Kingdom of Bahrain

Safar 1436 - December 2014

THE PROVISIONS OF PERSONAL STATUS

(According to Jafari jurisprudence)

The first draft of the Personal Status Law in the history of Sharia judiciary in the Kingdom of Bahrain (2002)

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The author presents two copies of the first edition of the Personal Status Law book (in Arabic & English) to HM King Hamad bin Isa Al Khalifa at Safriya Palace in 2000

The Translator's Foreword to the Book

In the name of GOD (ALLAH), the Most Merciful and Compassionate

Praise be to GOD (ALLAH), and may prayers and peace be upon the Messenger of GOD (ALLAH), Prophet Muhammad, and his family, his companions, and those who followed him.

This is the second edition of the translated version of the provisions of the Personal Status book from Arabic into English. The book is written by Shaikh Mohsin Abdul Hussein Al Asfoor, the former Judge of the High Islamic Court of Appeal (Jaffaria), and the current Chairman of the Jaffaria Waqf Directorate in the Kingdom of Bahrain.

The first Arabic edition of this book was issued in Bahrain in 2002, followed by the second edition in Kuwait and the third edition in Beirut in 2011. The first edition was distributed among lawyers and specialists in Islamic jurisprudence and received overall positive responses.

The Arabic edition was jointly translated into English by Dr. Noaman Mohammed Saleh Al Musawi and Ms. Hessa Khalifa Al Haiki, being the first registry in English for the provisions of the Personal Status in the history of the legal judiciary in Bahrain and the Arab world.

We undertook a comprehensive review of the translated

version of the book; we revised the meanings, simplified some phrases to suit different levels of non-Arabic readers, and double-checked the words to make sure that they are easier and understandable by them all over the world and that they do not contain spelling and grammatical mistakes.

This book gives the reader a comprehensive idea about marriage and the provisions related to its rights, obligations and problems, and also about other issues of mortmain, gift, will, inheritance, and custodianships of legal judiciary as perceived from the perspective of the Jafari's school of thought in the contemporary Islam.

This book is regarded as an important reference in Islamic jurisprudence for both non-Arabic speaking Muslims and non-Muslims, as it clearly demonstrates how Islam preserved the woman's dignity and rights and pave the way for her cooperation with the man in building a pure and healthy society free of sins and offences.

We hope that this book will be helpful to everyone, as the concepts and meanings are now simpler than those in the first edition. We believe that this book is an essential reference for jurists, academics, and all those specialists who are looking for the answers to their questions concerned with provisions and issues of Personal Status Law in the Islamic Shariat.

Dr. Noaman Moh'd Saleh Al Musawi
Hessa Khalifa Jassim Al Haiki

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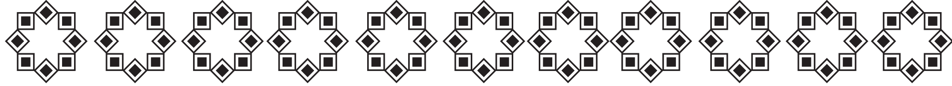

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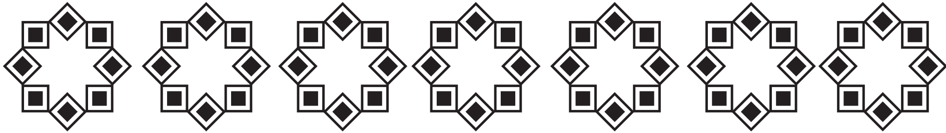
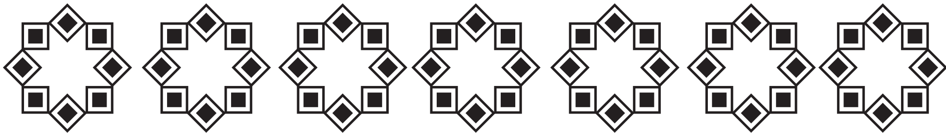


THE MARRIAGE BOOK



- **Chapter One:** **The Implementation of Marriage**
- **Chapter Two:** **The Spouses**
- **Chapter Three:** **Qualifications & custodianship**
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Chapter One
The Implementation of Marriage

First Section: PRELIMINARIES OF MARRIAGE

ARTICLE No. 1: Marriage is the name of the contract resulted from the special, matrimonial relationship between the man and the woman who is not prohibited for him for reasons of relation or cause, upon which each of them is permitted to have all kinds of enjoyment with other party for the purposes of stability, tranquility, continuation of offspring and chastity.

ARTICLE No. 2: The man's betrothal of the woman that is void of a contract does not necessarily commit her to marry him; the same is true for promise of marriage, collection of dowry, acceptance of its value or exchange of gifts.

ARTICLE No. 3:

a- If one party changed his or her mind and did not wish to marry the other party, the betrother is entitled to take back the dowry that he paid or its value in case of damage, if it is not possible to give back its real estate value.

b- If the fiancée bought a trousseau by the amount of her dowry in full or partially or disposed of it as a gift, charity or donation, etc., and then one party

changed his or her mind, she is entitled to give back the dowry in its actual form, in cash or in real estate, accordingly, or in both, unless both parties mutually agree on something else.

ARTICLE No. 4:

a- If the fiancée or the betrother changed their mind and did not wish to marry, then the pending gifts or the ones whose use is stipulated by marriage protocol or marriage life, such as cosmetics, furniture, etc., must be returned back.

b- Since the gift granted to the fiancée should be used immediately, i.e., not after implementing the marriage contract, then the fiancée is not obliged to return it back after disposal of it, whether she used it in a safe or damaging way.

c- If a uterine kinship existed between the spouses, then the fiancée is not obliged to return the gift to the betrother; rather, she deserves the right to be the owner of the gift in the time of its collection.

Second Section: PILLARS OF MARRIAGE

ARTICLE No. 5: The marriage contract is implemented between the spouses when both of them accept and agree on that, or who act on behalf of them by custodianship or authorization.

ARTICLE No. 6:

a- The agreement or acceptance must be done orally using phrases that indicate its meaning and are stipulated by the Islamic law.

b- The marriage contract is considered valid if the spouses stated their acceptance and agreement in oral form or authorized someone else to accept and agree on behalf of them.

c- If any of the parties or those representing them was unable to speak or spell words of acceptance and agreement, it is thereby permitted for them to write or to use an understandable sign which indicates acceptance and agreement.

Third Section: THE TERMS OF THE MARRIAGE CONTRACT

Part (1): The Form

ARTICLE No. 7: Agreement or acceptance must satisfy the following conditions:

a- The agreement and acceptance must be immediate and not pending on something that is probable or might happen later (like if the man says: if I got the promotion this week, I will accept the marriage).

b- The acceptance must match the agreement in an

explicit manner, which means that the second party must accept the agreement of marriage itself and not something else.

c- The betrother or fiancée is not entitled to change his or her mind after agreeing on marriage until the acceptance becomes true.

d- Each one of the parties must be present to hear from the other party his or her words that explicitly indicate that the marriage is meant by those words, with no intention to joke or play by words.

e- A customary continuity should exist between the times in which the two forms of acceptance “I agreed” and agreement “I agree to marry you” are established. If a delay or long interval of time took place between them that impeded the validity of marriage contract, the contract is customarily considered null and void.

ARTICLE No. 8: The validity of the marriage contract does not depend on the presence of two witnesses although it is desirably recommended.

Chapter Two: The Spouses

First Section: THE PERMISSIBLE AND THE PROHIBITED

ARTICLE No. 9: The marriage is regarded as valid if the fiancée is not prohibited for the betrother, whether eternally or temporarily.

First part: Eternal Prohibitions

ARTICLE No. 10: Because of reasons of relation, the man is prohibited to marry the woman if she belongs to one of the following categories:

a- His ancestor, such as mother, grandmother and upward.

b- His descendant, such as daughter, granddaughter and downward.

c- Descendants of his parents, such as his sister, her daughters and the far relatives.

d- First class of descendants of his grandfathers and grandmothers, such as paternal and maternal uncles and aunts.

ARTICLE No. 11: Due to the relation by marriage, the man is prohibited to marry:

a- A women who married one of his ancestors, such as his stepmother and upward, whether she had sexual intercourse with him or not.

b- A woman who married his descendant, i.e., his daughter-in-law and downward, whether she had sexual intercourse with him or not.

c- Ancestors of his wife, such as his mother-in-law and upward.

d- Descendants of his wife with whom he had sexual intercourse, such as his step-daughter and downward.

ARTICLE No. 12: If a man committed adultery with a woman, their descendants, such as children and downward, are prohibited for them.

ARTICLE No. 13:

a- If one commits a suspicious intercourse or adultery to a woman, he is not entitled to marry her or her daughter.

b- If one commits a suspicious intercourse or adultery to a woman, his father or son are not entitled to marry her.

c- The suspicious intercourse or adultery after the marriage contract does not annul the contract.

ARTICLE No. 14:

a- If an adult sodomised a boy less than 15 years old, he should be prohibited from marrying the boy's mother

by relation and foster mother and upward, his future daughter and downward, his sister by relation and his foster sister, in particular.

b- The prohibition is regarded as void if the sodomite is non-adult who committed suspicious intercourse to a fellow or to an adult.

c- The sodomised boy deserves the right to marry any one of relatives of the sodomite, whether ancestors or descendants, i.e., the mother or daughters.

ARTICLE No. 15: Suckling is a reason for eternal prohibition, because the Holy Prophet (Peace Be Upon Him And his Progeny) says: "*That who is prohibited because of the relationship is also prohibited by suckle*". Suckling is confirmed by some conditions related to nurse, her husband, and the quantity of the milk given to the baby as follows:

a- The nurse must be a legal wife, who is the only one and alive, and her milk must be a natural result of her pregnancy and delivery.

b- She must be married to a legal husband, and her milk should be a result of the child incurred from her pregnancy from her husband.

c- The milk must be fed during the legal suckling period that begins from the moment of the birth and expires within two lunar years, and the baby must drink the milk directly with his mouth without any intervening devise, such as spoon or artificial breast.

d- The milk must not be mixed with other material, liquid, or any kind of food and the suckling must be

continuous, without any kind of interval, like in the case when the baby drinks the milk of another woman or a strange kind of food.

ARTICLE No. 16: There are three reliable ways through which the legal quantity of suckling can be verified:

First: When one becomes sure that the suckling, as said above, was the main result of the growth of baby's body, strength of bones and flesh.

Second: If the baby drinks the milk in one day and one night continually, no matter whether he or she suckled the milk few or many times.

Third: The baby must be given fifteen continual complete suckles, and these suckles must not be mixed with suckling by another woman or with having other liquids, or any other kinds of food. It is the most reliable and the easiest way to verify if the child had the legal amount of suckling.

ARTICLE No. 17: If one nurse gave legal and complete suckles to many male and female foreign babies simultaneously, all those male and female foreign babies shall be considered brothers and sisters , no matter whether there were few or many of them, since the number makes no difference as long the suckling of each of them occurred in line with legal conditions.

ARTICLE No. 18: Men who suckled in their childhood from one nurse according to legal conditions are prohibited to marry any of these women:

a- The nurse herself, being as mother of the suckling man.

b- The nurse's daughter who had suckled with the man

from the same breast in the same time, and thereby became the man's foster sister.

c- Sisters of suckling man, who had legally suckled with him from the same breast in the same time, and thereby became the man's foster sisters.

d- The nurse's mother and grandmother and upward as they shall be the grandmothers of the suckling man.

e- The nurse's sister, being considered as the man's maternal aunt.

f- The daughters of the suckling man shall be the granddaughters of the foster father (milk of the male); he is thereby prohibited from marrying any of them because he is their grandfather by fosterage.

g- The sisters of the nurse's husband (and upward) because they shall be the paternal aunts of the suckling male by fosterage.

ARTICLE No. 19: It is prohibited for the women, who suckled according to the legal regulations from one nurse and in one time, to marry one of the following males:

1- The nurse's husband because he became the father of the baby girl who suckled from his wife's breast.

2- The nurse's son, who naturally suckled from the nurse's breast (his mother), in the same time when the stranger baby girl was doing the same, so he became her brother by fosterage.

3- The baby girl's brothers who have suckled from the same nurse in the same time when she was suckling according to legal terms (because they are her foster brothers).

4- The suckling male's father and grandfather (and upward), because they are her grandfathers (by fosterage).

5- The nurse's brother (because he is her maternal uncle).

6- The suckling female's sons (because they are the nurse's grandsons, and because the nurse is their grandmother by fosterage).

7- The father's brother by fosterage, and upward, (because he is the suckling female's paternal uncle).

Second part: Temporary Prohibitions

ARTICLE No. 20: The following cases are prohibited in Islam:

a- If a Muslim woman marries a non-Muslim man.

b- When a Muslim man marries a non-Muslim woman (who is not from the people of the Scripture, i.e. the Jews, the Christians and the Magians).

c- When a Muslim man marries a woman (who is from the people of the Scripture) by permanent, not temporary marriage contract.

ARTICLE No. 21:

a- It is not permitted for a man to marry a woman who is already married or who is spending the period of waiting[1].

b- It is also prohibited to implement permanent and temporary marriage contracts with two or more sisters at the same time. No matter whether the sisters were half-sisters, full sisters or foster sisters.

c- A man is not permitted to marry the minor, insane, fool or non-adult woman whether by temporary or permanent marriage contract without the permission of her custodian or the legal judge.

d- A man who has four wives is not permitted to marry a fifth woman with a permanent contract in the same time.

e- A man is not permitted to implement a marriage contract with any woman as long as he is in pilgrimage state (a pilgrimage to Mecca, Kingdom of Saudi Arabia), no matter whether she was in pilgrimage state too or not.

f- A man is not permitted to implement a marriage contract with a woman who apostates from Islam unless she repents and returns to her religion (i.e. Islam),

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1 In Islam, (period of waiting) is the period a woman must observe after the death of her spouse or after a divorce, during which she may not marry another man. The period after the death of a spouse, is four months and ten days, while the period after divorce is three periods of purity from menstruation after the divorce. Once the third period of cleanliness ends, the period of waiting has concluded.

no matter whether she was inborn Muslim or non-Muslim before she apostatizes[2].

ARTICLE No. 22:

a- A man is not permitted to marry niece of his wife (if his wife was the paternal or maternal aunt of the niece) without her permission.

b- A man is permitted to marry the maternal or paternal aunt of his wife, even without her acceptance and permission.

ARTICLE No. 23:

a- A woman who is divorced three times (irrevocable divorce) by her husband is prohibited for him until she marries another man and has sexual intercourse with him. If the second husband divorced her, her previous husband can marry her again with a new marriage contract after the expiry of her period of waiting[3].

b- A man is eternally prohibited from marrying the woman whom he divorced nine times, with six returns during those divorces, two new marriage contracts between the divorced woman and another husband, and two continual marriages.

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2 A non-Muslim apostate, whose parents are non-Muslim, and who has converted to Islam then he/she apostatized.

3 This situation is called in Arabic "tahleel" (permission) and the second husband is therefore called in Arabic "muhallil" (permissive).

ARTICLE No. 24:

a- If a man married a woman who is already married or she was passing her period of waiting, knowing that this kind of marriage is prohibited, she will be thereby prohibited for him forever and he cannot marry her even if her ex-husband divorced her or her period of waiting expired. But if he was heedless of the prohibition and he had sexual intercourse with her, then she would be prohibited for him forever, but if he did not have any sexual intercourse, then she would not be prohibited for him and he can marry her with a new marriage contract after her previous husband divorced her and after she completed her period of waiting.

b- If a man committed adultery with a married woman or a woman passing any kind of period of waiting, he is not permitted to marry her forever, even if she was divorced from her present husband or she completed her period of waiting.

Chapter Three
Qualifications & custodianship

First part: The husband's qualifications and his representative

ARTICLE No. 25: To be qualified for marriage, the husband must be sane, adult, not mad, and able to manage his personal affairs freely.

ARTICLE No. 26:

a- A custodian, whether a father or a grandfather, can implement a marriage contract for his child before adulthood, if the child is fool and mad.

ARTICLE No. 27: It is not permitted to implement a marriage contract for a man or woman, whether she was virgin or deflowered, if they were forced to marry; otherwise if they both were satisfied then the contract shall be valid.

ARTICLE No. 28:

a- The two main parties are permitted to choose anybody on behalf of one or both of them (as their representatives) to implement the marriage contract.

b- The representative is not permitted to wed the one whom he represents without his or her permission.

ARTICLE No. 29:

a- If a mediator implemented a marriage contract for any of spouses without his or her permission, then the contract shall be considered null and void.

b- If the representative went beyond his authorized representation in the marriage, then he would be considered as a mediator.

Second part: The custodianship in the marriage

ARTICLE No. 30:

a- The custodians of the virgin must not be other than her father and her paternal grandfather.

b- If one of them (i.e. the father and grandfather) preceded the other and implemented a marriage contract for the person who is under custody, then the contract implemented before the other shall be valid and effective.

c- In case both contracts have been implemented exactly in the same time, the contract that had been implemented by the grandfather shall be considered valid and effective, and the father's contract shall be considered void.

d- An adult, upright and virgin daughter can manage her affairs by herself. She can implement a marriage contract with whom she wants or desires, in case both her father and grandfather are dead.

e- The adult, upright and deflowered woman (whether she was divorced or widow) can herself implement a marriage contract with whom she likes even if her father or grandfather or both of them objected to that.

f- A deflowered woman is a woman who lost her virginity (i.e., hymen) through legal sexual intercourse, even if the amount of penetration was so little as the glans of the male organ entered the vagina without removing the hymen.

ARTICLE No. 31:

a- The eldest brother is not entitled to have any kind of custodianship upon the upright virgin daughter who lost her father or grandfather or both and desires to marry. It is, however, recommended to have his permission if she has neither father nor grandfather.

b- A mother, maternal grandfather and upward, and the paternal or maternal uncles, are not entitled to have any custodianship upon the upright adult daughter if she had lost her father or grandfather and she wanted to marry.

ARTICLE No. 32:

a- Father, grandfather, and the legal judge are not entitled to have any kind of custodianship upon the adult upright male.

b- If a fool, who is and under interdiction[4] because of

4 It is an interdiction where an owner of wealth or property is restrained from having any say in its use, like in the cases of a bankrupt, a minor, an insane person, a fool etc.

immoderation and foolishness, wanted to marry, then his marriage shall not be considered legal unless he gets permission of his custodian or the legal judge.

Third part: The competence

ARTICLE No. 33:

a- Righteousness in religion is the main requirement in competence.

b- If one of the spouses concealed any natural or body shortcomings from the other spouse that lead to hate between each other, then this party has the right to annul the marriage contract.

c- The right of annulment is cancelled if the other spouse discovered the shortcomings and was satisfied, and long time passed since that discovery.

Fourth part: The terms & conditions included within the marriage contract

ARTICLE No. 34:

a- When the marriage contract includes a term that does not suit with main goal of the marriage contract, then this contract shall be void.

b- If the term is congruent with the main objective of

the marriage contract, but is does not follow the Holy Qur´an' and the Prophet Muhammad's path, the marriage contract shall not be considered void, but only the term or condition shall be void.

c- If the term suits with the main goal of the marriage contract, and is appropriate to Holy Qur´an and to Prophet Muhammad's path, then the other spouse must fulfill this term; otherwise, the one who put the term can plead before a judge to force the other spouse to fulfill that term.

The first section: the husband's terms

ARTICLE No. 35:

a- If a man married a woman and put some conditions that he would not give her the provision, he would not spend the nights with her equally, and he would not ask her to give a child to birth, then these conditions would be considered correct if the wife agreed, however, the wife has the right to annul this condition and claim her legal rights in the future.

b- If the husband provided to his wife that she would give him some of her property, then this term would be considered as corrupt.

The second section: the wife's terms

ARTICLE No. 36:

a- If the wife provided to her husband that he would donate her some of his property beside the dowry or to be donated to her custodian, then this term would be considered corrupt.

b- The wife does not have the right to put a condition that her husband must give her (in addition to the postponed dowry[5]) half of his property or a certain percentage of it if he divorced her.

5 The wife can have some of the dowry (quick dowry) and postpones the rest (postponed dowry) for a specific time, before or after having sexual intercourse, or until the husband´s death, or her divorce, etc.

Chapter Four

Types of marriage and their characteristics

First Section: TYPES OF MARRIAGE & THEIR RULES

First part: The types

ARTICLE No. 37:

a- Marriage has two types**:** true and false.

b- True marriage is that which includes all the pillars and terms of its validity according to this book; otherwise this kind of marriage would be false.

ARTICLE No. 38:

a- True marriage is available in three kinds: effective and obligatory, effective and non-obligatory, and ineffective.

b- The effective and obligatory marriage is one that includes all the matrimonial rights and permits all kinds of enjoyment between the spouses. This kind of marriage does not need permission of anyone and it is considered irrevocable according to this book.

c- The effective, non-obligatory marriage is one that is effective, but does not include the matrimonial rights,

and this kind of marriage can be annulled according to this book[6].

d- The ineffective marriage is one that is correct but it would be valid after permission of the concerned spouse.

ARTICLE No. 39:

a- All abovementioned kinds of the true marriage are of two types: permanent and temporary.

b- The permanent marriage includes agreement, acceptance, and the dowry within the marriage contract, but there is no term (period of time) mentioned therein.

c- The temporary marriage includes the agreement and acceptance, and dowry within the marriage contract, as well as a specific period of time.

Second part: The characteristics of the temporary marriage

ARTICLE No. 40: The most important differences that distinguish the temporary marriage from the permanent marriage are as follows:

1- There is a specific period of time mentioned in the

6 The effective and non-obligatory marriage is correct but it does not permit the spouses to have sexual intercourse together without the permission of the wife›s custodian, because in this marriage, the upright adult daughter had married without the permission of her custodian.

contract and there is no limitation for that period.

2- The spouses in the temporary marriage do not inherit each other when one of them dies, except when one or both of them put this condition in the contract.

3- It is not obligatory for the husband to spend on his wife in the temporary contract unless she puts such a condition in the contract.

4- The wife, in the temporary marriage, has not the right to specify the nights (the four known nights)[7] in which her husband has to be in bed with her, except when she had put this condition in the contract.

5- In the temporary marriage, both spouses can leave each other without divorce. This type of marriage shall expire by the expiry of the contract's term (period of time).

6- The husband can implement as much as he likes of temporary contracts, contrary to the permanent marriage where the man cannot keep more than four wives (in the same time).

7- The woman, who was divorced irrevocable divorce, cannot return to her husband by the temporary marriage[8].

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7 When a man has four wives, he must treat then fairly and divide the nights between them, so he must spend a night with each of them equally.

8 If the woman was divorced three continuous times after a permanent marriage, the husband shall not be permitted to marry her again unless she get married from another person (by a permanent contract not temporary) then she get divorced and her period of waiting had expired. This is not applicable in the temporary marriage but only in the permanent marriage.

8- In the temporary marriage, there is no prohibition whether the contract has been repeated many times on the same wife, even if it is repeated a dozen of times.

9- It is not forbidden to neglect the wife sexually more than four months in the temporary marriage[9].

10- The wife has the right to put a condition in the contract saying that her husband has not the right to have any kind of sexual intercourse with her.

Second Section: GENERAL RULES

ARTICLE No. 41: The true effective and obligatory marriage is that which includes all the matrimonial rights, obligations and duties which will be effective from the moment of implementation of the contract.

ARTICLE No. 42: The true ineffective marriage is one that is correct but does not entail any rights, obligations and duties unless the concerned spouse permits such a contract; hence it will be valid and effective after that permission.

ARTICLE No. 43: The false marriage is that which does not include any rights or obligations or duties.

ARTICLE No. 44: Marriage shall be considered void in the following cases:

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9 In the permanent marriage, it is forbidden for the husband to neglect his wife sexually more than four months, while it is not forbidden to neglect her even more than this period in the temporary marriage.

a- When there is a defect in the contract, as if the agreement or the acceptance is missing, or when one of the obligatory qualifications of the husband is missing.

b- When the wife is prohibited to her husband because of relative, suckling, relationship by marriage obstacles, or when she is already married or spending the period of waiting.

c- If the wife was divorced three times by her husband and did not marry another man (as explained in Article No. 23), or if she was non-Muslim, or when he is already married to her sister or aunt[10].

ARTICLE No. 45:

a- If a Muslim wife apostatized before having any sexual intercourse (no matter whether she was a Muslim or non-Muslim before she apostatizes[11]), then there shall be no relationship between her and her husband and he must immediately abandon her. However, if she apostatized after having sexual intercourse, then the marriage contract is considered null and void after the period of waiting of divorce expires. If she returned to Islam during period of waiting, then she will remain his wife according to the previous marriage contract; otherwise, the marriage contract shall be regarded invalid and the husband must abandon her.

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10 In case a man married a woman, he shall not be permitted to marry her niece without the permission of his first wife.

11 A Muslim apostate, whose parents are already Muslim and thus he is Muslim too, then he/she apostatized, while a non-Muslim apostate, whose parents are non-Muslim, and who has converted to Islam then he/she apostatized.

b- If a Muslim husband apostatized before having sexual intercourse with his wife, then the marriage contract is annulled immediately (no matter whether he was a Muslim or non-Muslim before he apostatizes). However, if husband apostatized after having sexual intercourse (if he was non-Muslim before he apostatizes), the contract shall not be void, but however, his wife must spend a period of waiting of divorce and will be prohibited for him until he returns to Islam again during that period. If he returned to Islam during the period of waiting, then they shall remain as two legal spouses; otherwise, the marriage contract shall be void and she must abandon him.

c- If husband apostatized (if he was a Muslim before he apostatizes), then the marriage contract shall be annulled immediately, whether he apostatized before or after having sexual intercourse with his wife.

d- If husband apostatized (if he was a Muslim before he apostatizes), then the wife must spend the period of waiting of death, which is four months and ten days, and she has the right to claim for her share of inheritance even if he was alive.

ARTICLE No. 46: If suspicious coitus is practiced, then the following rules shall be applied:

a- The child of suspicious coitus shall be related to the owner of the semen (the man who practiced the suspicious coitus), and so he must confess that the child belongs to him if he thought that he is his child.

b- The woman whom the suspicious coitus was practiced with shall deserve the suitable dowry of a permanent marriage, if she was heedless of the prohibition of such coitus.

Chapter Five
The consequences of marriage

First Section: THE DOWRY

ARTICLE No. 47:

a- The husband, not the wife, has to pay the dowry because it is an obligatory matter that must be fulfilled by the husband.

b- The amount, type, and kind of the dowry depend on the wife or her custodian's agreement and acceptance.

c- The dowry must be paid to wife as soon as the marriage contract is implemented, and the wife deserves the whole dowry from the husband after the sexual intercourse.

d- If the husband divorced his wife or died or apostatized from Islam before having sexual intercourse with her, then she deserves the half of the dowry.

e- If the wife became apostate before the sexual intercourse, then she shall deserve no dowry, but if she has received all of it before that, she must return it to the husband.

f- There is no fixed estimated amount for dowry, whether it should be less or more than that.

ARTICLE No. 48:

a- Everything that can be owned legally can be considered as dowry, whether it was an essence or a benefit.

b- If the husband divorced his wife without nominating the dowry before sexual intercourse with her, then she deserves the suitable dowry[12]; otherwise, she will be entitled only for the provision[13].

ARTICLE No. 49:

a- The wife has the right to prevent her husband from having sexual intercourse with her, until she immediately gets her dowry.

b- If the husband had sexual intercourse with his wife before she gets the immediate dowry, she won't have the right to prevent him from practicing sexual intercourse with her in the future. The same thing is said if the dowry was postponed.

ARTICLE No. 50:

a- The wife has not the right to claim for the postponed dowry from her husband before its time comes.

b- If the dowry or some of it was postponed for a certain

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12 The suitable dowry means that the dowry of the wife must be similar to that of other women, like her and the husband´s relative wives. Of course, this dowry's value varies from a country to another and from a social class to another, or according to the traditions of each country.

13 The provision in this case means a gift or donation, like a ring, dress, or some money given to the wife by the husband.

period of time and the husband died, then that period shall be annulled and the dowry shall be considered as immediate that must be paid to the wife from the main inheritance of the dead husband like any debt.

ARTICLE No. 51:

a- The wife is permitted to free her husband from paying her some or the whole dowry after implementing the marriage contract, and the husband is not permitted to use his authority or influence to force his wife to do this.

b- The wife is not permitted to claim for the dowry in the future after exempting her husband from paying it, whether their matrimonial life continued or he divorced her or died.

ARTICLE No. 52:

a- The adult upright wife deserves the dowry according to the above listed conditions, and she is free to do with it whatever she likes. Her husband or her custodians (father or grandfather) do not have any right to object to that.

b- If the wife died before having sexual intercourse, her heirs have the right to claim for the half of the dowry, but if she died after having sexual intercourse, then they have the right to claim for the whole amount of dowry.

ARTICLE No. 53: If the husband and wife disputed on the amount of the dowry and on its delivery to her, the evidence by the husband should be taken for granted; if there is no evidence, there shall be two cases:

a- If they disputed before the sexual intercourse, then the word of the wife must be taken into consideration (under oath) since it has been proved that the husband has to pay the dowry, and because he had confessed and has been discovered that he hadn't fulfilled that and she denies that, her word therefore must be accepted.

b- If they disputed after the sexual intercourse, then the word of the husband must be taken into consideration (under oath), and the wife can claim the evidence from him.

ARTICLE No. 54: If the spouses disputed on the sexual intercourse, as if the wife pretended that her husband had sexual intercourse with her while the husband denied that; then the wife has to submit evidence. But if she was not able to do that, then the husband has to bring one; otherwise, he shall be placed under oath.

ARTICLE No. 55:

a- If a man who carried a serious disease implemented a marriage contract with a woman and died before having a sexual intercourse, she is not entitled to have the dowry. But if he died after the sexual intercourse, then she shall deserve the whole dowry nominated in the contract.

b- If a man married a sick woman who is affected by a serious disease and she died before having sexual intercourse, then half of the dowry shall be considered as inheritance and conveyed to her heirs. But if she died after the sexual intercourse, then the whole dowry shall be considered as inheritance and conveyed to her heirs.

ARTICLE No. 56: If the claim regarding the dowry was contrary to what is included in the marriage contract, then it shall not be taken into consideration unless there is evidence or by the confession of the other party.

ARTICLE No. 57: It is a condition to mention the dowry in the temporary marriage contract, otherwise, the contract shall be considered void.

Second Section: PARAPHERNALIA AND HOUSE FURNITURE

ARTICLE No. 58:

a- The husband must prepare all necessary and essential items for the house, including the heating and the cooling devices for winter and summer.

b- The wife is not obliged to provide any necessary items or furniture for matrimonial house, but if she did, then she will be the owner of such items.

c- The wife shall be the owner of all kinds of tools, devices, jewelry and cosmetics bought by the husband for her, as long as she used it, whether it was considered from the obligatory provision (financial support) or non-obligatory provision[14].

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14 The standard obligatory provision that the husband must pay to his wife is that on which people have agreed and became known and enough to secure their livelihood. And the surplus that results from it shall not be obligatory rather kindness from him.

d- The husband is permitted to benefit from what the wife buys such as devices or appliances as long as their matrimonial life continues and she has no objection regarding that.

Third Section: THE PROVISION OF THE MARTIMONIAL LIFE (FINANCIAL SUPPORT)[15]

First part: General rules

ARTICLE No. 59: The husband is obliged to give the provision to his wife whom he married with a permanent marriage contract (not that with temporary contract, unless the latter put a condition regarding that in the contract).

ARTICLE No. 60: The husband is obliged to pay the provision to his wife whether he was wealthy or in a difficulty, and it shall be considered as a debt that husband is obliged to settle, whether he was alive or dead.

ARTICLE No. 61: The provision of the wife is a priority to parents' and children's provision. That is to say that if the husband has a father, mother and children, and he got enough provision for his wife only, he is entitled to prefer his wife,

15 Provision is the financial support a husband must provide for his wife or wives. In an Islamic marriage agreement, the husband is responsible to pay for his wife's housing, food and clothing. Any money the wife earns is hers to do with it what she wishes.

although the others are needy as well. The husband's kindness to parents shall not annul the wife's right to have the provision.

ARTICLE No. 62: If the wife borrowed money to spend on herself and her children during her husband's absence in a travel or work, then the husband has to pay that debt, unless the amount of debt far exceeded the usual and necessary amount.

ARTICLE No. 63: If the husband refused to pay the obligatory provision to his wife and the designated period of payment elapsed, then it will be regarded as a debt that he must pay like any other outstanding debts.

ARTICLE No. 64: The standard obligatory provision that the husband is entitled to hand over to his wife is one on which people have agreed and became known and enough to secure their livelihood, and the surplus is regarded as a kindness rather than an obligatory act from the husband.

ARTICLE No. 65: The legal standard provision which is necessary for livelihood as known must include the following components:

1- Suitable and independent residence, food, and beverages that are enough to secure the wife's livelihood.

2- Necessary clothes that are enough to cover the body and private parts according to Islamic rules.

3- A servant for the wife if she is qualified for that.

4- All kinds of necessary creams, ointments, oils, and dyes that she needs for dying her body and hair.

5- Detergent powders, washing machine, sweeper or broom, etc., that are appropriate to the known customs of his wife's environment.

6- Medical and health care, childbirth costs, the midwife, medicine, hospital, doctors' wage, etc., which is discussed in details herein.

ARTICLE No. 66: It is important after all to take the husband's situation (whether he is wealthy or impoverished) into consideration and according to that, the provision of the wife must be specified. In this regard, GOD (ALLAH), the Exalted, said, "***Let the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what GOD (ALLAH) has given him. GOD (ALLAH) puts no burden on any person beyond what He has given him. GOD (ALLAH) will grant after hardship, ease***" [At-Talaq: 7].

ARTICLE No. 67: The provision must basically be specified according to the spouses' situation (whether they, namely husband, were wealthy or impoverished). The term "Wife's wealth or poverty" refers sometimes to the wealth and impoverished status of her parents, and in some other times, to her own wealth and her finances beyond her parents' status.

ARTICLE No. 68: The obligatory provision of the wife shall not be annulled even if she was wealthy and rich. Husband is obliged to give her the provision as if she is not wealthy at all.

ARTICLE No. 69: The husband is not entitled to restrict the increase of his wife's wealth (if she was rich), or limit

her freedom in investing her capital if this investment brings her benefits, and no matter if they were estates or trade investments.

ARTICLE No. 70: The wealthy wife deserves the right to spend all her property on herself, her family, give it as charity, donating it to anyone she likes, etc., and she can also lend her husband from it. She can even claim for her debts from her husband whenever she likes, especially when he is wealthy too.

Second part: Dispute in provision

ARTICLE No. 71: Those clothes which the husband gives to his wife (and which are regarded as obligatory clothing or donation) are her own; they are like obligatory provision, and the husband is not permitted to get them back in the future.

ARTICLE No. 72: Whatever the husband gives to his wife as possession and donation, such as clothes, jewels, ornaments, etc., is included in her own property; hence the heirs are not permitted to get them back after the husband's death.

ARTICLE No. 73: The wife has the right to plead against her husband before a legal judge if he was unable to pay the provision to her, or he refused to hold the matrimonial responsibility.

ARTICLE No. 74: If the husband was in difficulty and unable to pay the provision to his wife, or he refused to pay it to her, then the legal judge shall force him to divorce her.

If the husband refused that, the marriage contract shall be annulled by the legal judge who should be considered as the husband's custodian in order to repel the harm from the wife and to set her free, if he has been given a period of time and the wife declared that she cannot stand him anymore.

ARTICLE No. 75: If the husband was in difficulty and the legal judge became sure of this fact, then he is not permitted to put him in prison. Rather he must give him enough time until he is able to pay the provision to his wife. GOD (ALLAH), the Exalted, said, "***GOD (ALLAH) will grant after hardship, ease.***"[At-Talaq: 7]; and, "***And if the debtor is in hard time, then grant him time till it is easy for him to repay"*** [Al-Baqarah: 280].

ARTICLE No. 76: If the husband was wealthy and rich, then he would not be compelled to divorce his wife; he would rather be forced to pay the provision to his wife, and the matrimonial life will continue.

ARTICLE No. 77: If the wife left her husband's house pretending that her husband drove her out, then she has to bring evidence and he has to be sworn in.

ARTICLE No. 78: If a man married a woman but didn't have a sexual intercourse with her, and a period of time passed but his wife didn't claim for provision, then she would deserve the provision, because it became a natural right for her from the moment of executing the marriage contract, provided that she is not rebellious[16].

16 A rebellious wife is the one who rebels against her husband unjustifiably. She may be deprived of financial support.

ARTICLE No. 79: If the husband was absent and his rebellious wife declared before the legal judge the expiry of her rebellion and claimed for her provision, then this shall not be considered enough evidence for her to deserve the provision except after having informed her husband, and after the judge is reassured that the wife deserves the provision or not.

Third part: Amending the provision

ARTICLE No. 80: The wife, whom low provision has been appointed for her, has the right to claim for higher provision because of rising prices or when the husband becomes wealthy.

ARTICLE No. 81: The husband is entitled to claim for reduction of his wife's provision if the exchange rate has increased and if the minimum rate of provision shall be enough to ensure her living, or if the husband was impoverished, and hence he is unable to pay the appointed provision.

ARTICLE No. 82: The mutual agreement of spouses on the minimum rate of provision to be paid in a certain time according to exceptional circumstances does not mean that the wife is prohibited to claim for an increase of rate in the future if the conditions changed and the husband became wealthy, and thus he became able to pay more.

ARTICLE No. 83: Wife can claim for her future provision if husband intended to travel for days or months leaving her behind in his homeland.

ARTICLE No. 84: If the wife owes her husband a debt, her financial status shall be taken into consideration; if she was wealthy, then the debts shall be deducted from her past, present, and future provisions until the whole debts are settled. But if she was not wealthy, he is not permitted to deduct the debts from her provision because she would at last be without provision and thus her situation would be worse. However, fulfilling the debts is obligatory if the debtor is wealthy and not impoverished.

Fourth part: Exempting the husband from paying provision

ARTICLE No. 85: The wife is permitted to exempt her husband from paying the provision and other matrimonial rights like spending a night with her (of the four agreed nights[17]), sleeping with her, etc. If she did that, then she is not permitted to change her mind regarding that and claim for the provision of the past time in the future.

ARTICLE No. 86: The wife who exempted her husband from the future provision can change her mind and claim for it in the future.

17 When a man has four wives, he must treat then fairly and divide the nights between them, so he must spend a night with each of them equally.

Fourth Section: RULES OF RESIDENCE & OBEDIENCE

ARTICLE No. 87:

a- The husband has to provide a separate and legal residence for his wife, and there is no need to mention such a term in the contract itself, because it is one of the obligatory matrimonial requirements.

b- The wife is obliged to live with her husband in their matrimonial house after receiving the immediate dowry.

c- The wife is permitted to refuse to live with her husband if there is a legal justification, and her provision shall not be annulled.

ARTICLE No. 88: If the wife refused to live in the legal and appropriate residence that her husband had provided for her in spite of his call and request, then she would be considered disobedient.

ARTICLE No. 89: It is not obligatory that the house is the husband's own possession; rather he can live with his wife in a house that is a gift from anyone or a hired house, as the obligatory condition to be observed is to reside in a legal appropriate house and it is not necessarily to be the husband's own property.

ARTICLE No. 90: It is not obligatory that the residence must be in a certain quarter or state, unless the wife herself stipulated that condition in the marriage contract; thus, the wife must live with her husband wherever he decides to live.

GOD (ALLAH), the Exalted, said, "***Lodge them where you dwell, according to your means, and do not treat them in such a harmful way that they be obliged to leave,***" [Al-Talaq: 7].

ARTICLE No. 91: The furniture of the residence must contain three important elements:

1- It must be suitable to the wife and her style of life in her country.

2- It must be appropriate for all seasons, namely winter and summer.

3- The husband must be able and capable to prepare them according to his financial resources.

ARTICLE No. 92:

a- It is not permitted to put two wives in one mutual residence except by the first wife's acceptance, unless the residence had a separate room with its facilities, and a separate exit, then the husband has the whole right to let anyone he likes to live in it.

b- The husband is permitted (if necessary) to let someone to live with his wife in one residence, like his old parents or his young children (from his ex-wife) if they were non-independent, provided that this shall not harm the wife as long as husband cannot afford providing a separate residence for each of them.

c- The wife has the right to claim a financial compensation because her husband didn't prepare a house for the future until he finds a residence for her to live.

ARTICLE No. 93:

a- If the husband asked his wife to live with him in the matrimonial house, or he gave her the choice to either live together in her own house or in her parents' house and she refused both choices, then her right in having the provision shall be annulled during that time.

b- There must be a justification for wife's refusal like if her husband commits evil deeds or drinks wines, or brings wicked friends to his house, or he didn't pay her the immediate dowry (in case he had not a sexual intercourse with her yet), or he did not prepare the suitable residence for her, or he refused to give her the provision, etc.

c- The legal judge shall not consider the wife rebellious and annul all her legal rights without the request of the husband.

d- It is not legal to force the wife to return to her husband's house, but the husband has to choose between divorcing her or to considering her as rebellious.

e- If wife traveled without her husband's permission for something important like performing the obligatory pilgrimage or a certain vow that must be fulfilled immediately or to cure herself, she will not be considered disobedient.

Fifth Section: DISPUTES BETWEEN THE SPOUSES IN PROOFING THEIR MARRIAGE WHEN THEY DO NOT HAVE AN OFFICIAL MARRIAGE CONTRACT

First part: When the spouses are alive

ARTICLE No. 94: The claim to prove a marriage after the denial shall not be accepted unless there is legal evidence (i.e. by the witness of two trustworthy men or the wife's custodian) or if the denial was preceded by a confession of the marriage.

ARTICLE No. 95:

a- The claim to prove a marriage shall only be applied to the spouses. However, if both spouses accept and agree on a marriage that needs the agreement of the wife's custodian, then the custodian has the right to claim in the court to annul such marriage.

b- If the wife pretended that a certain man is her husband, then she has the right to claim in the court to prove this marriage.

ARTICLE No. 96:

a- The claim to prove a marriage shall not be accepted if the claimant had already denied that marriage by providing logical evidences that are totally contrary to that claim.

b- If a man confessed that a certain woman is prohibited for him by reason of fosterage (suckle) and after that

he claimed in the court to prove that she is his wife, he will be pardoned if he withdrew that confession before he claims.

Second part: When one of the spouses died

ARTICLE No. 97: If a man confesses that a certain woman who is dead is his wife, his pretence is accepted under the following conditions:

1- The woman whom this man pretension that she is his wife must be possible and logical as a party of marriage and cannot be falsified by natural sense and knowledge during the time of confession.

2- The woman's status must be unknown, because the woman whose husband is legally known shall not be, at any rate, another man's wife unless her divorce from the first husband (or any other legal reason) is verified, and she also must not be in period of waiting.

3- There must be no other man who also pretends that this woman is his wife too.

4- The confessor's confession must be indisputable, like when a man pretends that a certain woman is his wife (after her death) or if a woman pretends that a certain man was her husband (after his death) because he/she has got property and they have got no heir.

5- Each party must accept and agree on the other's confession or pretension (if both of them were alive).

ARTICLE No. 98: If the above conditions were available (i.e. two adults confessed that they are spouses), then inheritance terms shall be applied on both of them. However, these terms shall not include the brothers or children of any of the two main parties (i.e. the spouses). For example, if an adult male or female said, “This man is my husband” or “This woman is my wife”, it means that they (i.e. the adult male or female) are spouses, and it is a confession that is related personally to them only and not to others.

Chapter Six

Disputes on rights & rebellion between the spouses

First Section: THE HUSBAND'S DISPUTE BECAUSE OF HIS WIFE'S SHORTCOMINGS

ARTICLE No. 99: The husband has the right to sue his wife for the following cases:

1- If she rebelled and refused to perform her matrimonial duties in her husband's house.

2- If she apostatized publicly from Islam (in case she was a Muslim).

3- If she treated him badly and he feared on himself and his children from her.

4- If she deviated from what is right and he feared on his daughters and sons.

5- If he saw her with another man in a suspicious state, where here he can demand her to practice mutual cursing[18].

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18 Mutual cursing is a procedure in which a husband, who accuses his wife of adultery without having witnesses, swears four times to GOD (ALLAH) that he is telling the truth and fifth time that he deserves GOD (ALLAH)›s wrath if he is telling a lie. The wife then may, if she claims innocence, swear four times that he is telling a lie, and the fifth time that she deserves GOD (ALLAH)›s wrath if she is not telling the truth.

6- If he discovered one of the following defects (after the wedding) when he has the right to annul the marriage contract: madness, loss of virginity, blindness, incapacity of sexual intercourse, if anal and vaginal canals were united, if her vagina was mended, piles, leprosy, or an infectious or fatal disease, like AIDS or Ebola virus.

Second Section: THE DISPUTE BY WIFE UPON HER HUSBAND'S SHORTCOMINGS

ARTICLE No. 100: The wife has the right to sue her husband for the following cases:

1- If he didn't provide a legal suitable and dependent residence for her and for her children.

2- If he refused to spend on her and her children.

3- If her husband wanted to marry her niece (where he is not permitted to do so except by her permission and acceptance and if he did so, then his marriage shall be void).

4- If he had sexual intercourse with her while she had her menstrual period, where she can force him to pay the atonement, because it is prohibited to have sexual intercourse during that period.

5- If he had sexual intercourse with her during the time

of abstinence in the holy month of Ramadan[19], where he has to be punished and forced to pay the atonement.

6- If he abandoned sleeping with her in the same bed more than four nights without legal reasons.

7- If he refused to have sexual intercourse with her more than four months.

8- If he treated her badly, since the husband is legally obliged to treat his wife kindly.

9- If he beat her and caused some wounds on her body or broke some of her bones. In this case he has to pay the blood-money specified in legal books, and she can claim for retaliation, because then she would be considered like any strange person who has the right to have his/her own retaliation.

10- If he used to harm her in a manner that she could not stay with him anymore, because that would create hate between them which can hardly be removed.

11- If he wanted to bring his second wife or his children from his other wife (no matter whether they were young or adult) to live in the same house where his first wife lives without her permission.

12- If he threw her out of the house while she is still his wife or even when she was spending the period of waiting of the revocable divorce (because she is still considered his wife until the period of waiting expires).

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19 Ramadan is the ninth month of the Islamic calendar; Muslims worldwide observe this as a month of fasting.

13- If she discovered one of the following defects (after the wedding) where she has the right to annul the marriage contract: madness, impotence, castration, blindness, leprosy, or any fatal diseases.

14- If he was absent for a long time during which she became unable to appoint his exact place or destiny. In this case, a certain period of time shall be appointed for his absence (which is four years) after which the marriage contract shall be considered annulled. During that period, investigation procedures shall be performed to find the husband.

15- If he apostatized publicly from Islam (in case he embraced Islam before he apostatizes). In this case, the marriage contract shall be considered annulled, and his wife shall be considered as a strange woman to him, and she would have the right to claim for her and her children's portion of inheritance, even though he is still alive.

16- If he defamed or accused her of adultery. In this case, he shall be forced either to accept the concerned punishment or to practice mutual cursing against her.

17- If she was less than 9 years old, and he had a sexual intercourse with her (which of course she would be prohibited to him forever), and here she claim for her blood-money (in case he penetrated his male organ). She is also entitled to claim for her provision which he must pay to her until she dies.

Third Section: THE DISOBEDIANT WIFE

GOD (ALLAH), the Exalted said: "***As to those women on whose part you see ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly if it is useful), but if they return to obedience, seek not against them means (of annoyance).*** [An-Nesā', 34].

ARTICLE No. 101: The woman is prohibited from disobedience, that is declaring resistance to her husband's obedience, refusing to do her legal duties toward him, and preventing him from enjoyment, especially from having sexual intercourse with her, or even going out of the matrimonial house without his permission, or declaring that she does not want to live with him anymore, etc.

ARTICLE No. 102: If the wife decided to be rebellious and refused to obey her husband, she is not considered "rebellious" if she didn't do that.

ARTICLE No. 103: If the wife became rebellious as stated above, her husband is permitted to cut the provision from her and she is not legally entitled to claim for it. He is also entitled to deprive her from her share in sleeping (in case he had many wives).

ARTICLE No. 104: If the husband began to claim his wife's mistreating toward him and that she does not perform her matrimonial duties with him as a husband, without first warning or advising her to change her behavior, then his wife shall not be considered rebellious, and so, he has first to advise and preach her, so that she obeys him and becomes good wife or at least presents a logical justification for her behavior.

ARTICLE No. 105: If wife refused to sleep on the same bed with her husband, like if she slept on a separate bed or in another room, now, if her husband warned her but she did not listen and insisted on her attitude, in this case, she would undoubtedly be considered disobedient and thus, all her legal rights, including the provision, shall be annulled.

Fourth Section: THE REBELLIOUS HUSBAND

GOD (ALLAH), the Exalted said: "***And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves, and making peace is better.***" [An-Nesā', 128].

ARTICLE No. 106: The husband, like the wife, is prohibited from being rebellious.

ARTICLE No. 107: The husband shall be considered rebellious if he refused to give his wife all or even some of her legal and obligatory rights, or mistreated her or beat her without any permissible reason.

ARTICLE No. 108: If the husband did not listen to his wife's advice, then she is permitted to sue him before a legal judge who must be sure of certain evidences about that, then he can force the husband to give his wife her legal rights.

ARTICLE No. 109: The wife is not permitted to beat her rebellious husband or abandon him in the bed although she was quite sure that he would be reformed by that.

ARTICLE No. 110: If it turns out that the husband hates his wife because of her sickness or oldness and for this reason he avoids calling her to bed, or he intends to divorce her for any reason, then he would not be considered rebellious, and so he is not going to be judged except in the cases where he may mistreat his wife.

ARTICLE No. 111: If the legal judge warned the husband who is rebellious, but the latter did not pay attention to the judge's warning, then the judge is permitted to punish him. And, if the husband refused to pay the provision to his wife, then he (i.e. the judge) may pay the provision to the wife from the husband's own property even if that was not possible but by selling some of the husband's real estates. Otherwise, and in case all those ways were inefficacious, the husband might be forced to divorce his wife, or she would be given the right to annul the marriage contract.

ARTICLE No. 112: If the husband was not rebellious but he hates his wife for her sickness or oldness, or he could not live with her as a wife, and so he wanted to divorce her, then she is advised to give up some of her rights for him as a way to attract him toward her and to convince him to keep her as his wife. The husband too is permitted to accept that if he wished, even if she gave him some money. However, the husband shall be considered sinful even though he did not force her to do that, because GOD (ALLAH), the Exalted said: "***And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves, and making peace is better.***" [An-Nesā', 128].

ARTICLE No. 113: If the husband forced his wife to give him some money in order to leave his rebellion, then he would be prohibited from taking that money, besides, he would be considered sinful. Moreover, he is not entitled to spend or use that money; he would be like an extortionist as long as he keeps that money with him.

ARTICLE No. 114: If the husband abandoned his wife and refused to sleep with her on one bed in her share of the four nights, then the judge shall force him to fulfill his wife's right. The judge may also rebuke and warn the husband according to the Islamic law. If advising the husband did not work, then the judge may punish him for his deeds.

Chapter Seven: Mutual hate

First Section: RULES OF MUTUAL HATE

ARTICLE No. 115: If both the husband and his wife became rebellious then this case is called Mutual Hate. This matter has been referred to in this holy verse, "***If you fear a breach between them twain (the man and his wife), appoint two arbitrators, one from his family and the other from her's. If they both wish for peace, GOD (ALLAH) will cause their reconciliation.***"[An-Nesā', 35].

ARTICLE No. 116: Calling the arbitrators is a duty of the legal judge as an attempt to put an end to the spouses' dispute and mutual hate. Now, if the legal judge became certain that the mutual hate may force one or both of the spouses to commit a sin, then his duty is to call an arbitrator from the husband's family and another one from the wife's family to help the spouses to pass this problem. However, if the legal judge has the ability to reform the spouses' situation, he is permitted then to call them together and try his best.

ARTICLE No. 117: If it was difficult to find a legal judge, or it was not possible to call the arbitrators, then the spouses may choose anyone to be their representative to solve the problem according to the requirements of the authorization.

ARTICLE No. 118: It is not necessary or obligatory that the arbitrators must be members of the spouses' families, although it is recommended, as mentioned in the above holy

verse, since the family members are more acquainted of the situation of spouses more than the strangers. However, the spouses may choose any trustworthy person (or persons) if it became necessary. In all cases, this job might be done also by any trusted lawyer.

ARTICLE No. 119: If there was anyone in the spouses' family who has the ability to solve their problem, and is known for his or her equity, then the legal judge may call him or her who shall be preferred to anyone else.

ARTICLE No. 120: The reason behind giving the permission to the individuals to choose strange people as arbitrators is that kinship cannot be dependable in judgment and representation, while the main goal of choosing the arbitrators is judgment and representation. Thus, when the above holy verse referred to the guidance and solution of such problems, it is not necessarily an order to choose the arbitrators from the spouses' families. It is like the verse that says: "***But take witnesses whenever you make a commercial contract,***" [Al-Baqarah, 282].

Second Section: THE QUALIFICATIONS OF ARBITRATORS

ARTICLE No. 121: The arbitrators must have important and essential qualifications. The following are some of those qualifications:

1- Puberty.
2- Sane.
3- Islam.
4- Full acquaintance of their task.
5- Justice.

However, the last qualification is essential in case the legal judge wanted to consider the arbitrators as his deputies.

ARTICLE No. 122: Both spouses must agree on the arbitrators to be their representatives to solve their problems or to decide the divorce in case they became unable to harmonize between their opinions, and all the amicable and peaceful ways they have tried were useless.

ARTICLE No. 123: The spouses are not permitted to refuse or depose the arbitrators or to disagree on their judgment since they have chosen them and agreed on their representativeness to solve the problem.

ARTICLE No. 124: If the arbitrators took a decision that is not legally appropriate, then the spouses can revoke their judgment and choose a better one. Therefore, the arbitrators must study the spouses‘ problem thoroughly and discover the reason behind that dispute. They must try their best to approach the spouses‘ hearts and opinions.

ARTICLE No. 125: Arbitrators should investigate the matter personally and separately (in a legal privacy) with their authorizers (i.e., the husband and the wife) to identify their main problem and be acquainted with their desires. Then, the arbitrators must discuss that with them both and each has to disclose his authorizer‘s opinions so that they may find a suitable solution. However, if the arbitrators couldn’t find a solution then another two arbitrators must be chosen.

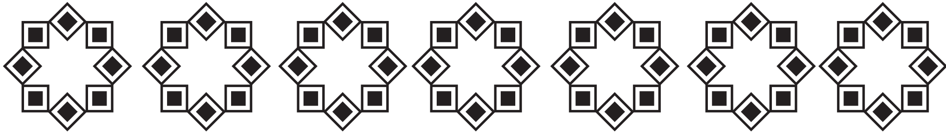
ARTICLE No. 126: The arbitrators must be honest, faithful, and seek to improve, because it is logical that if the arbitrators were so, then GOD (ALLAH), the Exalted shall bless their attempt and it will be a reason to reach their

desirable goal, as GOD (ALLAH) Himself declares this saying, "***If they both wish for peace, GOD (ALLAH) will cause their reconciliation.***" [An-Nesā',35], and therefore, GOD (ALLAH), the Exalted continued that if the arbitrators couldn't reach a reasonable solution, then two other faithful and sincere people who know the spouses' case very well must be chosen to take the responsibility, and they are free to decide whether the spouses can continue their life or shall the divorce be the only solution. However, the holy verse explains that if the arbitrators could not improve and solve the problem, it means that they both were holding wicked intentions, and that one or both of them did not trace for reforming, and for this reason they failed to reach an appropriate solution.

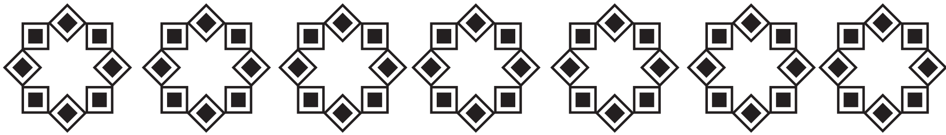
ARTICLE No. 127: If the legal judge sent the arbitrators to discuss the matter with the spouses, but one or both of the spouses were absent, and as a result, the arbitrators could not have enough information about the spouses' case, then they are not permitted to arbitrate before they see the spouses personally. But if the spouses became absent after the arbitrators' investigation, then the arbitrators' judgment shall be considered correct, because the arbitrators' task is to reform the case and such an intention does not require the spouses' presence, except if the arbitrators' judgment was divorce. In this case, both spouses must be present.

ARTICLE No. 128: Any decision that the arbitrators give should be accepted by the spouses, unless the decision was unreasonable where they can reject it as mentioned before. Some of reasonable decisions are that the arbitrators may advise the husband to find a residence for his wife in a certain country, or to look for a suitable house for her, or ask him

not to let his mother or his other wife live with her in one residence (even if in a separate room), or they agreed that his wife shall postpone the immediate dowry to a certain date, or she returns to him what she had received from him as a loan, etc. On the other hand, some unreasonable decisions, such as if they agree with the wife that she has to give up some of her share of sleeping of the four known nights, or provision or dowry, or they put a condition that the husband must not marry or have concubines or he must travel without taking his wife with him. Such decisions are regarded absolutely invalid. But if the decision (s) was that the spouses can amend their marriage or manage it somehow, like when the wife is forced to give up some of her rights, then she can refuse or accept this kind of decision.



THE SEPERATION BETWEEN THE SPOUSES BOOK



- **Chapter One:** **The types of separation**
- **Chapter Two:** **The separation**
- **Chapter Three:** **The consequences of separation**

Chapter One
The types of separation

ARTICLE No. 129: The following are the types of separation between the spouses:

1- Separation by divorce.

2- Divorce upon the wife's request.

3- Divorce by mutual agreement

4- Divorce because of apostasy (whether the wife or the husband apostatized from Islam).

5- Divorce because of Islam (when the woman whose from the people of the Scripture has converted to Islam while her husband did not, then their marriage contract shall be annulled. However, if it is vice versa, the contract shall not be annulled).

6- Separation because of the existence of a legal reason (or reasons) that lead to the annulment of the marriage contract.

7- Separation because of the verification that either the husband or the wife had concealed a defect in their body from the other party.

8- Separation by mutual cursing.

9- Separation because of having sexual intercourse (as

if his wife's age is less than nine lunar years)[20].

10- Separation because of reasons of relation, such as if the husband discovered that his wife is one of his relatives (unmarriageable kin, like daughter, sister, aunt, etc.) and thus she would be prohibited for him.

11- Separation because of suckle, as the husband must not be one of the wife's foster relatives.

12- Separation because of the husband's absence, as if the legal judge could not appoint his exact place or destiny. In this case, a certain period of time shall be appointed for his absence (which is four years) after which the marriage contract shall be considered annulled, and the wife will be divorced and has to spend the period of waiting of death.

13- Separation because the husband is not giving the legally agreed provision (financial support) to his wife.

14- Separation because of marrying a woman who is spending her period of waiting, whether the husband was aware of that or not, and thus, the marriage contact shall be considered void.

15- Separation because the husband implemented a marriage contract with a woman while being in pilgrimage (no matter whether she was also in pilgrimage or not). Such a contract is regarded void.

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20 In Islam, having sexual intercourse with a wife whose age is under nine lunar years, even if she didn't lose her virginity, their marriage contract would be considered void and she would be prohibited for him forever.

16- If a man had committed adultery with a woman who was married or with one passing her period of waiting in the time of adultery, he is prohibited from marrying that woman forever.

17- If the man had committed sodomy with the wife's son (from her previous husband) or with her brother, then she must leave him and she will be prohibited for him, as mentioned in Article No. 14.

Chapter Two
The separation

First part: Separation by the will of the husband

First Section: THE DIVORCE

ARTICLE No. 130: Separation by divorce is the dissolution of the marriage knot by the husband's will or by who's acting on his behalf.

ARTICLE No. 131:

a- Divorce has two kinds: revocable and irrevocable divorce.

b- Revocable divorce which is specified for the deflowered woman and the marriage will be continued until the expiry of the period of waiting.

c- Irrevocable divorce, which befalls the wife before having sexual intercourse, shall end the marriage immediately and there is no need for a period of waiting.

ARTICLE No. 132: The divorce shall be considered valid if the husband was sane, adult, conscious and aware of what he says, otherwise, if the husband was insane, fool, drunk, or angry and he was unaware of what he is saying, then the divorce will not be considered valid.

ARTICLE No. 133:

a- If a man married a woman who is still in the period of waiting during death or divorce, then the marriage contract is void and the divorce is pointless, because basically the marriage itself is false.

b- If husband had sexual intercourse with his wife after implementing the marriage contract then he divorced her, the divorce shall not be considered valid unless she was in period of purity (she finished her menstruation) and he did not have sexual intercourse with her during that period.

ARTICLE No. 134:

a- The divorce shall not be considered valid unless the wife's name is mentioned in the phrase of divorce, as if the husband says: "you are divorced" or "so and so is divorced".

b- If the husband was unable to speak fluently or eloquently, then he can practice any behaviors or use understandable signs to express his intention.

ARTICLE No. 135:

a- The divorce shall be actual, not restricted to a particular condition.

b- The divorce shall occur in presence of two trustworthy witnesses of men who must listen to the phrase of divorce.

ARTICLE No. 136:

a- The husband can authorize anyone to be his

representative to execute the divorce, and this representative does not have the right to appoint another representative without the husband's permission. This authorization shall expire whenever the husband decided.

b- The representation shall be annulled if the authorizer died or went into a coma.

ARTICLE No. 137: The husband can divorce his wife three times, and after the third time she will be prohibited for him and he cannot marry her again unless she marries another man by a permanent marriage and have sexual intercourse with him, then he divorces her and she spends her period of waiting.

ARTICLE No. 138: The divorce is revocable except in the following cases: If divorce was before the sexual intercourse, divorcing the young girl who is less than 9 lunar years, divorcing the menopausal woman (in these three cases, there is no need for spending a period of waiting), or in other cases like divorcing the woman for the third time, and the divorce upon the wife's request (in these two cases, the woman has to spend a period of waiting).

ARTICLE No. 139: If the divorced woman married another man, the number of divorces of the previous husband shall be annulled whether they were three or less; and if this wife returned to her first husband after being divorced by the second one, then the three divorces will be renewed again (because the new marriage contract shall annul the previous number of divorces).

ARTICLE No. 140: The divorce that is associated with a

certain number whether verbally or by signs or by written words shall be considered only a one-time divorce[21].

Second Section: DIVORCE UPON THE WIFE'S REQUEST

ARTICLE No. 141: separation by (the divorce upon the wife's request) is if husband divorces his wife upon her request in return for a payment, because she hates him and no longer wants to live with him.

ARTICLE No. 142:

a- The wife in this case is seeking a divorce from her husband for compensation (usually monetary) paid back to the husband from the wife, whether this payment is equal to the dowry which he gave to her or more or less than that, and the amount and description of the payment must be known.

b- This kind of divorce can only be performed by the spouses or who legally represent them.

ARTICLE No. 143: Everything that can be legally possessed and has a monetary value can be paid to the husband whether it was real estate or a benefit, and:

a- There shall be no long disputes regarding the amount of payment.

21 The husband can›t divorce his wife three times in one day, for example if he said: «you are divorced» two times, then this divorce will be considered as one time only.

b- The amount of payment must not be beyond the wife's capability.

c- The wife must be satisfied and agreed on the specified amount.

ARTICLE No. 144: Both spouses must be qualified to execute such divorce according to this book.

ARTICLE No. 145: Both spouses are permitted to change their mind regarding such divorce before its completion.

ARTICLE No. 146: If the husband refused the request of the wife to divorce her without any legal reason although she declared her hatred to him and the impossibility of living with him, then the rule is what will be mentioned in Article No. 554 to Article No. 558.

ARTICLE No. 147:

a- The wife who has been divorced upon her request has the right to change her mind as long as she is still in the period of waiting, and the husband is obliged to return her money back. Hence, divorce will become revocable and the husband can return to his wife.

b- If, however, the wife was one who does not have to spend a period of waiting or if her period of waiting had expired, then she cannot change her mind regarding the payment and the husband is not obliged to return her money back.

ARTICLE No. 148: If the husband wanted to return to his wife during the period of waiting without returning her money back (or she did not request that), he needs to implement a new marriage contract with her. However, if he breached that

and she accepted, and after that they had sexual intercourse, they would be considered adulterers.

ARTICLE No. 149: There is no inheritance between the divorced wife and the husband if one of them died during the period of waiting, because there is no matrimonial relationship between them any longer.

Third Section: DIVORCE BY MUTUAL AGREEMENT

ARTICLE No. 150: Divorce by mutual agreement is when the husband and the wife dislike each other[22].

ARTICLE No. 151: The husband is not permitted to return to his wife unless she changes her mind regarding the payment that she already paid to him, and the husband is obliged to return her money back during the period of waiting, and thus the divorce will become revocable.

ARTICLE No. 152: The wife is permitted to pay a sum of money to her husband to divorce her, whether this payment is equal to the dowry which he gave to her or less than that, and he is not permitted to ask for more than that[23].

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22 If the husband and the wife both do not like each other, the woman gives some property to the man so that he may divorce her. This divorce is called «Divorce by mutual agreement»

23 In the divorce upon the wife›s request, the payment is equal to the dowry which the husband gave to her or more or less than that, while in the divorce by mutual agreement, the payment is equal to the dowry which he gave to her or less than that, but it cannot be more.

ARTICLE No. 153: The phrase of divorce must include the words “Divorce” and “Mutual Agreement”.

ARTICLE No. 154: Divorce by mutual agreement has the same rules of the divorce upon the wife’s request.

Fourth Section: ANNULLING THE CONTRACT AND THE REASONS BEHIND THAT

ARTICLE No. 155: Annulling the contract happens when it was verified that one of spouses had one of the reasons that led to the annulment. Annulment, however, does not decrease the number of divorces.

ARTICLE No. 156:

a- The annulment of the marriage contract depends on the verdict by the judge.

b- If the reason of the annulment was because the wife is prohibited to her husband, then the spouses must be separated from the time of discovering the reason until the verdict by the judge.

ARTICLE No. 157:

a- If the marriage was annulled after having sexual intercourse, then the wife shall deserve a dowry similar to the one before marriage.

b- If the marriage was annulled before having sexual intercourse, then the wife shall deserve no dowry except

if husband was impotent[24], in this case she deserves half of the dowry.

ARTICLE No. 158: The husband has the right to annul the marriage contract if the wife has one of the following defects:

1- Madness 2- piles 3- leprosy 4- if anal and vaginal canals are united 5- defloration 6- blindness 7- she was obviously lame 8- she seems physically incapable of intercourse 9- If her vagina was mended.

The wife has the right to annul the marriage contract if the husband has one of the following defects:

1- Madness 2- impotence 3- castration 4- blindness 5- leprosy 6- piles,

as mentioned in Articles No. 99 and 100.

ARTICLE No. 159:

a- If the defect occurred after the marriage, the contract shall not be annulled except if the man was impotent or the madness befallen a spouse or both, then the contract shall be annulled.

b- The annulment of the marriage contract because of the said defects shall be permitted only if the spouse was unaware of that defect before implementing the contract.

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24 A man who has an inability to either get an erection, or to maintain that erection long enough for intercourse.

c- What is mentioned in Article No. 33 regarding the annulment shall be taken into consideration.

d- If the said defects of man or woman are treatable, then annulling the contract is not necessary, but the judge is permitted to oblige the spouse who has defect to go for treatment if he requested so.

ARTICLE No. 160: If one of the spouses concealed any natural or body shortcomings from the other spouse that lead to hate between each other, then the latter has the right to annul the marriage contract.

ARTICLE No. 161: If the husband was impotent and unable to have sexual intercourse with his wife, she has the right to plead before a legal judge who will give him one year chance as maximum since she pleaded; she can live with him and wait for one year, but if he did not intercourse with her before the end of the year, she has the right to annul the marriage contract if the following conditions existed:

- First: He never had a sexual intercourse with her after the marriage contract is implemented.
- Second: He is unable to intercourse with other women as well.
- Third: The wife is unaware of his impotence before implementing the marriage contract.

Chapter Three
The consequences of separation

First part: The consequences of separation in the marriage

ARTICLE No. 162:

a- The husband has the right to return to his wife verbally or by deed as long as she still in the period of waiting of a revocable divorce, and this right shall not be annulled whether by cancelation or in return for money or by stipulating such a condition in the marriage contract.

b- There is no need for the agreement or acceptance of the wife when the husband wants to return to her.

c- When the husband declared that he returned to his wife, he shall be believed if that happened prior to expiry of the period of waiting. If he declared that, however, after the expiry of period of waiting, he shall not be believed unless he submits legal evidence.

ARTICLE No. 163: The woman shall be believed and her saying shall be considered if her claim is not contested (although it is preferred to investigate with her if she was accused in order to reveal the truth and clear confusion when examining her situation) in the following cases:

1- Whether she was married or not.

2- Whether she had sexual intercourse after implementing the marriage contract (so she deserves the whole dowry) or she had not (she deserves the half of the dowry) when her husband wants to divorce her, and then she has to spend the period of waiting if the divorce was revocable (in case she had sexual intercourse with him); otherwise, if the husband said the opposite, then there shall be no period of waiting.

3- Whether she was at the menstrual period or not.

4- Whether she had been in the period of purity (she finished her menstruation) and thus he did not have sexual intercourse with her during this period or he did[25].

5- Whether she is still in the period of waiting or it is already expired by spending three periods of purity from menstruation.

6- Whether the divorce was while she was in the menstrual period or in period of purity. If she said that the divorce happened while she is menstruating then the divorce is void; otherwise, if she said that she was in the purity period, then she cannot deny that later.

7- If she said that she married a second husband after being divorced three times by her ex-husband, then the latter wanted to return to her after she got divorced from the second husband, she will be believed if there was enough time for the occurrence of such event.

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25 As mentioned in article No. 133, the divorce shall not be considered correct if the husband divorced his wife while she is still at the menstrual period.

ARTICLE No. 164: The wife who is divorced revocably is similar to the ordinary wife as long as she is in the period of waiting, she deserves the provision (financial support), inheritance, the husband can enter the house without her permission, and she is prohibited to stay out of his house except if she committed adultery.

ARTICLE No. 165: If the wife, who already had sexual intercourse, refused to tell if she is menstruating or not, then she must be given one month since she refused, but if she insisted on her refusal then she must be divorced in whatever case she is.

Second part: Types of waiting periods

ARTICLE No. 166: The following women do not have to spend a period of waiting: the young girl whose age is less than nine years old, the wife who did not have sexual intercourse whether through the anus or vagina, and the menopausal women.

ARTICLE No. 167:

a- The period of waiting of revocable divorce shall be annulled when the husband returned to his wife and changed his mind regarding the divorce.

b- If the husband divorced his wife for the second time after returning to her, two cases shall be relevant: if

that was after having sexual intercourse, she must spend a new period of waiting, but if he did not have intercourse with her before the second divorce, then she must resume spending the remaining days of the first period of waiting.

ARTICLE No. 168: The woman is obliged to spend a period of waiting in the following cases:

1- In all types of separation from her husband after having sexual intercourse.

2- If her husband died.

3- If she committed a suspicious intercourse.

ARTICLE No. 169: The period of waiting starts:

1- Since the occurrence of the divorce in the true marriage.

2- Since the date of last intercourse in the suspicious intercourse.

3- Since being aware of the husband's death, if he died.

4- In case of the woman who does not menstruate despite being at the age of menstruation, and also the woman whose womb (uterus) is removed, their period of waiting starts if three months passed from the last sexual intercourse.

ARTICLE No. 170:

a- If the husband died, the period of waiting of his wife will be four months and ten days, being not pregnant; but if she was pregnant then her period of waiting

will be the longest one, either until she gives birth to a child or by spending four months and ten days[26].

b- The period of waiting of the divorced woman who is not pregnant is three periods of purity from menstruation, and the purity period in which the divorce occurred should be considered (in case she is menstruating), but if she does not menstruate despite being at the age of menstruation or if her womb (uterus) is removed and the husband wanted to divorce her, then he shall wait three months since the last sexual intercourse and then he can divorce her. After that, she has to spend a period of waiting that is equal to three lunar months.

c- The period of waiting for the pregnant woman starts in the moment she gave birth to a child, even if she was divorced a few hours or minutes before the childbirth.

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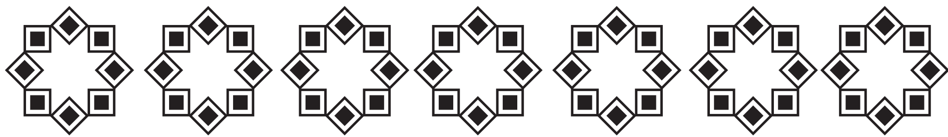
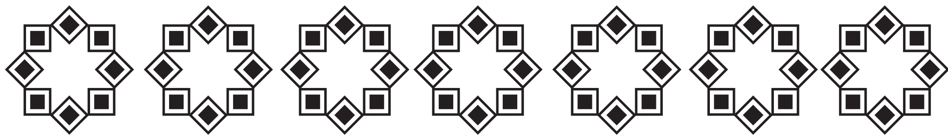
26 In Islam, the period of waiting of a woman if her husband died is four months and ten days, and if she was pregnant then until she gives birth to a child, so if her husband died while she is pregnant then there shall be two kinds of waiting periods. In this case she must spend the longest period, for example if five months remaining to give birth then she has to wait until she delivers instead of waiting four months and ten days (as this period is shorter than five months).



THE CHILDBIRTH & ITS CONSEQUENCES BOOK



- **Chapter One:** **Rules on the children’s relation**
- **Chapter Two:** **Fosterage (suckle)**
- **Chapter Three:** **Guardianship**
- **Chapter four:** **The provision of the relatives**

Chapter One
Rules on the children's relation

First Section: GENERAL RULES

ARTICLE No. 171: The wife's children shall be related to her legal husband. The legal kinship between those children and their father is verified based on a legal sexual intercourse or an apparent matrimonial life. In Islamic law, the wife is called (bed), and her husband is called (the owner or master of bed).

ARTICLE No. 172: There is no difference whether the marriage contract between the above mentioned spouses was temporary or permanent.

ARTICLE No. 173: The legal kinship between the parents and the adopted child cannot be verified even if the child was of unknown parentage.

ARTICLE No. 174: If a man committed adultery with a strange woman then she became pregnant from him (provided that she is not forbidden to him forever); now if they got married then the husband is not permitted to relate that child to him.

ARTICLE No. 175: Accidental adultery in bed does not have a negative effect on the correctness of the child's relationship to legal husband, since this child must be related to (the owner or master of bed).

ARTICLE No. 176: A legal sexual intercourse cannot be verified by a temporary marriage; rather other terms and conditions must be taken into consideration, like real privacy, verifying the penetration of male organ (although no ejaculation occurs), watching the pregnancy's minimum and maximum period, and the husband himself must fear GOD (ALLAH) and say the truth.

ARTICLE No. 177: If a woman became pregnant by in vitro fertilization and the semen put in the tube was her husband's, then the child would be related to her and her husband, and would be considered as a legal child from legal parents. But if the semen was not taken from the husband of her own, then the child shall neither be related to her nor to her husband. Husband and wife in this case won't be legitimate parents to this child.

ARTICLE No. 178: Relation established through fosterage (suckling) shall be accepted exactly as occurs in a legal marriage, as mentioned in Articles No. 15 - 19.

Second Section: THE CHILD'S RELATION

First part: The relation in the true marriage

ARTICLE No. 179: In the true marriage, the legal ways to prove the relation of the child are:

1- The legal sexual intercourse
2- Confession
3- Publicity
4- Testimony

ARTICLE No. 180: A legal sexual intercourse shall be verified through three conditions:

First: The confirmation of a legal marriage; that is to say that the woman must be a legal wife to her husband.

Second: They must undergo a sexual intercourse, and a real penetration of the male organ (especially its glans) must occur, no matter whether this penetration was through vagina or anus.

Third: The minimum and maximum periods of pregnancy must be regarded through the following periods:

1- At least, six lunar months must pass from the day of the marriage contract, and after the first sexual intercourse between spouses. This is the minimum period of pregnancy[27].

2- The last coitus which the spouses have undergone must not exceed nine months, which is the maximum period of a pregnancy; that means that the wife must not give birth to a child within a period more than nine months.

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27 According to the holy verses, "Mothers shall suckle their children for two whole years; (that is) for those who wish to complete the suckling."[Al-Baqarah: 233]; "His mother beareth him in weakness upon weakness, and his weaning is in two years;" [Luqman: 14]; and "and the bearing of him and the weaning of him is thirty months," [Al-'Ahqaf: 15]. The first two verses refer that the period of suckling is two complete years (i.e. 24 months), while the third verse refers that both the period of pregnancy and suckling is thirty months; now if we deducted the 24 months from this 30 months, the remaining 6 months is estimated to be the minimum period of a pregnancy.

Second part: Confessing the relationship

ARTICLE No. 181:

a- If a man confessed that a certain child (of unknown parentage) is his son or daughter (even if this man is about to die), then he shall be believed if the filiation is possible, logical, cannot be falsified by natural sense and knowledge, and he did not say that this child is illegitimate. The child shall not be believed except if he or she was adult.

b- If someone of unknown parentage confessed that a certain man is his father, then his pretension shall not be accepted unless that man accepts this speech and confession or there is legal evidence.

ARTICLE No. 182: The legal relation shall be verified by an outward confession according to the terms herein in addition to those mentioned earlier concerning the verification of the legal sexual intercourse.

ARTICLE No. 183: There are some conditions that must be available in the confessor. They are as follows:

1- He must be adult, as confession of non-adult shall not be accepted.

2- He must be sane.

ARTICLE No. 184: If that who is accepted to be one of

the relatives was not an adult or he or she was insane, then his or her acceptance of that confession is not necessary.

ARTICLE No. 185: If a man confessed that a non-adult boy or girl is his son or daughter, no matter whether he/she was one day, one month, or one year old, then this confession shall be accepted if it contained the following conditions:

1- The filiation must be logical and possible, and cannot be falsified by natural sense and knowledge.

2- The son or girl must be of unknown parentage, because a legally proved relation shall not be transferred to others.

3- The confessor must not be challenged or falsified by a competitor who may have evidences to prove that this is his son or daughter.

Third part: Denying a relation by mutual cursing

ARTICLE No. 186: It is illegal to deny the child's relation after the verification of the sexual intercourse between the spouses and the birth of this child for any of the following pretensions:

1- Only to accuse the wife unjustly.

2- Because the husband pretends that he used the condom.

3- Because the husband thinks that he didn't ejaculate even if he confessed that he penetrated his glans

deeply inside his wife's vagina, since his semen might be flowed without his knowledge.

4- Because he pretends that he had anal intercourse and ejaculated his semen inside her anus. This is also not accepted, because the semen might have been flowed into the vagina because of the short distance between the anus and the vagina, and because the man's semen is one of the two liquids (i.e. the man's semen and the woman's vaginal secretions).

ARTICLE No. 187: If all mentioned conditions existed and everything was proved but the husband insisted on his pretension that the child is not his child and refused to confess that, then he won't be believed because of the abundance of evidences which prove that he is the child's father.

ARTICLE No. 188: However, if the husband insisted on his pretension after all those evidences, then the case would be settled by the action of mutual cursing as shall be discussed later. Now, if the husband knows very well that he is the real father of that child but he denies that, then he will lose his sincere relationship with GOD (ALLAH), the Almighty, and the Exalted.

ARTICLE No. 189: The purpose of mutual cursing is to repeal the punishment of defamation for the husband who had accused his wife of adultery or denied the child's relationship in two matters:

First: To accuse his legal wife of adultery.

Second: To deny the child's relationship although it is possible to prove that relation.

ARTICLE No. 190: The following conditions must be existent while practicing the mutual cursing:

1- The legal phrase of mutual cursing that is explained in the holy verse must be used.

2- The marriage contract must be permanent.

3- The wife must be deflowered.

4- The wife must not be deaf or dumb.

5- There shall be no legal evidence of adultery.

6- The spouses (husband and wife) must be standing during the cursing.

7- When the husband accused his wife of adultery, it is supposed that he saw her committing adultery.

8- When denying the child's relationship, the husband must claim that he knows that the child is not his child.

ARTICLE No. 191: If the mutual cursing was done based on the above conditions, then the following rules will result:

1- The punishment of defamation for the husband will be repealed.

2- The marriage contract will be annulled.

3- The cursed woman will be prohibited for her husband forever.

4- The child must be legally denied from his father.

Fourth part: Claiming the relationship

ARTICLE No. 192:

a- If another competitor pretends that the child is his child, then his pretension shall be considered if he has the right to be the father of that child or if a certain right depends on proofing the filiation of that child (i.e. if the mother died and the father cannot inherit her unless he proves that he is the father of her child).

b- If a man confessed that a certain child is his child then he denied that, two cases are relevant: if there was an interval (minutes, hours or days) between the confession and the denial, the confession shall be accepted and the denial shall not be accepted. If the confession and the denial, however, happened at the same time in one sentence as if he said: “he is my son of adultery”, the confession shall not be accepted, because the child is illegitimate.

Chapter Two
Fosterage (suckle)

GOD (ALLAH) the Exalted said: "***Mothers shall suckle their children for two whole years; (that is) for those who wish to complete the suckling*, *but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis*.**" [Al-Baqarah: 233].

ARTICLE No. 193: Basically, mothers are not obliged to suckle their children except if the child is unable to live without his mother's milk, or if there was no one to suckle him except his mother.

ARTICLE No. 194: The obligatory period of suckling any newborn is twenty-one months and the maximum period of suckling is two complete lunar years.

ARTICLE No. 195:

a- The mother is permitted to ask for the wage of suckling her child.

b- The father is not permitted to give the child to a strange nurse for suckling except if his mother refused to suckle him or she asked for wage that is more than that which is asked by other nurses.

Chapter Three
Guardianship

ARTICLE No. 196: Guardianship is a mutual responsibility between the child's (or children's) father and mother, so if they separated from each other by annulling marriage contract or by divorce or if the qualifications of the father were missing, then the mother has the right to claim for the guardianship, and the child shall remain with her until he/she becomes seven years old.

ARTICLE No. 197: The guardianship of the child's mother shall expire and be transferred to his father if the divorced mother married another husband before her child becomes 7 years old.

ARTICLE No. 198: If the woman's second husband divorced her or annulled the marriage contract or died, then she is entitled to claim for the guardianship again if the child is not seven years old yet.

ARTICLE No. 199: If the guardianship was transferred to the father because the children are seven years old, he will bear this responsibility until the daughter completes nine years old and the son completes fifteen years old; after that age their mother is permitted to give them the choice whether to live with her or remain with their father.

ARTICLE No. 200: If the children became adult and mature, they will be given the choice whether to live with their mother or father, and they must visit their father if their mother was their guardian, and vice-versa.

ARTICLE No. 201: The father is obliged to pay the provision (financial support) to his daughter who is under her mother's guardianship until she gets married and to the son until he becomes able to earn his own income. This is in case they chose to live with their mother after their puberty.

ARTICLE No. 202: The guardian (the father or mother) who is given the right to guard the children must have the following qualifications:

1- He or she must be Muslim; if the mother was non-Muslim (i.e. one of the People of the Scripture), she won't be permitted to claim for her children's guardianship, and the same thing is said if the father apostatized from Islam[28], and the mother would also be deprived from having the guardianship of her daughter and son when they became adult.

2- He or she must be sane, because an insane person (who himself or herself has to be guarded) is not permitted to have the guardianship of the children.

3- He or she must be chaste, not irreligious, corrupt, or errant, so that he or she can take good care of the children, because a disbeliever cannot be trusted.

4- He or she must reside in one place not travelling here and there. In other words, the guardianship shall be given to who resides in a certain place.

5- He or she must be healthy and has got no disease (like

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28 (no matter whether he became a Muslim apostate, whose parents are Muslim, or a non-Muslim apostate, whose parents are non-Muslim, and who has converted to Islam then he apostatized).

tuberculosis, leprosy, etc.) that could be transferred to the children under his/her guardianship.

6- He/she must be sound so that he/she can take care of the children.

ARTICLE No. 203: The guardianship of one of the parents can be annulled by legal and logical objection or by agreement in case it was not legally restricted to one of the parents.

ARTICLE No. 204: The parents can make an agreement or peaceful contract to annul the guardianship of either of them and leave it to the other one, but for a certain period of time appointed by them, like one or two months, or even till the expiry of the guardianship as a whole.

ARTICLE No. 205: If the mother was the guardian of the child and she lost one of the terms or conditions mentioned before, then the child's father is preferred to receive that guardianship, because the mother had lost her efficiency and competence. The same thing is said if the father was the one who lost one of the terms or conditions, and then the child's mother shall be preferred to receive that guardianship even if she was married.

ARTICLE No. 206: If the father (i.e. the husband) agreed with the mother (i.e. his wife) that in return for divorce upon her request, she leaves the guardianship of his child (or children) who are less than seven years old, or to continue her guardianship even after her legal guardianship and spending on them from her own money instead of him, then this kind of contract or agreement is correct and legal and no one of them shall be permitted to annul it after the completion of the divorce upon her request, except if the other party agreed on that.

ARTICLE No. 207: The child's mother shall not be permitted to take the child and travel outside the husband's homeland, especially if it occurred beyond the husband's permission or agreement. The father too hasn't the right to take the child and travel outside the country during the period when the mother is still the child's guardian.

ARTICLE No. 208: If the mother did that (i.e. took the child and traveled outside the husband's homeland) then her guardianship shall be annulled, and thus, the child's father shall have the right to be his guardian. The same thing is said if the child's father did that. However, they (i.e. the husband and his wife) may make an agreement allowing either of them to do that.

ARTICLE No. 209: If the child was under the guardianship of his mother, and the father wanted to take him and travel to dwell with him in another country, then he cannot do that except by the permission of the child's mother.

ARTICLE No. 210: If one of the parents died, or his/ her guardianship was annulled because he/she is not well-qualified for that, then the child's guardianship shall be conveyed to the one (i.e. the parent) who is still alive. Now, if the living parent was the child's mother, then she would be preferred to have her child's guardianship even if she was married.

ARTICLE No. 211: If the child's father was the only guardian for his child (or children) because of the child mother's death, or vice-versa, then the living parent is not permitted, voluntarily, to refuse the guardianship of his child, otherwise, any of his or her relative shall be charged to hold this responsibility.

ARTICLE No. 212: If the child's parents died, then the guardianship shall be given to the people according to their levels of inheritance, and thus, the nearer shall be preferred to others.

ARTICLE No. 213: In addition to what has been said above, the parents shall be considered dead if they were lacking any of the guardianship's terms and conditions.

ARTICLE No. 214: If the child's father and mother were dead, then the maternal aunts shall be preferred to the cousins and nieces, because they are nearer to the child's mother. The others who are relatives shall follow the same rule.

ARTICLE No. 215: The guardian (the one who is mentioned in the will "letter") of the father and grandfather shall be preferred to other relatives. And the grandfather's guardian shall be preferred to the father's if any dispute happened on this issue.

ARTICLE No. 216: If there were many people who have the right to claim for the child's guardianship, like if the child has got many maternal aunts and each aunt claimed for the guardianship, then one of them must be chosen by the lot to end this dispute which may cause troubles for the child.

ARTICLE No. 217: The children must not be prevented from visiting their father if their mother was their guardian, and vice-versa. This is one of the parents' duties to continue showing their kindness and clemency toward their children.

ARTICLE No. 218: The father is not permitted to prevent the children from visiting their mother and talking to her, because this is not legal.

ARTICLE No. 219: The father is obliged to give the provision to his child when he is under his mother's guardianship; otherwise, the mother can claim for that until the guardianship expires.

ARTICLE No. 220: If any child (under his or her father's guardianship) became ill, then the father hasn't the right to prevent the child's mother from looking after him or her or nursing him or her. The child's mother can also stay with him in his father's house, or she can take him with her (in case it was necessary to do that) to her (i.e. the mother's) residence, because anyhow, she would be more kind to him than anyone else.

ARTICLE No. 221: If a man married a divorced or widow woman who had children from her previous husband, and she put a condition (in the marriage contract) that he must accept her children and let them live with her in the same house, then he is not permitted to dismiss them or prevent their mother from taking care of them. Of course, the children's mother must balance between her care toward her children and her duties toward her husband. But if the wife didn't put such a condition, then her husband is permitted to prevent them from entering his own house, and his wife must get his permission to let her children come into his house. The children's mother must have her husband's permission too, if she wanted to spend some of her husband's money on her children.

Chapter four
The provision of the relatives

First Section: GENERAL RULES

ARTICLE No. 222: The provision must be given to the nearest relatives and upward (i.e. mother, grandmother, etc), and to the nearer relatives and downward (i.e. daughter, granddaughter, etc), no matter whether the provision was cash or objective (food, clothes, etc.).

ARTICLE No. 223: The legal standard provision which is necessary for livelihood as known must include the following:

1- Provide all necessary food, beverages, etc. for the children.

2- Provide the necessary clothes that are enough to cover the body and private parts according to Islamic rules.

3- Provide the suitable residence.

ARTICLE No. 224: After all, it is important to take the husband's situation (whether he was wealthy or impoverished) into consideration. In this regard, GOD (ALLAH), the Exalted, said, "***Let the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what GOD (ALLAH) has given him. GOD (ALLAH), the Exalted, puts no burden on any person beyond what He has given him. GOD (ALLAH) will grant hardship, ease***" [At-Talaq: 7].

ARTICLE No. 225: If the husband was not wealthy and his property wasn't enough to divide it on his wives equally, then he can donate that to who is needier than the others (like if she was sick, young or disabled, and so on).

ARTICLE No. 226: Basically, it is obligatory that the male pays the provision and not the female.

ARTICLE No. 227: The one whom the provision is being paid to must be unable to afford his provision by himself. As for those who have jobs and can earn money from them, they do not deserve any provision. A person who has got a job is considered as a rich person.

ARTICLE No. 228: Paying the provision to those who are in need of it must be according to their nearness. For example, the father must precede the grandfather, and the son must precede the grandson.

ARTICLE No. 229: If the father and his son exist, then they shall be classified in one rank like the children and the father (because they are classified in one rank as we mentioned before), and so, they are all partners in giving equal provision, and that shall not happen except in the case of the father and his son.

ARTICLE No. 230: If one has got many rich sons, then they must pay him the provision equally.

ARTICLE No. 231: If some of his sons were rich and the others were not, then those who are rich must pay him the provision.

ARTICLE No. 232: There is no difference (in the above cases) between the male and female, nor between the rich and that who is needy.

ARTICLE No. 233: If the one who requested the provision pretended that he or she is impoverished, then he or she has to be believed after swearing, and the one who must spend on his or her relatives must prove that his relative is wealthy and does not deserve the provision.

ARTICLE No. 234: The one whom the provision must be paid to has the right to plead against one who refuses to pay the provision to him. In this case, the legal judge shall force him or her to pay the provision according to his or her financial state, after verifying that the provision is obligatory and that the provider is refusing to pay it.

ARTICLE No. 235: If the wealthy provider refused to pay the provision to whom in need of it of his or her relatives for a period of time whether that period was short or long, he or she would not be obliged to pay it; neither would be forced to fulfill it in the future, except if that needy was forced to borrow money and plead against that issue, in this case he will be given the provision since the date of plead and claim.

ARTICLE No. 236: If the provider proved that he refused to pay the provision to that who is in need of it because the latter is spending the provision in illegal ways, committing sins with it like gambling, drinking wine, eating the meat of swine or carrion, etc., then the provider shall not be obliged to pay the provision; rather he or she would be prohibited from paying the provision to that one as long as he or she keeps doing them.

Second Section: THE RULE OF THE FATHER WHO IS IMPOVERISHED

ARTICLE No. 237: The wealthy and capable daughter is obliged to give the provision to her father or grandfather if there were no people (such as sons and grandfathers) who can give the provision to them, although she is not obliged to spend on them.

ARTICLE No. 238: If mother passed away, then the provision must be devoted to the wealthy daughter's father and mother (and upward, then the nearer of the grandfathers, according to the inheritance system).

ARTICLE No. 239: If the father passed away, or he was impoverished, or one of his fathers existed, then he can be instead of him, preceding the mother's rank, because he resembles the dead father by meaning and nomination, and hence the same rule shall be applied on him. This case is related to fathers rather than mothers (even if the mothers were rich); because it calls the custodian of money and that are the fathers.

ARTICLE No. 240: If all were dead, or they were impoverished, then the wealthy mother is obliged to hold the responsibility. And if she also was dead or she was impoverished, then her parents (equally) and upward has to do that taking into consideration the nearer and so on.

ARTICLE No. 241: The father is obliged to give the provision to his children and grandsons in case he is wealthy and they were impoverished.

ARTICLE No. 242: The wealthy father shall be forced to give the provision to his children if he refused to do that voluntarily.

ARTICLE No. 243: The father is permitted to use his young or adult son's property but not absolutely; rather he takes his suitable provision even like the loan that he will later give it back to him, or like a donation from his son. However, the father is not permitted to take anything from his son's property in case he is not in need of it.

ARTICLE No. 244: The mother is basically not obliged to pay the provision in any case; rather the men (i.e. the fathers if they are existent) are obliged and she will not be in charge of that except when no one from the existent individuals (especially the father and/or the grandfather and upward) can pay the provision.

ARTICLE No. 245: If the father is dead or he was impoverished, and he has no father or grandfather (as mentioned earlier), then the mother shall be obliged to pay the provision to the son in case she is wealthy, owns sufficient property and can afford her son's provision, and then her father, mother, and the mother of the son's father must hold this responsibility.

ARTICLE No. 246: The grandfather and grandmother of the son (his mother's father and mother), and his father's mother shall participate in giving him the provision equally in case they were wealthy. And if some of them were wealthy, then they have to hold this responsibility.

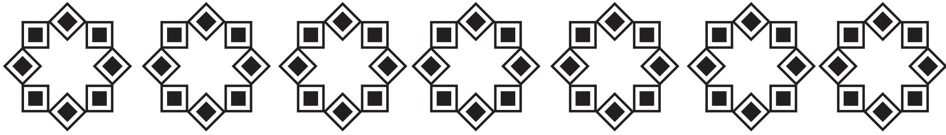
Third Section: THE PROVISION OF STUDYING

ARTICLE No. 247: The provision of the public schools in all levels of education (primary, intermediate, and secondary levels), which nowadays became an integral part of people's life in present and future, including necessary school garments, stationary, and all transportation means, are all included in the obligatory provision.

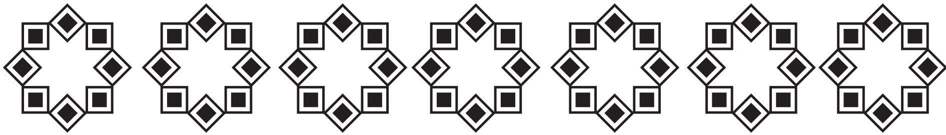
ARTICLE No. 248: If the son was not yet independent in getting his own provision although he became adult and was able to do that because he was studying to get better scientific rank and certificate, then his father is obliged to give him the provision of living and the studying fees until he graduates and get his own job.

ARTICLE No. 249: The expenses of kindergarten, nursery or private schools, are not included in the obligatory provision.

ARTICLE No. 250: If a dispute occurred between the husband and his wife upon who must afford the expenses of their children's fees in the kindergarten, then the husband shall not be obliged to pay those fees. The same thing is said if the dispute was between brother, sister, and their father about who is to afford the fees of the university, then the father is not obliged to pay those fees unless he is wealthy and capable of that.



THE MORTMAIN (WAQF) BOOK



- **Chapter One:** **Conditions Of The Mortmain (Waqf)**
- **Chapter Two:** **Sources Of Invalidity Of Mortmain**
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THE MORTMAIN (WAQF) BOOK

ARTICLE No. 251: The mortmain *(waqf)* is entailment of the asset and release of the benefit.

ARTICLE No. 252: The mortmain is concluded solely with the phrase "I ensured" or "I entailed"; otherwise, it is concluded within the context.

CONDITIONS OF THE MORTMAIN (WAQF)

Chapter One
CONDITIONS OF THE MORTMAIN (WAQF)

ARTICLE No. 253: The mortmain must satisfy the following conditions:

1- Perpetuity.

2- Immediacy.

3- Delivery.

4- Relinquishment (release from oneself).

This is appended by the following articles:

ARTICLE No. 254: The mortmain is considered as void if the creator linked the waqf to a certain period, such as a year, or restricted the waqf to those who often cease to exist, such as a particular person.

ARTICLE No. 255: The immediacy of mortmain is not stipulated by the acceptance from the mortmainee, as an individual or as a group, being present or absent, existing or to be existent in future, even if the descendants follow.

ARTICLE No. 256: The delivery is a condition for the validity of mortmain, its completion and necessity so that the creator does not have the right to cancel the mortmain after collection of the waqf but he deserves the right to do that before collection. If the mortmainer passed away prior to the collection, the mortmain becomes an inheritance.

ARTICLE No. 257: The mortmain is considered void when it is at first devoted to an individual who is unqualified to be a mortmainee and then by another one who is qualified to be a mortmainee.

ARTICLE No. 258: The collection by a custodian *(Wali)* on behalf of those who are under one's custodianship is equivalent to the collection by the mortmainer who is a custodian of his or her own children. If the custodian collects before signing the contract of waqf, then it is sufficient that he or she, being the mortmainee, collects after the waqf is created.

ARTICLE No. 259: If the founder of waqf dedicated what exists in the hands of the custodian as a trust or a loan to those who are under the custodianship, then it is sufficient that he or she, being the mortmainer, collects what exists as a trust or as a loan after the waqf is created.

ARTICLE No. 260: The collection by the custodian is sufficient, be the custodian a father, a grandfather or their custodian or the legal judge.

ARTICLE No. 261: The collection by the mortmainee is established in a legal manner if the founder delivers the mortmain and gives it out to the mortmainee in its actual status or through permission. If the mortmainee collected the waqf without permission from the founder of waqf, then the collection is void as it is considered as a disposal of a possession of others without their consent. Unless the creator delivers waqf to the mortmainee, the mortmainee deserves the right to sign the contract or not to do so.

ARTICLE No. 262: If the mortmain was in the hands of the mortmainee before the founder gave it out in a legal, as in the case of trust or loan, or illegal way, as in the case of forceful collection or dishonest purchase, the collection is accomplished, and the founder does not deserve the right to cancel the contract; the renewal of collection of waqf, or the elapse of the time in which the collection can be made are not taken into consideration.

ARTICLE No. 263: After signing the contract, the collection is not required to be immediate; it can be delayed for many years from the date when the contract of waqf was signed unless the creator of waqf passed away or annulled the contract in his or her lifetime.

ARTICLE No. 264: If an added value was resulted in the time between the contract and the collection, it belongs then to the creator of waqf.

ARTICLE No. 265: If the property was given in mortmain to the benefit of representatives of a private profession, such as jurists, doctors, students from various scientific domains, or to the sole benefit of institutions, such as places of worship,

sanatoriums, hospitals, schools, universities, etc., or to the benefit of public utilities, such as bridges, roads, etc., the waqf is immediately established, and the founder does not deserve the right to cancel the contract, even if the appointed overseer of the said institution or utility did not collect waqf from the founder himself or herself or from the legal judge because of the absence of a particular mortmainee.

ARTICLE No. 266: The creator of the waqf that was assigned for a specific group mortmainees does not reserve the right to cancel the waqf contract after the collection was made by anyone of those mortmainees.

ARTICLE No. 267: The mortmain (waqf) is considered valid provided that it is granted for the sake of rapprochement, i.e., if the waqf is a way that the mortmainer may pursue to approach GOD (ALLAH), the Exalted, and that the mortmainee is a believer so that to achieve the goal of waqf.

ARTICLE No. 268: If, after the mortmain is established, the mortmainee appeared to have not approached GOD (ALLAH) or to have been an unbeliever, the mortmain then is considered invalid. It is also considered invalid if the mortmainee was already an unbeliever, for whom the waqf is prohibited, unless the unbeliever is one of the parents of the mortmainee.

ARTICLE No. 269: The mortmainer should grant the waqf by releasing it from oneself and the mortmain is considered as void if the founder of waqf dedicated it for oneself, no matter if the founder restricted the waqf to the benefit of oneself or granted the waqf to someone else after that.

ARTICLE No. 270: The creator of waqf should exclude oneself entirely from the waqf that he granted to others; i.e.,

he or she should not dedicate the waqf to himself or herself or stipulate taking it back, entirely or partially, for oneself, or grant the waqf to someone else.

ARTICLE No. 271: If the creator dedicated a definite percentage of the waqf to oneself and granted the remaining percentage to others, the mortmain is considered as valid in terms of the percentage devoted to others, but it is invalid in terms of the percentage devoted to the creator.

ARTICLE No. 272: If the creator of waqf stipulated that the mortmain must be in the hands of others, including his or her relatives or parents or anyone else, the waqf itself and the said condition are regarded as valid.

ARTICLE No. 273: If the mortmain is given for the poor and the creator became poor in the future, or to jurists and the creator became a jurist in the future, the creator thereby deserves the right to share the mortmain with those to whom it was granted. This is also considered as valid for the waqf which was granted to people of different majors and professions.

ARTICLE No. 274: The creator of waqf has the right to share with the mortmainees unless he or she does not intend to do so and unless he explicitly declares about excluding oneself from sharing with them.

ARTICLE No. 275: The added value should not be spent on all mortmainees; it should rather belong to some or to anyone of them.

ARTICLE No. 276: If the contract of waqf stated that the waqf should be granted to all of the mortmainees, it must be delivered to each one of them, like if it was granted to the children of the founder and to others.

Chapter Two

SOURCES OF INVALIDITY OF MORTMAIN

ARTICLE No. 277: The mortmain is considered as invalid and remains as a property of the owner when it is not established because:

a- Its actualization depends on a phenomenon that must happen, such as rise of the sun or advent of the month.

b- Its actualization depends on a probable or improbable condition that may and may not take place, such as the arrival of a particular person.

ARTICLE No. 278: The validity of mortmain (waqf) is established if the mortmain depends on a factual condition known to the founder, like when he or she says: “I shall entail this property if today is Friday” and he or she knows that it is so. In this case, the mortmain is considered as valid.

ARTICLE No. 279: The mortmain is considered as invalid if something that was stipulated in its contract comes in conflict with the condition of perpetuity, such as in the following cases:

1- If the founder (creator) stipulated one’s right to strike off anyone from the list of mortmainees, whenever he or she wishes to do so.

2- If the founder stipulated his or her own right to transfer the mortmain from the mortmainees to those persons

who will be available at hand.

3- If the founder stipulated in the contract of mortmain his or her right to take back the mortmain whenever he or she deems this action necessary.

4- If the founder entailed the real estate as a mortmain for the benefit of another person on condition that his or her personal debts ought to be paid or his or her living needs should be provided by the said person.

Chapter Three

CONDITIONS THAT THE OBJECT GIVEN IN MORTMAIN (ALMAWQUF) SHOULD SATISFY

ARTICLE No. 280: The object given in mortmain *(AlMawquf)* must satisfy the following conditions:

1- It should be a real object, i.e., it should exist in reality, like a land that can be located in a particular, well-known area.

2- It should be a property (estate) of the founder of waqf, like a building or farm of his or her own.

3- There is a possibility for anyone to benefit from it, such as to invest the land in a profitable way for the sake of poor people.

4- There is a possibility for the mortmainee to collect it, i.e., to have it.

ARTICLE No. 281: Reality refers to something that is not a debt, and not ambiguous, i.e., not an object from which a benefit cannot be derived.

ARTICLE No. 282: Giving the property whose location cannot be exactly identified in waqf is regarded as valid if a well-known portion or percentage of the said property is granted to the mortmainee. The delivery can be made upon permission by the founder of waqf and the partner.

Chapter Four

CONDITIONS THAT THE FOUNDER OF WAQF (ALWAQIF) SHOULD SATISFY

ARTICLE No. 283: The founder of waqf *(Alwaqif)* must satisfy the following conditions:

1- The founder should be an adult; e.g., a male who reached ten years old.

2- The founder should be sound of mind, i.e., not mad or insane.

3- The founder should be able to dispose of the waqf, i.e., he or she must not be a person for whom waqf is interdicted because of foolishness.

ARTICLE No. 284: The female founder must be perfect in terms of adulthood, sanity, and lift of interdiction. The male founder who is able to distinguish between the right and the wrong should have reached ten years old and his or her establishment of waqf must be consistent with the behavior of normal people who are able to distinguish between right and wrong. The founder must not be a person for whom waqf is interdicted due to his or her foolishness. The custodian of the said founders does not reserve the right to interdict them from establishing of waqf.

ARTICLE No. 285: The mortmain (waqf) is not considered as valid if it is made by the male adult who is drunk, insane or foolish, by the female who is less than nine years old, and by the male who is less than ten years old, as it is mentioned in The Book of Will.

Chapter Five

CUSTODIANSHIP ON THE MANAGEMENT OF THE MORTMAIN'S AFFAIRS

ARTICLE No. 286: The founder reserves the right to keep to oneself the custodianship on the management of the mortmain's affairs, or to appoint the qualified family relative or anyone else to take charge of the waqf.

ARTICLE No. 287: If a supervisor *(nazir)* has not been appointed, the task of supervision would be transferred to the founder of waqf or to the mortmainee who is now the owner of the property; otherwise, supervision is transferred to the legal judge.

ARTICLE No. 288: If the founder of waqf authorized others to oversee the mortmain, they do not have to accept authorization but if they did so, they must continue to do that because this act would signify procuration and because they are originally not obligated to accept the authorization.

ARTICLE No. 289: The overseer appointed by the creator of waqf might be classified in one of the following categories:

1- The overseer is laid down by condition in the contract, and if so, the founder, pursuant to the terms of the contract, is not permitted to dismiss him or her, unless something that came up obligated the act of dismissal.

2- The overseer is not laid down by condition in the contract,

and was appointed anyway after the contract was signed. In this case, the overseer may be dismissed whenever the founder wishes to do so, because in this case he or she is virtually a procurator who is permitted to be dismissed by the founder after signing the contract, whenever the latter wishes so.

ARTICLE No. 290: If the founder appointed a supervisor to oversee the waqf and did not specify a pay that is deducted from one's proceeds to the overseer so as to transfer the waqf to the mortmainee, the overseer then is considered as being satisfied to do the job for free and thus is not entitled for a pay. It is considered a valid action, however, if the proceeds of a definite percentage of waqf were allocated for the supervisor while the remaining percentage of waqf was specified to the mortmainee.

ARTICLE No. 291: The assignment of anything that is related to the construction or maintenance of waqf, to the collection of proceeds and their distribution on the beneficiaries, to the preservation of the asset and the proceeds and so on, is not considered as valid without a permission from the founder, even if the mortmainee acted on his or her own.

ARTICLE No. 292: If the founder appointed a private custodian in the process of dedication, he or she does not reserve the right to share with him or her the consideration of waqf or to dismiss him or her from the position unless the founder stipulated this action to oneself in the process of dedication, and unless it was stated explicitly in the contract that the founder himself or herself reserves the right to discharge the custodian or that the custodian should consult with him or her about the mortmain's affairs or that the founder reserves

for oneself the right to discharge the custodian whenever he or she found such an act for one's own advantage, and also the right to appoint another custodian instead of him or her.

ARTICLE No. 293: If the founder assigned the custodianship of waqf to oneself, or reappointed the preceding custodian as the custodian of waqf, he or she reserves the right to deduct from the proceeds of the waqf what is necessary to keep, maintain, sustain and develop the waqf, and to lease the mortmain when it comes to that.

Chapter Six

CONDITIONS THAT THE MORTMAINEE (ALMAWQUF ALAIH) SHOULD SATISFY

ARTICLE No. 294: The mortmainee *(Almawquf Alaih)* must satisfy the following terms:

1- The mortmainee should be available at any time.

2- The mortmainee should have the legal capacity for holding a property or should be dependent on something that exists and whose existence is usually possible.

3- The mortmainee should receive the mortmain (waqf) with approval.

ARTICLE No. 295: Dedication of the waqf for the mortmainee who does not exist is considered as void because the act of mortmain is an absolute transfer of a benefit or a real object to the mortmainee and the mortmainee who does not exist is not considered as eligible for that.

ARTICLE No. 296: The mortmain (waqf) of worship places, such as synagogues and churches by Muslim to non-Muslims is considered as void. Mortmain is also considered as void if the entailed objects are the Holly Books, such as Bible or Torah, or if waqf is intended to help the adulterers, bandits, drinkers, and the likes.

ARTICLE No. 297: The dedication of the preservation and publishing of Books of Islamic Law (Shari'a) is considered as valid, except the books written by the errant and devious who wrongly claim to be Muslims.

ARTICLE No. 298: If the mortmainee is described by a certain quality, then all what is generalized from that quality is regarded as a prevailing custom if both the custom and the term equally interpret that quality; otherwise the customary quality is determined by the founder based on real evidence, even though some leads need to be adequately followed.

ARTICLE No. 299: If the mortmain (waqf) is dedicated for poor people, it should be dedicated to the poor Muslims, if the founder is a Muslim. If the founder is an unbeliever and the mortmain (waqf) by the unbeliever is considered as valid, the waqf shall be dedicated to the poor who embrace the religion of the unbeliever. The point is that the quality of being poor refers to both Muslims and unbelievers alike.

ARTICLE No. 300: If the mortmain (waqf) is dedicated for poor, it is not permitted to follow those poor who left the country, in which the waqf exists. It is enough to pay to the poor people who stay in that country and to seek to cover the largest portion of them, if the proceeds permit that. If the mortmain is dedicated to Muslims, and its face validity is established on the individuals who utter "there is no God but Allah and Muhammad is God's Apostle", and who necessarily did not deny their knowledge of Islam, unbelievers and devious people then are excluded from the waqf.

Chapter Seven

EXTINCTION OF THE MORTMAINEE (ALMAWQUF ALAIH)

ARTICLE No. 301: If the mortmain (waqf) was dedicated for a service that ceased to exist or cannot actually exist and the waqf must be implemented pursuant to the Islamic Law (Shari'a), the waqf then should be granted for charitable purposes, if the proper disposer of waqf is not available, and should not be not collected back by the heirs.

ARTICLE No. 302: In dedicating waqf for charitable purposes, the service that is more and more close to the charity service, in terms of the objectives of the deed of waqf, must be considered.

ARTICLE No. 303: If the waqf was dedicated for the sake of GOD (ALLAH), it would go to what related to reward, because the path is the way and it is more desired, the more it is the way to get the reward from GOD (ALLAH), Glory to GOD (ALLAH), and it is also the mean to get contentment from the Lord. To say: "For the sake of GOD (ALLAH), for the sake of Reward, and for the sake of Good", is to refer to one thing said at first: The sake of GOD (ALLAH), the Exalted.

Chapter Eight
WAQF DEDICATED FOR OFFSPRING

ARTICLE No. 304: If the founder dedicated the mortmain for his or her offspring in an absolute way, without any restrictions whatsoever, his or her real children will benefit from the waqf in future, but if the founder restricted the waqf to the existing children particularly, he or she does not reserve the right to include others unless it is laid down in the contract.

ARTICLE No. 305: The collection that is considered legal, with respect to the mortmain to the offspring, is valid for the first and not to the next descendants because they collect the property from the first descendant.

ARTICLE No. 306: If the mortmainees from the first descendant passed away or became extinct before the delivery, the mortmain (waqf) is regarded as invalid and is not transferred to the next descendant as a result of validity and necessity of waqf for the first descendant; so if the founder is alive, he or she has to choose between dedicating the waqf to the second descendant or taking it back as own property. If the founder passed away, the mortmain becomes an inheritance for the heirs.

ARTICLE No. 307: If the creator dedicated the mortmain for the sake of his or her grandchildren, then the grandchildren, male and female alike, all of them share the said mortmain without any preference or nepotism whatsoever. If the mortmain was granted to males or females particularly, and

to their children, it is then not shared by all members of the offspring.

ARTICLE No. 308: The said conditions must be observed in the contract of waqf, in terms of order, sharing, and preference; so if the creator devoted waqf at the same time to his or her children and grandchildren, partnering of the last and the first descendants is required. Grandchildren and all descendants join absolutely without any preference whatsoever.

If the creator said: "I dedicate the waqf to my children and grandchildren" or "I devote the waqf to the first descendant, respectively, but the second descendant does not deserve anything as far as there is one from the first descendant is alive, and the share of all dead from the first descendant reverts to the rest", and unless he or she says:"My share goes to my child", the condition mentioned above remains valid; so if one of them who was born died, his or her share goes to his or her child, and if some of them died without having a child, his or her share would go to the rest of descendants, except the child who took his or her father's share. The term "My Children" in this context refers to the heirs of my body, so my grandchildren are not included as a result of presumption of coupling.

If the creator of waqf said: "I dedicate waqf to my grandchildren", all descendants that follow the first descendant are included herein because they are all among the grandchildren, as mentioned above, so the sequence applies to the children of the first descendant, who are heirs of one's body, and to the late ranks of descendants. Late

ranks of descendants from the grandchildren, and from the descendants that follow them, however, should not be put in order.

If the creator of waqf said: “one descendant after another”, he or she refers to the way descendants are ordered. And if he or she said: “I dedicate the waqf to my children and then to my grandchildren” and after that one of the children passed away, his or her share goes to his or her children; and if the child who passed away did not have a child, his or her share goes to the ensured individuals; and if the child who passed away had two children, his or her share goes to those two children, and if the child passed away without having a child, his or her share goes equally to the two abovementioned children and also to the rest of his or her class of descendants, because all of them are considered as mortmainees who together share the waqf, and if one of the two abovementioned children passed away, his or her share goes to his or her brother or uncle, because they are the mortmainees.

ARTICLE No. 309: If the founder gave a dedicated estate and alike as a mortmain for his children, and then for his or her grandchildren, and then for their offspring after them, and members of the offspring continued to exist without extinction, the mortmain is considered as valid and as necessary and the termination of waqf is considered as null and void.

ARTICLE No. 310: If the founder dedicated a mortmain that is mostly subject to distinction and did not mention the disposer after him or her, as if he or she dedicated the

mortmain to his or her children while restricting it to particular descendants, the waqf is considered as void because of the absence of perpetuation and becomes a life or real or residential dedicated estate, as perceived from what the founder meant in the context.

ARTICLE No. 311: If the mortmainees became extinct, the waqf is delivered back to the founder, if he or she is alive or to his or her heirs after one's death, no matter how different are the ranks of inheritance.

Chapter Nine

LEASE OF WAQF DEVOTED TO OFFSPRING

ARTICLE No. 312: The lease contract for the waqf that is devoted to the posterity is not considered as void if the first descendant (the lessor) passed away before the termination of the period of contract.

ARTICLE No. 313: The lease contract for the waqf devoted for posterity is also considered as valid if lessor of the waqf was a supervisor, a mortmainee or a foreigner, because the lessor acts as a procurator of all .

ARTICLE No. 314: If the amount of lease is paid on monthly or annual basis upon the termination of the period of lease, the heirs from the first descendant receive the portion of their legators' share from the amount of lease that is equal to the percentage of the whole amount paid for the total period of lease. The remaining amount that is equal to the said percentage reverts back to the heirs from the second descendant.

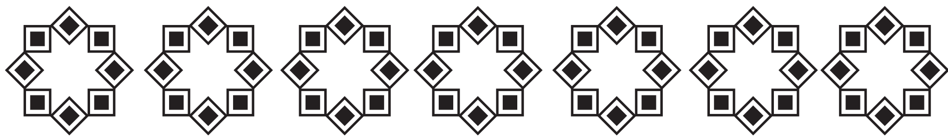
Chapter Ten

TERMINATION AND SALE OF WAQF

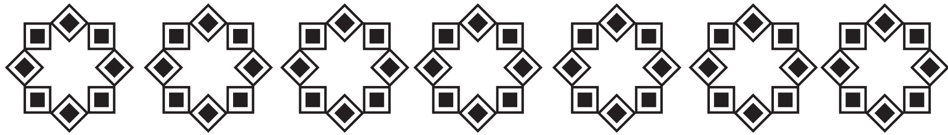
ARTICLE No. 315: Termination and sale of the perpetual waqf devoted to the offspring are interdicted unless it is a private or public mortmain.

ARTICLE No. 316: The founder of waqf deserves the right to sell the mortmain if it was not delivered to the mortmainees and if he or she did not dedicated it to them or happened to learn about a wide disagreement between them before the mortmain was collected by them.

ARTICLE No. 317: The mortmainees do not reserve the right to terminate the waqf devoted to the posterity after its collection by the first descendant because they have nothing to do with it as they are related to it the same way as the other late ranks of descendants. They do not hold a specific share from the waqf but they deserve the right to benefit from its added value during their lifetime before the waqf is transferred to others.



THE GIFT (Heba) BOOK



- **Chapter One:** **THE FORM OF THE GIFT (HEBA)**
- **Chapter Two:** **CONDITIONS APPLIED TO THE GRANTER, GRANTEE AND THE GIFT**
- **Chapter Three:** **SOURCES OF INVALIDATY OF THE GIFT**
- **Chapter Four:** **SOURCES OF VALIDATY OF THE GIFT**
- **Chapter Five:** **RETREAT OF GRANTER OF GIFT**
- **Chapter Six:** **THE COMPENSATED GIFT**
- **Chapter Seven:** **THE ENDOWMENT OF DEBTS**

THE GIFT (Heba) BOOK

ARTICLE No. 318: The gift *(Heba)* is a legal act by which the granter makes someone else the owner of the realty or property that he or she owns as a donation for him or her with no compensation whatsoever.

Chapter One
THE FORM OF THE GIFT (HEBA)

ARTICLE No. 319: The endowment is not restricted to a certain word in particular. It is true for meaning of this word, be it release or forgiveness or extinguishment, or any word that obligates the quittance of the grantee.

ARTICLE No. 320: The gift does not specify immediacy and it must not necessarily be uttered in Arabic or in the past tense or so.

ARTICLE No. 321: The gift obligates the ownership by the grantee as his or her real property. The grantee deserves the right to dispose of the gift in his or her own way unless the granter withdraws before or after the collection but prior to the disposal.

Chapter Two

CONDITIONS APPLIED TO THE GRANTER, GRANTEE AND THE GIFT

ARTICLE No. 322: The granter *(Waheb)* must:

1- Be the owner.

2- Have the legal capacity of disposal in terms of adulthood and sanity.

3- Have reached ten years and be capable of behaving as a normal person.

ARTICLE No. 323: The gift must satisfy the following conditions:

1- The ownership must be the property of the granter as a valid property.

2- Immediacy (donation without delay).

3- Giving out by the granter (release from oneself).

4- Collection by the grantee *(Mawhoob)*.

5- Disposal of the gift by the granter.

ARTICLE No. 324: The granter and the grantee *(Mawhoob)* must not necessarily be present in the place where the endowment is established.

ARTICLE No. 325: Collection is a condition of the necessity, but not the validity, of the gift. If the gift is not necessary, the granter then deserves the right to withdraw before the collection.

ARTICLE No. 326: If an added value was resulted in the time between the contract and the collection, it belongs then to the granter of gift.

Chapter Three

SOURCES OF INVALIDATY OF THE GIFT

ARTICLE No. 327: The gift is considered as invalid if:

1- The lack of ownership of the gift by the granter is established.

2- The legal incapacity of granter to dispose of the gift is established.

3- The granter withdrew before or after collection but prior to the disposal, which resulted in damage, change, or transfer of the property.

4- The death occurs in the following forms:

   a- If the granter died prior to the collection by the grantee, the gift then is inherited to the heirs.

   b- If the grantee died prior to collection, the gift does not become one's inheritance or inherited stocks, so the heirs are not entitled to inherit it.

ARTICLE No. 328: In addition to the previous article, the gift is also regarded as invalid if it was delivered to someone and the granter or the grantee died prior to its collection. In this case, the messenger does not deserve the right to donate the gift to the grantee, nor to his or her heirs as the gift, like a donation, is seen as invalid due to death before collection.

Chapter Four
SOURCES OF VALIDATY OF THE GIFT

ARTICLE No. 329: The gift is regarded as valid in the case of overall collection, including release and collection. The collection ensued by necessity or rightness is regarded as valid if it is achieved by the granter's permission, unless the gift is legally collected by the grantee prior to that.

ARTICLE No. 330: If the grantee collected the gift on permission from the granter, the gift is considered as valid. If the permission was not given by the granter, the gift is then regarded as invalid because the contract, by itself, does not give the right for transferring the ownership and hence the grantee is regarded as sinful.

ARTICLE No. 331: If the granter donated the gift that was already in the hands of the grantee, the latter then does not need a permission to collect the gift, nor a time in which delivery should happen, be it in a legal way, as in the case of deposit or loan, or illegal way, as in forceful collection.

ARTICLE No. 332: If the father or grandfather donated the gift to his or her under-age, minor child, the gift in their hands does not need a new collection because the collection by the custodian is made on behalf of the child. If the child was an adult, whether male or female, the collection should then be necessarily established.

ARTICLE No. 333: If the granter to the child was not his or her father or grandfather, collection on behalf of the child is

necessary and is achieved by his or her father or grandfather or by the custodian or the legal judge or the person appointed by the legal judge.

ARTICLE No. 334: The donation of commonage or a piece of land whose location cannot be identified is regarded as valid as donation of anything else. If the partner is the granter, he or she should deliver the whole commonage to the grantee to establish the collection. If the partner is not the granter, the delivery of commonage is permitted by the granter; the granter is either satisfied with that or the grantee should entrust the partner to collect on his or her behalf. If the granter and the partner fail to agree, the case then is referred to the legal judge who appoints an official receiver who should collect the specified percentage of gift and keeps the remaining amount as a trust in his hands until the contract is completed.

ARTICLE No. 335: The father deserves the right to give preference of donation to some of his children, namely if the child is needy or virtuous or a student of spiritual studies and is preferred over his or her perverse or immoral cousins or relatives who are equally close to the said father.

Chapter Five
RETREAT OF GRANTER OF GIFT

SECTION ONE

ARTICLE No. 336: The gift is a non-obligatory contract subject to the will and desire of the granter; the granter thereby has the right to cancel the gift, whether the grantee disposed or not disposed of it, except in the cases mentioned hereunder.

ARTICLE No. 337: If the granter revoked the gift contract, he or she withdrew and dominated over his or her own, not the grantee's money. Revocation of gift is virtually regarded herein as a contract whereas the granter conveys the ownership from the grantee to the granter once again.

ARTICLE No. 338: The gift donated from one spouse to the other one is regarded as obligatory as soon as the contract is signed; the husband thereby does not have the right to take back what he already donated to his wife and the wife is not entitled to take back what she donated to her husband, whether or whether not the gift was really owned by the grantee.

ARTICLE No. 339: The previous article does not cover the wife who was irrevocably divorced, as she is not a real wife and the husband thereby has the right to take back his gift from her as from anyone else.

ARTICLE No. 340: The granter has the right to take back his or her gift and to claim its return after its collection by the

grantee while the donated realty remains in the possession of the grantee, except in special cases:

1- If the gift is donated to close relatives and hence requires necessity.
2- If the gift is compensated, even if the compensation amount is low.
3- If the donated is for the sake of GOD (ALLAH), be it a gratia, a gift or a charity.
4- If the gift was donated for the wife or the husband.
5- If the granter declared the donation of the gift and its collection by the grantee, he or she is thereby judged for one's declaration.
6- If the grantee disposed of the gift in a way that incurred damage of the ownership of gift after its collection or if the damage was resulted by will of GOD (ALLAH) the Glorious, or by someone else.
7- If the grantee disposed of the gift in a way that resulted in convey of its property to someone else by the mean of donation or sale, he or she has the right to do that and his or her actions are thereby regarded as valid.

SECTION TWO: Retreat of the Granter from the Changing Gift

ARTICLE No. 341: The granter deserves the right to take back the gift while the donated thing itself or part of it should remain indebted in the hands of the non-relative, i.e., the grantee who is not a relative of granter.

ARTICLE No. 342: The grantee does not insure against any kind of damage or defect incurred on the gift because the gift was regarded as his or her property prior to its return.

ARTICLE No. 343: The behaviors that incurred a change of ownership of the gift do not prevent the granter from retreat unless the property is totally damaged.

ARTICLE No. 344: The grantee deserves any added value incurred from the gift while being in his or her hands and while he or she collected what was added to the gift or built on its base or on the proceeds of its lease as it is considered as an additional outcome from his or her property and he or she is thereby entitled to have that added value or outcome.

ARTICLE No. 345: If the grantee disposed of the gift, incurring thereby an increase of its initial value, he or she is regarded as a partner who shares with the granter the amount of increase that he or she incurred.

ARTICLE No. 346: If the granter retreated after the amount of the gift had increased or after this increase ensued not as a result of the grantee's actions, the ownership by the grantee of the increase of the amount is thereby established because either the grantee is included within the gift contract or he or she is part of it in words or by virtue of the customs.

ARTICLE No. 347: If the grantee increased the property of the gift or set up a building on that property as if it was a real estate and the like, the granter does not deserve the right to cancel those additions whereas they remain out of the property as they existed after the donation and thereby their cancelation is not regarded as valid. The grantee is obliged to assess the additions and to pay their amount to the grantee or to agree with him or her on those additions in a way that acquits him or her on all charges.

Chapter Six
THE COMPENSATED GIFT

ARTICLE No. 348: The gift is classified as compensated and non-compensated; the compensated gift is divided into gift compensated with a reward and gift compensated with money.

ARTICLE No. 349: The granter deserves the right to stipulate that the grantee should pay him or her amount of compensation equal to or less than the amount of the real estate or value of the gift.

ARTICLE No. 350: If the granter stipulated the compensation of the gift, it becomes an obligating condition that he or she must not withdraw, even if the amount is tiny and both granter and grantee are satisfied with it.

ARTICLE No. 351: The compensation of the gift is an obligatory act, if it was either initially stipulated in the contract or it was agreed upon after the contract had been absolutely signed or if the grantee had compensated the granter after the signature and then gave the compensation to him or her and the granter was satisfied with the amount of compensation.

ARTICLE No. 352: If the granter stipulated that the grantee must pay an absolute amount, they sign the contract upon their agreement more or less on the said amount. If they did not reach an agreement, the granter must be compensated by an amount equal to the amount of the donated real estate, in real or abstract value; the granter should not by compensated

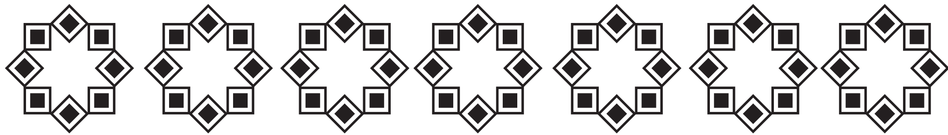
by a larger amount than that one, even if he or she demanded that.

ARTICLE No. 353: The granter must not be forced to accept the least amount of compensation but should have the opportunity to choose between accepting and refusing the compensation because the contract from his or her side is not obligatory prior to compensation. The grantee has to choose between returning the gift to the granter and compensation.

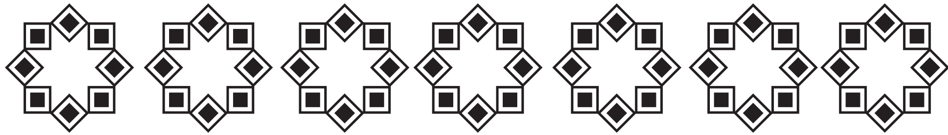
Chapter Seven
THE ENDOWMENT OF DEBTS

ARTICLE No. 354: The liquid debts should not be endowed to someone else but the creditors themselves because of the incapability of collection, unless the outstanding debts are really available for collection and delivery.

ARTICLE No. 355: The liquid debts should be donated to the creditors themselves; this kind of donation is considered as an acquittal of the debt and hence the collection is not stipulated.



THE WILL (WASEYA) BOOK



- **Chapter One:** GENERAL RULES
- **Chapter Two:** GUARDIANSHIP
- **Chapter Three:** CONDITIONS SET BY THE TESTATOR (ALMUOSY)
- **Chapter Four:** THE DEVISED (ALMUOSA BEH)
- **Chapter Five:** THE AMBIGUOUS WILLS
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- **Chapter Seven:** TESTEMONY OF THE WILL ON CUSTODIANSHIP
- **Chapter Eight:** THE DEVISEE (ALMUOSA ELAIH)
- **Chapter Nine:** CONDITIONS APPLIED TO THE DEVISEE (ALWASY)
- **Chapter Ten** SINGLE DEVISEE AND MORE THAN ONE DEVISEE
- **Chapter Eleven** DEEDS WHICH THE SICK PERSON WANTS TO BE EXECUTED URGENTLY BEFORE HIS OR HER DEATH

Chapter One
GENERAL RULES

ARTICLE No. 356: A will *(Waseya)* is a legal act by which the testator *(AlMuosy)* appoints someone to be the owner of his or her real estate or benefit or to manage or dispose of them after his or her death.

ARTICLE No. 357: The will is a complementary condition that permits transfer of property from the testator to the devisee *(AlMousa Elaih)*.

ARTICLE No. 358: The will is obligatory for individuals burdened with financial obligations that are due, such as a debt pilgrimage, alms-giving *(Zakat)*, contribution of one-fifth of one's income to charity *(Khums)*, etc.

ARTICLE No. 359: If someone incurred overwhelming debts that are due, such as Zakat, Khums, and devised one-third or part of income for poor or charity, the devised is deducted from his or her outstanding debts.

ARTICLE No. 360: It is definitely desirable for testator to devise some of money to his or her relatives who are not eligible to share the legacy.

ARTICLE No. 361: The testator should commend to trusted individuals of fellow Muslims the responsibility of disposal of his or her money after death to settle one's financial obligations, and also of the custodianship on his or her small children.

ARTICLE No. 362: The affirmative act is not tied to a word because any word indicates the meaning of it, such as if one says: “I devised so to so-and-so’ or “Give so to so-and-so after my death”.

ARTICLE No. 363: If the testator devised something for the devisee, it becomes the property of the devisee as soon as the testator passes away.

ARTICLE No. 364: The will does not require the devisee’s acceptance, whether he or she is specified in person in the will or not as the will refers to him or her as soon as the testator passes away.

ARTICLE No. 365: The will is a non-obligatory contract from which the devisee deserves the right to withdraw as long as he or she is alive, no matter whether the devised is money or guardianship of property.

ARTICLE No. 366: The testator’s withdrawal from the legacy should be declared and be accompanied with an act that violates the content of will, such as sale of the devised or sale or disposal of what he or she devised to sell, donate, deliver or pawn, etc., in a manner that distorts the devised.

ARTICLE No. 367: The transfer of devised to the non-specified devisee (e.g., individuals who do the same job or craft) is considered as complete and obligatory; the transfer to the specified devisee (definite persons) is subject to the devisee’s desire; hence if the devisee accepted the transfer, the devised then is regarded as stable and continuous but if he or she have not accepted that, the transfer is void and must be added to the inheritance to settle debts of the testator and to execute his or her wills, and the rest is distributed among the heirs.

ARTICLE No. 368: The added value of the devised from the inheritance after death belongs to the devisee, whether he or she accepted the will or not, because the real estate of the devised was transferred to the devisee, and hence its added value is an integral part of it.

ARTICLE No. 369: The execution of the will depends on the death of the testator, namely; the execution itself, not the collection, is considered as a condition for the devisee to own the devised property or money.

ARTICLE No. 370: If the devisee rejected the will after having owned the property, the property or real estate would not be regarded as invalid as the real estate does not cease to exist just because it was abandoned by owner. Permission may be necessary in some cases but the permission to dispose of the property does not require its cessation.

ARTICLE No. 371: If the devisee refused the will prior to the demise of the testator, the refusal is considered as null and he or she deserves the right to demand the will after the testator's death.

ARTICLE No. 372: If testator devised more than the third and the heir did not inherit as much as that, then what exceeds the third is regarded as null whereas what amounts to the third is considered as valid.

ARTICLE No. 373: If the devisee passed away while the testator is alive or after he or she passed away, the will is not regarded as void and is then devoted to the heir, provided that the testator did not change his or her mind, because what is really inherited is the will itself.

Chapter Two
GUARDIANSHIP

ARTICLE No. 374: The guardianship is the custodianship of collecting or settling a due of someone or of the child and insane whom the testator has to care for by behaving as father or grandfather, or accidentally, like by having obtained permission to be a guardian of one of them for whom the act of will is not interdicted due to his or her foolishness.

ARTICLE No. 375: The will is an admissible contract in the lifetime of testator and both the testator and the devisee are thereby entitled to annul the devised real estate, money or custodianship in the testator's lifetime. After the testator's death, the devisee is not eligible to retreat if he already accepted the will. If the devisee turned down the will during the lifetime of the testator, he or she has the right to make one's mind after death. The devisee, however, has to inform the testator, while still alive, about his or her decision on the guardianship of the devised. If the devisee did not inform the testator while the latter is alive, he or she is obliged to execute the will with no effect whatsoever incurred from this action.

ARTICLE No. 376: The guardian is entitled to refuse the guardianship as far as testator is alive but he or she must inform the latter about that. If the testator died before or after the refusal and had not been informed by the guardian of will, the latter is responsible for the execution of the will.

ARTICLE No. 377: A child is not entitled to refuse the

will, if the father asked him or her to accept it, even if he could have found someone else or not to accept the will.

ARTICLE No. 378: If the testator had devoted the guardianship to a devisee who was out of the country and passed away, the guardian must execute the will, whether or not he accepted it. If the testator devised the guardianship to a devisee who is present, the latter has to choose between acceptance and refusal, because there is someone else in the said country.

ARTICLE No. 379: If the testator devised numerous wills to the devisee and the latter turned down the previous wills, he or she should execute the last one, because the testator is entitled to abandon all of his or her wills as far as being alive by rearranging their order or increasing or decreasing their number, and so forth.

ARTICLE No. 380: The extraction of shroud is considered as obligatory and must be done first in the list of wills. Advancement of the debt over the will is obvious as the debt is related to immunity of the deceased and it must be, contrary to will, extracted from the original asset. Placement of all before inheritance follows what GOD (ALLAH), the Exalted, said: ***"After any bequest he [may have] made or debt"*** [An-Nesā', 11].

Chapter Three

CONDITIONS SET BY THE TESTATOR (ALMUOSY)

ARTICLE No. 381: The female testator must be perfect in terms of adulthood, sanity, and lift of interdiction. The male testator capable of distinguishing between right and wrong should have reached ten years old and his or her will must be consistent with the will of sane people who can distinguish between right and wrong. The testator could also be a person for whom the act of will is interdicted due to his or her foolishness provided that his or her will is consistent with the will of sane people. The custodian of both the male testator and the person for whom the will is interdicted due to foolishness does not reserve the right to interdict them from devising a will.

ARTICLE No. 382: The will is not considered as valid if it is made by the male adult who is drunk, insane or foolish, by the female who is less than nine years old, and by the male who is less than ten years old. Their gifts, deeds of waqf and charity contributions are also considered as void.

ARTICLE No. 383: If the will is preceded by the guardian having cut oneself to death or having drunk a poison and the like, the guardian's will is not considered as valid. If the guardian, however, committed those acts before death, his or her will is regarded as valid.

ARTICLE No. 384: The guardianship on small children is restricted only to father and grandfather and upward.

ARTICLE No. 385: If a mother or a relative devised a pecuniary will for a child and appointed an official receiver to execute the will, the official receiver has to spend the amount of money devised by the mother to the benefit and needs of the child. Father or grandfather of the child has the right to execute the will for the official receiver; i.e., the will is regarded as valid in terms of money, but the appointment of the official receiver is regarded as void; it is because the guardianship of father and grandfather is legal and hence it is not contradicted by the will of the official receiver.

Chapter Four
THE DEVISED (ALMUOSA BEH)

ARTICLE No. 386: The devised *(AlMuosa Beh)* could be gender, such as child; a benefit that really exists, like fruit; a thing whose existence is probable, such as pregnancy; a suspicious thing, such as a running beast, a bird in the air, and fish in the water; a thing existing by force, as what a maidwoman, an animal or a tree carries, or existing gradually, like the house residents. The will is valid in all of the above mentioned cases.

ARTICLE No. 387: In terms of devised and devisee, gender and benefit should be taken into consideration. The will is thereby regarded as void if the devised is wine or swine, what is impossible to possess, insects and remnants, because any of the above must not be owned by Muslims; the unbeliever, however, may devise wine and swine to a fellow unbeliever.

ARTICLE No. 388: The devised estate or benefit should not necessarily be therein in the time of will, hence if the devised is the fresh that the tree holds, and not restricted to time, like the fresh in this year or in five years time, or the fresh that is continuously renewed in the lifetime of an animal or a tree; the will in all the above mentioned cases is regarded as valid.

ARTICLE No. 389: The will is regarded as valid, whether the time in the will is set to or delayed from time of death, like if it was set in a particular year or specified in the subsequent years after death.

ARTICLE No. 390: The will is regarded as valid if the devised is real estate, such as the crop of one's garden field, house residents or the tree fruits forever or for a period, and the benefit thereby would be extracted from the third; otherwise the devisee obtains what equals to that third. As to construction of the house whose facilities were devised, irrigation and plowing of the garden whose fruits were devised, the will is valid upon an agreement between testator and devisee or if one of them volunteered to do that work while the other one lacks the right to stop him or her, but if they disputed, no one is forced to comply to the agreement, contrary to the case of animal, where the sanity of sole is the main concern. Dispute about construction and other provisions can be settled by the owner who has to do so to reserve money and the difference between the two cases is obvious. If the benefit is temporary, the owner should provide for it to safeguard one's money, because the benefit is imminent, if the purpose is to reserve money.

ARTICLE No. 391: The will is not considered as valid if the devised is something void of benefit as a seed of wheel or corn and the like, whereas void means that this thing is of no benefit, as seen from the perspective of the sane people, as it cannot be converted to money or sold or exchanged.

ARTICLE No. 392: The devised is estimated at third of the inheritance or less and if it is more than that, the difference is regarded as void unless the heirs allowed the inherited to exceed the third.

ARTICLE No. 393: If the heirs are a group of people and some of them allowed the inherited to exceed the third, their permission applies to their share from what exceeds the third of inheritance.

ARTICLE No. 394: Permission by the heir is considered obligatory for the devisee, be it issued in the lifetime of testator or after his or her death.

ARTICLE No. 395: If the heirs permitted what the testator devised, in his or her lifetime, which appeared to be above the third, they are obliged to stick to the devised as they are not entitled to back down after death.

ARTICLE No. 396: What counts as the third is in time of death, not will, so if the testator was affluent and turned to be poor in time of death, or vice versa, the death is what should be considered in both cases.

ARTICLE No. 397: If blood money and the compensation for crime are included in the will when the testator, after the will, was killed or injured, his or her will is void of the third of inheritance and third of blood money for manslaughter, murder or compensation, as it is deducted from the sum of money, even if due money was delayed after his or her death, hence his or her wills should be executed after deducting the outstanding debts.

ARTICLE No. 398: The will is regarded as valid if testator permitted speculation with all or part of one's inheritance provided that net profit is split between him or her and the heir, unless all heirs are trusted adults or children or insane people to whom the will is interdicted or all of them.

ARTICLE No. 399: The adult heir is entitled to annul the contract of speculation mentioned above upon his or her discretion as it is considered as licit contract, but for the guarded minor, the will is valid because father is obligatory custodian of him or her provided that will did not exceed the

legal boundaries and remains valid until adulthood. If the heir reached the age of adulthood, he or she deserves the right to liquidate the speculation.

ARTICLE No. 400: The financial obligations of the demised that are due must be extracted from the inheritance, like pilgrimage, penance, Zakat, Khums, or vows associated with money, whether the deceased devised those obligations or not because of love to money in his or her life. Ritual obligations like prayer and fast should be extracted from the third if the demised devised that in his or her will.

ARTICLE No. 401: If the testator did not have a guardian who has the right to settle ritual obligations, he or she should devise the sick person to settle them; this is true for other kinds of obligations as well.

ARTICLE No. 402: If the will contained financial and bodily obligations along with donations, financial obligations should be extracted from the initial inheritance; other obligations are extracted from the third in this order: Ritual obligations ordered by the level of importance, followed by donations if they are extracted from the third or if the heir permitted that; otherwise, donations are dropped from the will. If the heir permitted all of the above, the judgment conforms to what had been previously stated.

ARTICLE No. 403: If the heir permitted some of inheritance, it should be extracted from the origin, beginning with its content, such as financial obligations, but if financial obligations are smaller than other obligations and the permitted, other obligations that are due should be settled first. Obligations must be settled in terms of importance until third is reached.

ARTICLE No. 404: If the testator combined multiple things and devised the total without ordering them in will or he or she said: “Give so-and-so 100” or said after ordering: “Do not order the heirs”, and this resulted in a decrease of third, the difference is distributed among all proportionally.

ARTICLE No. 405: If the testator devised third of inheritance to a man, quarter of it to another, and fifth to the third one, will is regarded as valid for the first man as it contained the effective third without permission and considered as invalid for the second and third men.

ARTICLE No. 406: If the testator made a bequest and then made another one, both of them should be executed whenever it is possible. If not, the last will is considered as valid.

ARTICLE No. 407: If the testator devised something and added another one without satisfying the third, the things should be executed one by one and the decrease should involve the last thing if the third does not suffice.

ARTICLE No. 408: If the first heir suspected who should be the first from other two successors, the second successor should be chosen by lot.

ARTICLE No. 409: If the testator bequeathed one thing to two men, like if he or she said: “Give so-and-so hundred Dinars or that house”, and the devised exceeded the third, the devised then is distributed between them equally. If the figure increases, distribution must be made proportionally. If he or she said: “Give fifty Dinars to so-and-so and the same amount to so-and-so or give half the house to so-and-so and the other half to so-and-so”, and then he spent the remainder

on the third, he or she should start with the first gift whereas the value of the second gift will be decreased.

ARTICLE No. 410: If testator devised one third of his or her common property to someone, the devisee owns the third of everything included in inheritance, present or absent, estate or debt. The testator is therefore acts as a partner who shares every part of inheritance with the heirs until the amount of the third of inheritance is specifically determined or indicated.

ARTICLE No. 411: If testator devised to someone third of inheritance in an estate, such as a certain house, the devisee owns that third and seizes it if the testator dies. The heirs do not have the right to object to his or her power on the estate instead of them, and they own two thirds of estate.

ARTICLE No. 412: If testator bequeathed something that is forbidden, such as wine and swine and alike, the will is regarded as invalid.

Chapter Five
THE AMBIGUOUS WILLS

ARTICLE No. 413: If it is impossible to dispose of the will in the way it was devised, for any reason whatsoever, like insufficiency of the amount needed to execute the will or inability of the devisee to benefit from the will, being, for example, the Honorable Kaaba or Sacred Shrines, the will must be implemented for charity purposes and does not revert to heirs.

ARTICLE No. 414: If testator devised the will in a form of pilgrimage and the amount was not sufficient either from testator's homeland or from Mecca itself, the will is disposed for charity deeds. If he or she devised a property, be it money or an estate or a car, for Kaaba, both the estate and the car should be sold and their price should be paid to those devoted to pilgrimage, because what is donated to Kaaba is devoted to its visitors.

ARTICLE No. 415: Supplement to the previous article, if the testator died before he or she was paid and before the devised was collected and no one else knows where to dispose of the will except the testator himself or herself, the will then should be dedicated to charity deeds.

ARTICLE No. 416: If the testator made a bequest for the cause of GOD (ALLAH) without specifying where to dispose of the will, the said will should be devoted to the interests of Muslims, including the construction of public facilities like

bridges, roads, mosques, shrines, and to shroud the deceased people, and to assist pilgrims and visitors of Sacred Shrines and the like.

ARTICLE No. 417: If testator devised that some of his or her children should be deprived from inheritance because of their misbehavior or for the commitment of immoral misdemeanor, like incestuous adultery, his or her will should be implemented in its original form and the said children are disinherited from everything. If the said children did not commit the above listed acts, the testator does not have the right to enforce the will.

ARTICLE No. 418: If the third of inheritance cannot be given to the heir due to his or her foolishness, minority or abstention, the heir is donated a symbolic value of inheritance that is less than one deserves at first, which is considered as his or her correct (legitimate) share of legacy.

ARTICLE No. 419: The testator deserves the right to bequest the third of inheritance for non-heirs and for the charity groups without any coercion, as stated, but the best action is to devise the fifth or fourth of inheritance, based on the social rankings of the heirs in rich and poor times.

Chapter SIX
SOURCES OF VALIDITY OF WILL

ARTICLE No. 420: A will is valid if the following are available:

1- A testimony of two Muslim competent witnesses; this proves all rights, except those rights that need a testimony of four men and even more.

2- A witness and oath or a witness with two women.

3- A testimony of one woman on some aspects of the will.

4 A testimony of competent witnesses from free non-Muslims.

ARTICLE No. 421: Acceptance of testimony of an individual woman and of free non-Muslims is considered as valid if no other Muslim but them was with the testator during death in the time of travel to a foreign country. Both of them must be sworn in so as to verify their testimonies.

ARTICLE No. 422: The testimony of competent Muslims in the case of estate and custodianship is accepted; the testimony of free non-Muslims is accepted only in the case of estate, be it property or money.

ARTICLE No. 423: If two devious Muslims and two free non-Muslims are available, the free non-Muslims should be brought to stand. As to two anonymous Muslims, testimony is valid if they are straight and honest.

ARTICLE No. 424: The testimony of women is regarded as valid in case of money, where fourth of a testimony of a woman, half of two women, three quarter of three women, and a whole testimony of four women, are accepted. Certainty of what was said does not depend on their oaths.

ARTICLE No. 425: If the witness was only one man, his testimony is regarded as null and void.

ARTICLE No. 426: The acceptance of the testimony of a woman in the will does not stipulate the unavailability of men during her testimony.

Chapter Seven

TESTEMONY OF THE WILL ON CUSTODIANSHIP

ARTICLE No. 427: A testimony of a single woman that is related to the custodianship is not legal because what is devised in this case is not estate but domination on the disposal of that estate, be it property or money.

ARTICLE No. 428: If the devised is the custodianship, it is not lawful in the presence of one person who acts as a witness and oath in the same time; this is valid only in the case of estate, be it property or money.

ARTICLE No. 429: The testimony of a guardian is regarded as valid in terms of what was bequeathed under his or her guardianship to the orphan whom he raised and educated, even if the said testimony does not come in terms with the orphan's interests but was not rebutted by other witnesses.

ARTICLE No. 430: If the devisee was a guardian of the extraction of an estate and testified to the deceased on the third extracted from that estate, his or her testimony is regarded as lawful.

ARTICLE No. 431: The testimony of the devisee is not valid if he or she had testified on something that resulted in selfish benefit for oneself.

ARTICLE No. 432: The testimony of the devisee is not regarded as valid if the subject of testimony is beyond what is

considered under his or her guardianship, like if he or she was a guardian on the estate that yields proceeds used to provide for his or her children, and he or she testified their entitlement to a debt, or he or she was a guardian on the distribution of an estate, and thereby testified other due estates to the heirs and so on.

Chapter Eight
THE DEVISEE (ALMUOSA ELAIH)

ARTICLE No. 433: If the testator made a bequest to his or her children, brothers, sisters, uncles, aunts, and specified the settlement of payment of the same to everyone or not the same to all, he or she should proceed with that; otherwise he should act according to Quran by distributing the estate among them based on the amount of the share of will of each of them.

ARTICLE No. 434: : If testator made a bequest to his or her relatives, family, clan, folk, neighbors, and so forth, be them heirs or not, the will must be executed based on the customary meaning of the word "Relative" without the consideration of the legal aspects associated with this word.

ARTICLE No. 435: The word "Close Relative" indicates the relationship beginning from the lowest to the one who precedes him or her, and so on to the highest grandfather or grandmother in Islam and their offspring, and everyone is regarded as relative, except relatives from disbelievers.

ARTICLE No. 436: Relatives include male and female, poor and rich, heirs and non-heirs, near and far, and there is no difference in saying; "I devised to my relatives or to my relatives on the maternal side", because everyone of relatives is referred to the same meaning.

ARTICLE No. 437: If the testator devised to his or her household, this should include parents, children, grandfathers,

uncles, and their male and female children and grandchildren, and all known relatives.

ARTICLE No. 438: The will is regarded as stable and thus valid for the fetus that exists in its time, even if he or she is not born alive. Hence, if the fetus is born dead, the will is considered as void, even if he or she was alive in the time of will. The will is also considered as lawful if the fetus is born alive, even if this was not true in time of will. The stability of will is established when it is regarded as valid after the testator's death. The added value that was developed between birth and death of testator is included within the real estate.

ARTICLE No. 439: If the will is stabilized with the birth alive of the fetus, it is not defamed if the fetus died after that but is conveyed to his or her heirs according to the ranks of legacy.

ARTICLE No. 440: If the devisee died prior to the testator who did not withdraw his or her will, the will is transferred to the heirs of the devisee.

ARTICLE No. 441: The will is transferred to the heir upon the death of the devisee, whether or not the testator is alive, unless he or she retreats.

ARTICLE No. 442: If the testator devised to his or her closest relatives, the will is bequeathed to heir according to his or her rank, not entitlement, hence the male and female heirs, the close relative in terms of the parents or the mother, are equal even if they are brothers. Consideration of ranks means that the will should be handed over to the first, second rank, etc.

ARTICLE No. 443: If the testator instructed that the third of his or her inheritance should be spent on a man, provided that the man is alive, and the man then died before the consumption of the said third, the remainder of the third is given back to the heirs of the testator and not consumed in a sense that restricts it to the testator and his or her subsequent heirs.

Chapter Nine

CONDITIONS APPLIED TO THE DEVISEE (ALWASY)

ARTICLE No. 444: The devisee *(AlWasy)* should be:

1- Available in the time of will.

2- Perfect in terms of adulthood and sanity.

3- Non-devious and not revealing the commitment of sins.

4- Muslim, if the testator is Muslim.

5- Guided rightly to do what he or she was devised.

Chapter Ten

SINGLE DEVISEE AND MORE THAN ONE DEVISEE

ARTICLE No. 445: The devisee can be one or more than one individual. The following articles are conditions applied to both types of devisees.

SECTION ONE: The Single (Individual) Devisee

ARTICLE No. 446: If the testator devised his or her will to a deceased person, to one who was not born, and to one whose existence is a matter of probability but who appeared to be dead in time of will, the will is regarded as null and void.

ARTICLE No. 447: If the devisee became insane, the testator's will is considered as null and void.

ARTICLE No. 448: The devisee must not be necessarily male; the will can be devised to a man or a woman, whether she is a wife or a prohibited woman or anyone else, provided that she is qualified to be a devisee.

ARTICLE No. 449: If the dead testator instructed to dispose of his or her third in a certain way, the devisee does not deserve the right to halt it or to consume it in a way different from what the testator initially devised.

ARTICLE No. 450: The devisee is honest; he or she does not guarantee the estates subjected to his or her guardianship unless in case of squander or trespass on property. The breach or not of conditions of will should set the criterion for the trespassing.

ARTICLE No. 451: The devisee should guarantee what is resulted from his or her squander or trespass while keeping guardianship. Squander and trespassing, however, do not necessitate dismiss of the devisee.

ARTICLE No. 452: The will is regarded as void if the devisee is totally disabled and thus cannot execute it, even if the disability took place after the testator's death.

ARTICLE No. 453: The will is considered as valid for the heir, non-relative, and non-heir from relatives.

ARTICLE No. 454: The will is initially considered as valid for the sick, not totally disabled, and the totally disabled person.

ARTICLE No. 455: The testator deserves the right to permit the devisee to devise to others after his or her death and is not entitled to prevent the devisee from doing so.

ARTICLE No. 456: If the testator released the will but had not named a devisee after one's death and had not permitted anyone to name a devisee, the case then is referred to the legal judge to consider and make decision.

ARTICLE No. 457: If no one confronted the said actions, they suffice to be obligatory for all Muslims.

ARTICLE No. 458: If the testator instructed that a non-relative should assume the guardianship of his or her child's

property while he or she has father, i.e., grandfather of the child, the will is regarded as null and void because the guardianship of grandfather is initially enforced by Islamic Law.

ARTICLE No. 459: Conditions of validity of will, such as perfectionism, Islamic orientation, justice, etc., should be considered in the time of the testator's death; hence if the latter made a bequest to someone who is not qualified but satisfies the conditions of validity, will is regarded as valid.

ARTICLE No. 460: The devisee has the right to buy something from the testator's inheritance for himself or herself upon the necessity to sell it.

ARTICLE No. 461: If the testator devised the will to a free non-Muslim individual, the devisee has to implement the will, even if it is forbidden for him or her to execute it in the first place.

ARTICLE No. 462: The will is considered as void if it is devoted to the man who fights against Muslims, i.e., to the man who is a disbeliever or who does not comply with the conditions applied to free non-Muslims. The already devised estate or money is added to the inheritance and then distributed among the potential heirs.

SECTION TWO: More Than One Devisee

ARTICLE No. 463:

a- The testator deserves the right to devise the guardianship of his or her will to two devisees or more.

b- More than one devisee exists in the following forms:

First form: Every devisee is a minor.

Second form: Every devisee is an adult.

Third form: Devisees include both minors and adults.

ARTICLE No. 464: If the will is bequeathed to two devisees:

a- If the testator stipulated or not that the two devisees should mutually agree, no one of them deserves the right to dispose of the will on his or her own, because the testator is not satisfied of any individual opinion, and their guardianship, as a whole, is established only in this way.

b- If the testator stipulated that each guardian should act independently in accordance with the will, they deserve the right then to split the estate and dispose of it, each in his or her way; this split, however, is not real as each one is entitled to dispose of the other's share being a guardian on the total sum, and there is no damage in splitting it in an equal manner or not.

ARTICLE No. 465: The will bequeathed to a minor kid is regarded as void unless it is shared by an adult. The kid is not entitled to dispose of the will or be a partner with another devisee before the adulthood.

ARTICLE No. 466: The adult devisee deserves the right to dispose of the will as far as the child is not an adult.

ARTICLE No. 467: If the minor kid died or became an insane adult, the devisee deserves the right to dispose of the will on his or her own. The legal judge, however, does not deserve the right to interfere in this matter because the independent devisee in this case is readily available.

ARTICLE No. 468: The previous article is true for insane and foolish.

Chapter Eleven

DEEDS WHICH THE SICK PERSON WANTS TO BE EXECUTED URGENTLY BEFORE HIS OR HER DEATH

ARTICLE No. 469: The urgent deeds of the sick while alive, whether it is donation, like favorable compensation of discounted sale and purchase with a higher price, like gift, charity, mortmain, liberation from bondage, and the like, where estate is voluntarily wasted with no compensation, are all regarded as valid, in health and sickness, whether the devised is above the third or not.

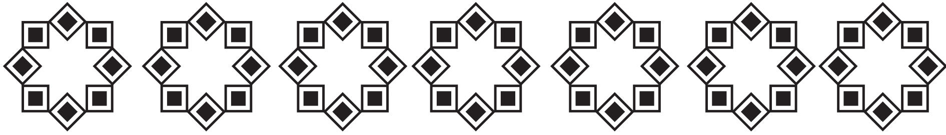
ARTICLE No. 470: If the sick recovered from sickness, during which he or she donated or after which he or she died, his or her deed is regarded as lawful and hence it should be extracted from the original assets.

ARTICLE No. 471: The deed of the sick person must be executed from the original assets absolutely, be it prior to his or her sickness or after it.

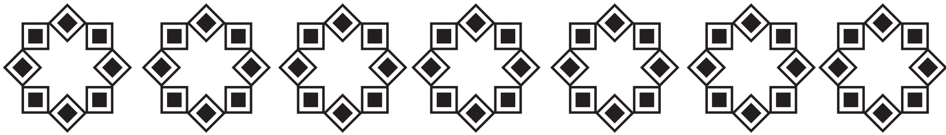
ARTICLE No. 472: If testator failed to declare the will due to a sickness or disability that prevented its declaration in verbal, the will is regarded as valid by pointing on the target without uttering a word or by writing with uttering or by referring to the context that explains the real meaning of the will.

ARTICLE No. 473: It is preferred to execute the will after recovery from the sickness during which it was devised.

ARTICLE No. 474: If the testator did not have any heirs who belong to the three above listed categories of legacy, he or she is entitled to transfer all estate to who he or she wills. The will may cover all affairs concerning Muslims, poor, miserable people and tramps and should be conveyed to the devisee upon the death of testator.



THE INHERITANCE (MEERATH) BOOK



- **Chapter One** **GENERAL RULES**
- **Chapter Two** **OBLIGATIONS OF INHERITANCE**
- **Chapter Three** **IMPEDIMENTS AND EXCLUSION FROM INHERITANCE**
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- **Chapter Seven** **RULES OF CLASSES OF LEGACY**
- **Chapter Eight** **APPENDICIES**

Chapter One
GENERAL RULES

ARTICLE No. 475: If the person dies, the property of what he or she possessed before death and the added value incurred from that property is transferred to whom he or she is related with a relationship or reason, as it is mentioned in the articles hereunder.

ARTICLE No. 476: The one whom GOD (ALLAH) decreed his or her entitlement of the deceased's inheritance should be bequeathed, and the one whom GOD (ALLAH) did not decree his or her of that inheritance should be deprived.

ARTICLE No. 477: All the following is deducted from the inheritance before it is distributed on the heirs:

1- The amount needed to make the deceased ready for burial.

2- The outstanding debts due by the deceased.

3- The financial will that does not exceed the third of inheritance.

4- The legal rights and obligations which the deceased had owed and did not settle before death, such as Zakat, Khums, prayer, and pilgrimage.

Chapter Two
OBLIGATIONS OF INHERITANCE

ARTICLE No. 478: There are two kinds of obligations and requirements:

Relationship and cause, each one of them has ranks and classes that are different in terms of proximity and farness, as close ranks of relationship move aside the far ones.

Relationship: relation to birth, either by someone ending to someone or by both ending to someone else, as established by Islamic Law.

Cause: Relationship to deceased that is not established by birth.

Chapter Three

IMPEDIMENTS AND EXCLUSION FROM INHERITANCE

SECTION ONE: IMPEDIMENTS OF INHERITANCE

ARTICLE No. 479: The most important impediments of inheritance are unbelief, killing, adultery, oath of condemnation, and slavery.

ARTICLE No. 480: A non-Muslim does not inherit a Muslim, even if he or she enjoys protection from Muslim state, unless one embraces Islam.

ARTICLE No. 481: The killer is not entitled to inherit the blood money of the killed, be his or her crime a murder or manslaughter.

ARTICLE No. 482: The adulterers are not entitled to inherit the natural child, boy or girl, procreated by them through adultery. The said child is also not entitled to inherit them.

ARTICLE No. 483: The oath of mutual cursing ends the family relation of the child to father and the succession between them so that any of them is not entitled to inherit the other one.

SECTION TWO: SCREEN OF INHERITANCE

ARTICLE No. 484: Screen of inheritance is prohibition from legacy, be it totally or partially. The first form is labeled screen of deprivation while the second form is called screen of deficiency.

ARTICLE No. 485: The screen of deprivation is a total screen where the existence of anyone in a preceding rank deters the ones in a late rank.

ARTICLE No. 486: The screen of deficiency is deprivation from a part of inheritance, which may take place in two forms:

a- In the case of child, boy or girl, spouses are screened from the share of the wife, starting from the first to the next wife in order. Parents are also screened from what exceeds the two-sixth of the total inheritance.

b- Stepbrothers by mother are screened from the third to the sixth of the total inheritance.

Chapter Four
CLASSES OF INHERITANCE

SECTION ONE: RANKS OF FAMILY RELATION

ARTICLE No. 487: Ranks of family relationship are three:

First rank: Parents and children and downward.

Second rank: Brothers and downward, and grandfathers and upward.

Third rank: Uncles, paternal or maternal, including their children or not.

ARTICLE No. 488: If anyone from the first rank, such as children and downward, and parents, exists, they screen brothers and grandfathers from the second rank from inheritance. Individuals from the second rank screen the ones from the third rank, i.e., uncles by father or mother; hence the ones from the late rank are not entitled to inherit unless the ones from the preceding rank cease to exist.

ARTICLE No. 489: The ones from the same rank may also be screened from inheritance; hence the ones who are closer in the same rank screen the ones who are farer, the grandchild thereby does not inherit if the child exists, and the child of grandchild does not inherit if the grandchild exists, and the grandfather in the second rank precedes father, brother precedes his child, and the same rule is true for uncles in the third rank.

ARTICLE No. 490: Excluded from the previous article are the far ones in a certain rank and the near ones in the next rank; hence the grandchild with his or her parents is entitled to inherit in the first rank, and the father of grandfather, with brothers and their children, is entitled to inherit with the nearer grandfather in the second rank.

ARTICLE No. 491: If the ones in the preceding three ranks are missing, heirs are those whose relationship to deceased is not established by birth.

SECTION TWO: RANKS OF RELATION BY CAUSE

ARTICLE No. 492: Those who are related by cause, i.e., whose relations to deceased are not established by birth, are divided into two categories: wedlock and loyalty. Loyalty, in turn, is subdivided into three ranks:

First rank: Loyalty of disengagement.

Second rank: Loyalty of surety of guilt.

Third rank: Loyalty to Imam, in his presence and appearance, or to a jurist who represents the Imam in public in the time of occultation.

ARTICLE No. 493: The divisions of loyalty are ordered according to the ranks of family relation, so the one in a higher rank does not inherit in the presence of a one in any other rank, even the last one. By the same token, the ones in a later rank do not inherit those in the ones who precede them.

ARTICLE No. 494: The spouse, husband or wife, shares all the ranks of inheritance, whether they are formed by relation or cause.

ARTICLE No. 495: The one late in those ranks is not entitled to inherit unless the preceding one is missing, as in the case of the rank by relation.

ARTICLE No. 496: The ranks by cause are now restricted to husband and Imam (heir of one who lacks heirs). If Imam is missing, and the ones by family relations in all ranks cease to exist, heirs are the ones by cause.

Chapter Five

ESTIMATED COMPLIMENTARY PERCEPTS (SHARES) OF LEGACY

ARTICLE No. 497: A percept is defined herein as the complimentary share that GOD (ALLAH) specified in Quran; the kinship is the person whom GOD (ALLAH) generally specified a share in the Holy Quran.

ARTICLE No. 498: The shares predetermined by Islamic Law that should be used as a guide in the division of the inheritance are six, as follows:

1- Half a share for three categories of legal heirs:

   a- The husband whose wife passed away, but she did not have children or grandchildren from him.

   b- The single daughter whose father passed away and she had no brothers or sisters.

   c- The stepsister related by parents or father, whose brother died while his parents were dead in the time of his death, and he had no children.

2- Fourth of a share for two categories of legal heirs:

   a- The husband whose wife passed away and had children.

   b- The wife, be it one or more, with a husband who passed away and had no children from her or from other wives.

3- The price is dedicated for wife, be it one or more, if her husband died and he had had children from her or from other wives.

4- Third of a share for two categories of legal heirs:

   a- The mother, if her child who died had had no brothers or children.

   b- The stepbrothers by mother, if their brother died and had had no father or children.

5- Two third of a share for two categories of legal heirs:

   a- The girls, if their father died without having boys.

   b- The sisters, if their stepbrother died without having family relatives by parents.

6- Sixth of a share for three categories of legal heirs:

   a- The father, if his son died but his or her mother and children alive.

   b- The mother, if her son died and had had children.

   c- The stepbrother and stepsister by mother, where each one of them is entitled for the sixth, and the brothers.

Chapter Six

INCREASE AND DECREASE OF PERCEPTS OF INHERITANCE

ARTICLE No. 499: If all above listed individuals included in categories of heirs are available, the decrease is true for legal heirs with one share, such as step girl(s), step sister(s) by father or parents, and the like. Any interference between the classes of inheritance is considered as invalid.

ARTICLE No. 500: If someone with one share is alone, he or she is the heir of the share, and the remaining percepts are devoted to him or her by relation or wedlock, as the shareholder is not entitled to inherit more than one with no shares, as relation by family does not suffice for entitlement.

ARTICLE No. 501: The one who believes in the twelve Imams of Shiah is not entitled to inherit a fellow to whom he is related by family or by intervening with other classes of legacy. The twelver is entitled, however, to inherit someone who belongs to other Islamic sects or beliefs.

ARTICLE No. 502: Muslims are entitled to inherit from each other, even if they differ in orientation of belief, unless this act necessitates belonging to defectors, fanatics, and disbelievers of Islam.

Chapter Seven
RULES OF CLASSES OF LEGACY

FIRST CLASS

ARTICLE No. 503: Closer one to the classes of inheritance displaces the farer one so that the latter is not entitled to inherit before the cessation of the ones in the preceding classes.

ARTICLE No. 504: Mother is entitled to inherit sixth or third of legacy while the rest belongs to the father who do not have children.

ARTICLE No. 505: Children of one mother and more than one father equally split third or fourth of inheritance between males and females.

ARTICLE No. 506: If a child is alone in his or her class, all inheritance is devised to him or her.

ARTICLE No. 507: Grandchildren act as representatives of their parents if the latter do not exist at all in the first class, and every one of them owns a share that belongs to the one to whom he or she is closely related.

ARTICLE No. 508: The one who is closely related to parents is derived from inheritance if he is close to father only and not to mother only.

SECOND CLASS

ARTICLE No. 509: The male child inherits a share as double of share of the female child provided that they all have one mother and one father or one father and more than one mother.

ARTICLE No. 510: The nephews act as representatives of their parents if the parents do not exist at all in the second class, and every one of them owns a share that belongs to the one to whom he or she is closely related, as it is the case in the first class.

THIRD CLASS

ARTICLE No. 511: One, who is closely related to parents, and to father, is entitled to be deprived from the inheritance.

ARTICLE No. 512: A grandfather does not deprive those in first class.

ARTICLE No. 513: Brothers do not deprive the farer grandfather and a latter act as a brother with brothers while grandmother acts as a sister.

ARTICLE No. 514: Paternal uncles have the right to inherit the maternal ones in their classes where maternal uncles deserve the third, even if only one is available, and the rest of inheritance should be devised to paternal uncles by preference, even if only one of them is available.

ARTICLE No. 515: One who is closely related to paternal uncles by his or her parents, namely his or her father, is entitled to be deprived from the inheritance. The same is true for the maternal uncles.

ARTICLE No. 516: Children of paternal and maternal uncles are entitled to inherit in the absence of the said uncles, except the cousin of parents by father. In this case, uncle is deprived but the cousin inherits the shares of those who are closely related to the parents.

Chapter Eight
APPENDICIES

SECTION ONE: INHERITANCE OF SPOUSES

ARTICLE No. 517: If the spouses are related with a permanent contract, they share all the said classes of relation; hence they only have the right to inherit, along with children and downward, and parents

ARTICLE No. 518: If all the classes of relation and the ones from first and second classes of cause are missing, and only husband, Imam or his general or special disposer of affairs exist, husband inherits all estate and thus deprives Imam from legacy.

ARTICLE No. 519: If wife and Imam only exist, the wife is not entitled to inherit all estate, as stated in the previous article, unless Imam permits her to have all of it and to dispose of it as she wills.

ARTICLE No. 520: If husband died after divorcing his wife irrevocably, she does not inherit him, but if the divorce was revocable and her period of waiting elapsed, she is entitled to inherit him.

ARTICLE No. 521: If husband divorced his wife and died after that due to sickness, wife deserves the right to inherit him, except in these cases:

1- If the husband died following the period that elapsed

after divorce and exceeded one lunar year.

2- If husband recovered from his sickness in the time of divorce, then he died a natural death or for another reason.

3- If the wife married another man after her period of waiting, even if a year did not elapse, or the husband did not recover from sickness during which he divorced her.

ARTICLE No. 522: The wife who was divorced revocably is entitled to inherit if her husband died during her period of waiting, being a real wife. The wife who was divorced irrevocably does not have the right to inherit even if her divorce was with a period of waiting, like divorce upon wife's request or upon agreement, or if her divorce was effective without a period of waiting, like the case of the young girl who is less than nine years old or menopausal woman or who did not have sexual intercourse.

ARTICLE No. 523: The wife who had temporary marriage contract does not inherit unless the legacy was explicitly stated in the contract.

ARTICLE No. 524: The wife namely inherits from her husband's money but some of his inheritance, such as a land, is not handed over to her and is compensated for buildings, and for what is movable or transferrable.

SECTION TWO: LEGACY OF HERMAPHRODITE

ARTICLE No. 525: If hermaphrodite or female inherits alone, each of them is entitled to be the owner of all inheritance.

ARTICLE No. 526: The inheritance of the ambiguous hermaphrodite, who cannot be identified as male or female, is based on the vagina form which he urines. If he has two testicles and a penis as that of men, with a hole next to them, and his urine comes from the penis, he is entitled to have the share of male. If his urine comes from the hole, he deserves the share of female. If he urines from both, the organ where urine comes first is more probable. If it comes from both of them simultaneously, the one where the urine finishes last is the likelier. If the urine finishes in both of them simultaneously, the target organ then will be the one from which he personally feels that the urine comes first.

ARTICLE No. 527: The ambiguous hermaphrodite can also be identified through sexual maturity, menstruation, and breast. If these are mixed up, ribs should be counted; if they are equal, she is female, if not, he is male. If these signs are hidden, the hermaphrodite inherits half the share of male plus half the share of female.

ARTICLE No. 528: The legacy of the ambiguous hermaphrodite who lacks vagina, but has a hole from which he urines, is determined by lot between male and female inheritance.

SECTION THREE: INHERITANCE OF THE MISSING PERSON

ARTICLE No. 529: Inheritance of the missing person without a trace should not be distributed on heirs upon his or her disappearance but should be executed after consideration of the cases listed hereunder.

ARTICLE No. 530: There are two cases related to the missing person:

1- If the person was missing in events where survival is not probable at all, such as plane crash, ship drowning, train fire, etc., where nobody was found alive, and where he would have been found if he had been alive, the spouse splits the inheritance after the waiting period of death elapses.

2- If the person was missing after travelling to an unknown destination and his or her news ceased to flow, the spouse awaits four years during which he or she refers the case to the legal prosecution, and then the legal judge is entitled to divorce him or her, and the legacy is thereby spitted among the heirs after the waiting period of death elapses.

SECTION FOUR: INHERITANCE OF DROWNED AND WRECKED

ARTICLE No. 531: If the heir and the inherited are

identified as dead, and the order of death is questioned, none of them should be entitled for inheritance unless in the case of the drowned and the wrecked.

ARTICLE No. 532: Inheritance in the case of drowned and the wrecked should satisfy the following conditions:

a- An estate that belongs to any or both of them is available.

b- Mix-up between the preceding and the subsequent ones in inheritance.

c- The act of inheritance should be considered as valid for both of them.

Families who have drowned in sea or considered dead in earthquakes and alike are entitled to inherit each other upon the availability of estate. If not, inheritance is not considered at all. If one of them owns an estate, his or her heir is the other one who does not have it, be the reason is relation by cause or by wedlock.

SECTION FIVE: OTHER TYPES OF INHERITANCE

ARTICLE No. 533: If spouses attached filiations of someone to them, with all conditions and impediments considered, inheritance is regarded as valid for them. Illegitimate child, however, does not inherit father or any of those individuals with whom he or she is in relation.

ARTICLE No. 534: The illegitimate child does not inherit

one's natural parent. Inheritance is valid herein between him, his wife and children.

ARTICLE No. 535: One with two heads and two bodies is left until he or she is asleep, and then awakened. If the two heads wake up in the same time, they are considered as one; if not, they are regarded as two.

ARTICLE No. 536: The fetus situated in his or her mother's stomach is not entitled to inherit the father unless born alive.

ARTICLE No. 537:

a- The man who is renegade by nature should be killed, even if repented, and his inheritance is distributed among the heirs after period of waiting by his wife. If his killing is impossible, other judgments are still held true.

b- The man who is apostate is urged for repentance and if he repented, his repentance is accepted; otherwise he is killed, and his inheritance should not be distributed before that.

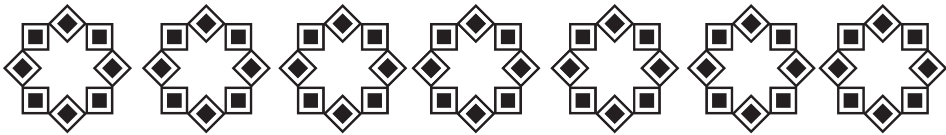
c- The woman who is apostate or renegade by nature must be imprisoned and beaten in the times of prayer until she repents or she is dead, and her inheritance is not distributed before her death.

SECTION SIX: FAVORITISM IN INHERITANCE

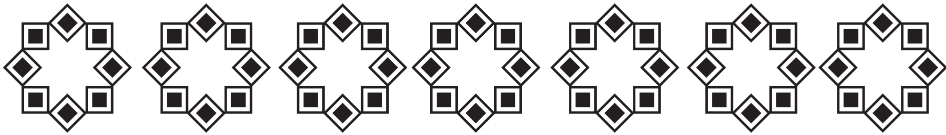
ARTICLE No. 538 The elder son of the deceased, be it

one or more, is granted favoritism, i.e., some of his father's inheritance is devoted to him for free, and is deducted from the total legacy. This includes sword, ring, clothes, books, Quran, saddle and mean of transport, be it one or more.

ARTICLE No. 539: Means of transport in the previous article includes car, ship, motorbike, motorcycle, in accordance to the country or region.



CUSTODIANSHIPS OF LEGAL JUDICIARY



- **Chapter One** — **CUSTODIANSHIP OF LEGAL JUDGE ON MINORS**
- **Chapter Two** — **CUSTODIANSHIP OF THE LEGAL JUDGE ON ONE WITH UNKNOWNFAMILY RELATIONS**
- **Chapter Three** — **CUSTODIANSHIP OF LEGAL JUDGE ON ADULT SANE GIRL**
- **Chapter Four** — **CUSTODIANSHIP OF LEGAL JUDGE ON MORTMAINS**
- **Chapter Five** — **CUSTODIANSHIP OF LEGAL JUDGE ON GUARDIANS**
- **Chapter Six** — **CUSTODIANSHIP OF LEGAL JUDGE ON DIVORCE**
- **Chapter Seven** — **CUSTODIANSHIP OF ONE WHO REFUSED TO SPEND ON WHOM HE MUST**
- **Chapter Eight** — **CUSTODIANSHIP ON THE INHERITANCE OF A PERSON WHO DOES NOT HAVE HEIRS**

Chapter One

CUSTODIANSHIP OF LEGAL JUDGE ON MINORS

ARTICLE No. 540:

a- If judge is a custodian of minors, he does not have the right to appoint a custodian of them when period of custodianship elapses, because his custodianship is restricted to the living minors; hence if the minors die, his decision is annulled. If the judge is entitled to entrust a living person as the custodian, since the custodianship is still his prerogative, which includes prohibiting the guardianship by someone else, he is thereby not entitled to make a bequest of custodianship of them, if they did not permit so; if they permit the custodianship, he or the entrusted person should be appointed as the custodian of them.

b- The legal judge is entitled to give insane or idiot, male or female, in marriage, as his guardian, if the insane has no father or grandfather. The same is true if the insanity or foolishness took place after adulthood, the guardian is alive, and the marriage is to bring benefit or to prevent evil.

Chapter Two

CUSTODIANSHIP OF THE LEGAL JUDGE ON ONE WITH UNKNOWN FAMILY RELATIONS

ARTICLE No. 541: The legal custodian of the one who does not have custodianship, such as one with unknown parents and the orphan since childhood, is the legal judge. Despite the fact that the kindergartens and refuges for orphans are nowadays available, the custodianship of orphans and ones with anonymous parents should be devoted to the legal judge who should act on behalf of their deceased parents, educate them in the right way according to Islamic Law, care for their needs and affairs, and solve their problems.

Chapter Three

CUSTODIANSHIP OF LEGAL JUDGE ON ADULT SANE GIRL

SECTION ONE: IMPEDIMENTS OF INHERITANCE

ARTICLE No. 542: If the custodian, father or grandfather, debarred his adult, virgin and sane girl from marriage to a competent betrother despite her will to marry him, she is thereby entitled to refer the case to the legal judge who is entitled to marry her to him.

Chapter Four

CUSTODIANSHIP OF LEGAL JUDGE ON MORTMAINS

ARTICLE No. 543: The custodianship is devoted to the legal judge if:

a- The creator of waqf appointed himself or herself as overseer and then died or if the one whom he or she appointed as the overseer passed away.

b- The founder created waqf but did not assign anyone as its custodian.

c- It was proved that the founder of waqf or the appointee by him or her is incapable to assume the responsibilities of custodianship.

d- An anonymous institution, to which some old real estate with a firmly established waqf is dedicated, spent its proceeds for charity purposes.

e- The overseer did not accept the supervision of waqf and in this case the legal judge or the mortmainee is thereby the supervisor of waqf.

ARTICLE No. 544: If there is a fear of the cessation of waqf as a result of dispute between the mortmainees, one should refer to the legal judge who is entitled to appoint a supervisor to dispose of its proceeds.

ARTICLE No. 545: The legal court is entitled to dismiss the disposer or custodian of waqf whom it appointed only if legal evidence proved his or her betrayal or inability to dispose of the mortmain.

Chapter Five

CUSTODIANSHIP OF LEGAL JUDGE ON GUARDIANS

ARTICLE No. 546: If the guardian showed signs of betrayal, the legal judge should dismiss him or her, prevent from disposal of waqf for the sake of children and the sources of charities, and appoint someone else.

ARTICLE No. 547: If one bequeathed in the will that someone should assume the guardianship on the execution of its content and then died, only legal judiciary is entitled to appoint another guardian to execute it.

ARTICLE No. 548: The legal court is entitled to change the initial and alternative guardians on the base of a legal evidence of their betrayal or incapability or to hire an assistant to help them, if it serves public interest.

ARTICLE No. 549: If the testator appointed two guardians and a fierce dispute that had arisen between them proved their lechery, the legal judge should discharge them and appoint someone else in their positions.

ARTICLE No. 550: If one of the guardians was inflicted with a sickness or disabled to the degree that inhibits him or her from implementing the wills, the legal judge is entitled to add a third guardian to help them out.

ARTICLE No. 551 If one guardian of two failed to attend the meeting set between them on the disposal of will due to his or her death, lechery, total disability, insanity, disappearance in far area, etc., the legal judge deserves the right to appoint someone else instead of him or her or both.

ARTICLE No. 552: If one died without devising his or her inheritance, money, and children to someone, the legal judge is entitled to consider the legacy and to assign a guardian to deal with the heirs for their interest.

ARTICLE No. 553: In the absence of legal judge, the juror of believers *(Adul Al-Mo'mineen)* is entitled to appoint oneself as one, and to perform his duties honestly and lawfully without incurring damage to the heirs.

Chapter Six

CUSTODIANSHIP OF LEGAL JUDGE ON DIVORCE

First Section: FOR THE INABILITY TO COMMITMENT TO SPENDING

ARTICLE No. 554:

a- If the present husband refused to spend on his wife, she is entitled to demand the divorce, and the judge is entitled to make husband committed to spending. If husband did not obey orders, the judge demands him to divorce. If he refused, and it was not possible to force him, the judge then deserves the right to divorce the woman without referring to the husband.

b- The judge does not deserve the right to divorce the woman if husband does not spend on her because of his detainment or forced occultation.

Second Section: FOR THE ABSUDRITY OF COMPANIONSHIP

ARTICLE No. 555:

a- The wife is entitled to demand divorce due to the damage incurred by her husband through his wear,

harmful behaviors in words and deeds, to the extent of threatening the sanity of her body and safety of her life.

b- The wife is entitled to demand divorce due to the deep emotional and psychological hatred for husband, refusal to live with him, and desire to leave him upon her request or on mutual agreement. If husband refused divorce despite the proof of the said damage, and of the hatred in which the retain and release on acceptable terms cease to exist, as GOD (ALLAH), the Exalted, said: ***"either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them]"*** [Al-Baqarah, 231], and: ***"either keep [her] in an acceptable manner or release [her] with good treatment"*** [Al-Baqarah, 229], and the Messenger of GOD (ALLAH), Prophet Muhammad (Pease Upon Him and His Progeny), said: "**There should be neither harming [darar] nor reciprocating harm [diraar]",** the legal judge deserves the right to force the husband, by threat in words or detainment in deeds, to divorce her for a certain period. If the husband refused to do that, the legal judge divorces her forcefully and lawfully, despite the will of the husband.

ARTICLE No. 556: To prove the damage, the legal evidence or what serves as the source of information should be taken into consideration.

ARTICLE No. 557: The testimony by the relative, and by ones related to who is in favor of the said testimony, is accepted since they are qualified.

ARTICLE No. 558: The divorce in the above listed cases is irrevocable, and husband should not return to divorcee, except with a new contract.

Third Section: FOR THE INTERDICTION BY THE HUSBAND HIMSELF OF INTERCOURSE WITH WIFE

ARTICLE No. 559: If the husband denied himself the intercourse with his wife by downgrading her to the relation within prohibited degree of marriage, like if he told her: "You are forbidden to me, like my mother or sister", the wife should refer the case to the legal judge who should give him a three-month grace; if he did not back down, the judge deserves the right to detain him, and to make him choose between atonement of his abjuration and return to his wife, life imprisonment, and divorcing her.

ARTICLE No. 560: If the husband swore that he denied himself the intercourse with his wife for more than four months or forever, the wife is entitled to refer the case to the legal judge who offers him a four-month grace; if he did not retreat, the judge is permitted to have him arrested, detained, and given a choice between two: either he returns to his wife or he divorces her. If he refused that, he should be sentenced by judge to life imprisonment. The judge must close in on him until he makes the choice.

Fourth Section: FOR ABSENCE OF THE HUSBAND FROM HOME AND LOSS OF HIS TRACE

ARTICLE No. 561:

a- If the husband is missing and nobody can tell if he is alive or dead, and his wife had an estate or money to spend from in his absence or someone who donated to spend on her was found, she should be patient and wait; she is not entitled to marry before she is informed about his death or her divorce.

b- If the missing husband had no estate or money and there is no one who spends on her, and she was not able to wait, she deserves the right to refer her case to the legal judge who should ask her to wait four years from that moment, and interrogate during this time about the presence of husband.

c- If the interrogation period elapsed without any news about the missing husband, the legal judge is entitled to order the guardian or legal attorney, if any, to divorce the wife. If any of them refused that, the legal judge is authorized to force him. If this act seemed impossible or if there was no guardian or legal attorney, the judge is entitled to divorce her revocably.

d- The period of waiting mentioned above is four months and ten days; if the husband came back before this period elapsed, she is regarded as his wife; if not, he is not entitled to return to her unless with a new contract.

e- All the rules concerning the period of revocable divorce are considered valid with respect to the period of waiting. During this period, the wife is entitled to receive the legal alimony; if she dies in that period, the missing husband is entitled to inherit her, if he appeared to be alive in that time; she inherits him if he appeared to be dead during her period of waiting.

Chapter Seven

CUSTODIANSHIP OF ONE WHO REFUSED TO SPEND ON WHOM HE MUST

ARTICLE No. 562: The legal judge is entitled to take all the necessary procedures to make the husband who refused to spend committed to the expenditure of money by using one of the following methods:

1- Taking a disciplinary action against him, if necessary.

2- Detaining him, if he refused that; he is also entitled to detain him for not settling his financial obligations, unless his insolvency was obvious.

3- Selling his estate, even in his absence; he makes him purchase estates within his debts and within the money that should be spent on his wife.

ARTICLE No. 563: If the spenders are more than one, and one of them refused to give or was absent, contrary to others, the legal judge should spend from the money of uncooperative or the absent what amounts to the share of each of them; the giver spends what amounts to one's own share.

ARTICLE No. 564: If the legal judge did not find money or a debtor, he should order the present one to spend some of it from his share, and some of it in a form of loan to his partner.

ARTICLE No. 565: If someone owing alimony to wife claimed inability, but obviously had had money, his case is refused. If the financial situation of the applicant of alimony is unknown, he should be asked to prove that his relative is able to spend on him.

Chapter Eight

CUSTODIANSHIP ON THE INHERITANCE OF A PERSON WHO DOES NOT HAVE HEIRS

ARTICLE No. 566: The legal judge is also the heir of the one who does not have heirs, and the disposer of the unknown estates, so anyone who is proved to be a believer in the twelve Imams of Shiites sect and died without successors, the legal judge hereby is entitled to inherit him or her. Doing this requires establishment of an account named for the Supreme Legal Court of Appeals, which is the highest legal, judicial authority, to dispose of the estate referred to it for the sake of charity and for the needy wives and husbands, if necessary in the extreme cases of poverty.

THIS BOOK WAS WRITTEN BY:

SHAIKH MOHSIN BIN HUSSAIN BIN KHALAF AL ASFOOR

DATE: MUHARRAM, 12, 1423 HIJRI.