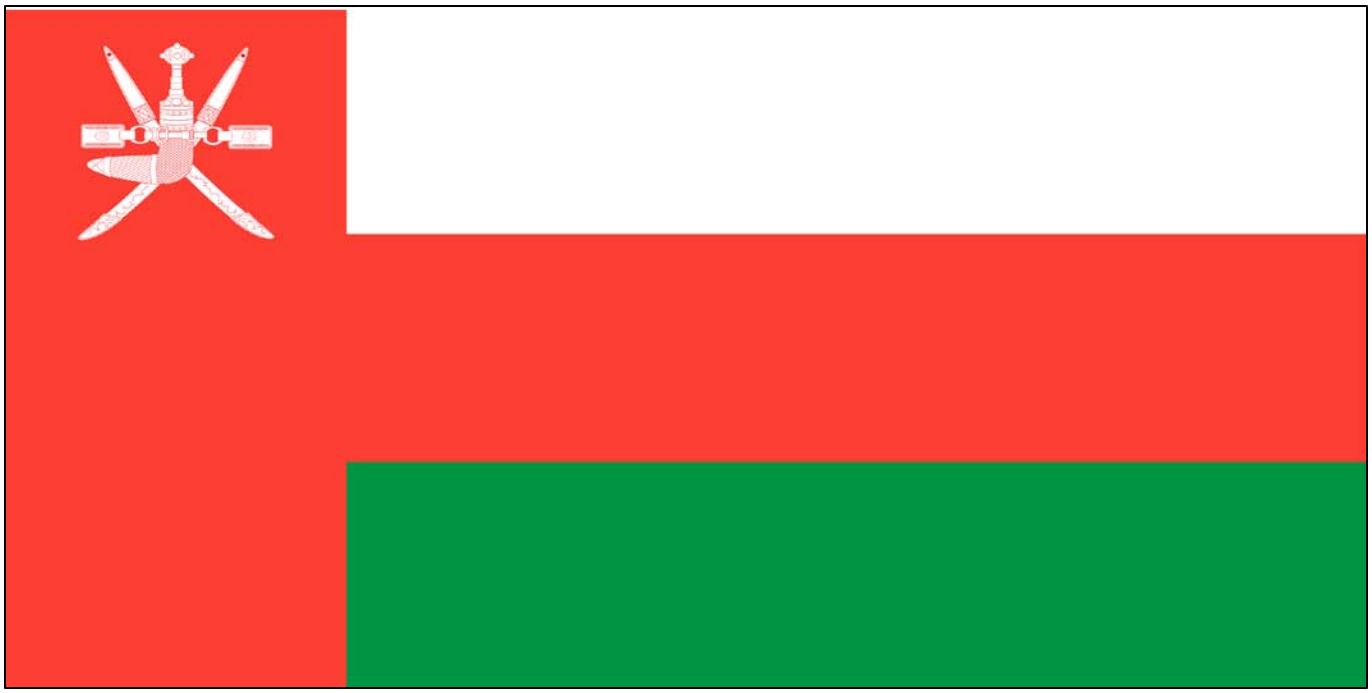
Oman personal status (family) law

Unofficial translation from Arabic



Oregon District Attorneys Association

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MUSCAT — Following is the unofficial translation of Royal Decree No. 32/97 promulgating the Personal Statute, which came into effect on 4 June 1997.

MARRIAGE

Engagement

Article 1: Engagement is defined as solicitation of marriage and promise of the same.

Article 2: A woman barred from seeking engagement, continues to be barred even if the ban is temporary. Permission for a woman completing *iddah* is possible. *(Iddah* is a legally prescribed period during which a woman may not marry after being widowed or divorced).

Article 3: (a) Any of the two parties may cancel their engagement.

(b) The party announcing the cancellation of the engagement shall return all gifts if these are still available or pay the appropriate value, unless formalities stipulate otherwise, or if the presents are of the type they are perishable.

(c) If the engagement ends because of death or reasons beyond one's control or any other reason other than marriage, the gifts need not be returned.

General Provisions:

Article 4: Marriage is a legal contract between a man and a woman, the purpose of which is integration and establishment of a stable family under the patronage of the husband, enabling both to bear the responsibilities of the family in an atmosphere of harmony and compassion.

Article 5: (a) Spouses are bound by their terms of contract, except where it amounts to *haram* or prohibits a lawful practice *(halal)*.

(b) If the contract contains a provision contrary to its purpose, this provision is void and the contract is valid.

(c) No terms of contract are valid unless specifically worded in the marriage contract.

(d) The spouse feeling aggrieved by the breach of any terms of the contract has the right to ask for a divorce.

Article 6: The marriage shall be officially documented, and it is possible to consider specific circumstances to prove the validity of a marriage by evidence or corroboration.

Article 7: Aptitude for marriage is achieved by maturity and attaining the age of 18.

Article 8: (a) Marriage involving an insane or mentally handicapped person shall not be concluded except by the sponsorship of his/her guardian and approved by a judge.

(b) The judge shall not permit the marriage of an insane or mentally handicapped person until the following conditions are fulfilled:

(i) The approval of the other party to marry the said person after being made aware of the latter's condition.

(ii) If the deficiency is not transferable to the offspring.

(iii) If the marriage would benefit the insane or mentally handicapped person.

The last two conditions shall be verified by a specialised committee.

Article 9: The judge shall not permit the marriage of a person detained for profligacy till approval is obtained from his/her legal guardian and after making sure that the dowry would be suitable to his financial situation. If the guardian refuses, the judge shall give him/her a time limit. If the guardian does not object or if his objection is not justified, the judge shall permit the marriage.

Article 10: (a) If a person aged 18 desires marriage and his guardian refuses his request, this person has the right to submit his request to the judge.

(b) The judge shall specify a period for the guardian to appear before the judge to state his/her reasons for disapproval. If the guardian does not appear before the judge or if his/her objection is not justifiable, the judge shall permit the marriage.

(c) Bearing in mind the provisions of Clause (b) of this article, a person not yet 18 years of age shall not be allowed to marry unless the permission of the judge has been obtained and after verifying that marriage would be beneficial.

Article 11: (a) The guardian in marriage is an agnate entrusted with the organisation of the inheritance, and if two guardians are equally close to the engaged person, either one shall undertake the conclusion of the marriage at his terms. It is mandatory that the responsible person shall be the one permitted by the engaged woman.

(b) It is a condition that the guardian shall be a male, mature, mentally sound individual, and one who is not *muhrim* (travelling); on *hajj* or *umra* (pilgrimage), and he shall be a Muslim if he is the guardian of a Muslim person.

Article 12: If the closest guardian happens to be away with no news of his whereabouts or if it is difficult to contact him or if he is handicapped, the powers of the legal guardian shall be transferred to the one in a qualified to be the guardian.

Article 13: The judge is the guardian of a person who has no guardian.

Article 14: The judge shall not legally arrange the marriage of a person of whom he/she is the guardian, whether this marriage is with the judge himself/herself or with one of his offspring or a relative thereof.

The Spouses:

Article 15: The spouses are any man and woman permitted to marry each other if there are no legal bars.

Article 16: Tenets of the marriage contract:

(a) Offer and consent; (b) the guardian (c) dowry; (d) the evidence.

Offer and consent:

Article 17: Bearing in mind the provisions of Article 19 of this law, marriage is concluded by the offer of one party and the consent of another, showing absolute satisfaction, with words indicating the meaning in language or in formality. In case of inability to pronounce the words, consent in writing is the alternative, or gestures that are comprehensive.

Article 18: Conditions of consent

1. Consent and offer must be in like manner.
2. Consent must be attached to the offer in the same time and place.
3. Consent and offer must take immediate effect.

The Guardian:

Article 19: The woman's guardian shall undertake to conclude her marriage with her consent.

Article 20: (a) Competence is a special right of the woman and the guardian.

(b) Competence is to be taken into account while concluding that contract. Competence is assessed in light of religion or formality.

Dowry

Article 21: Dowry is the money offered by the man with the intention of marriage.

Article 22: Anything legally valid to be taken as obligation is deemed to be dowry.

Article 23: The dowry is the woman's own property. She has the right to deal with it as she likes. No term or condition contrary to this shall be entertained.

Article 24: (a) When concluding the contract, payment of the dowry can be advanced or deferred wholly or partly.

(b) Dowry becomes an obligation with the conclusion of a valid contract and it is wholly accomplished by approaching the woman/wife, or by obtaining valid privacy with the woman (as a new wife) or by death. The deferred portion of the dowry is due in the event of death or *bainoond* (finality) unless the contract states otherwise.

Article 25: (a) The wife has the right to refuse *dukhool* (joining the husband in the matrimonial domicile) till such time that she receives payment of the dowry.

(b) If the wife accepts *dukhool* before she receives payment, the dowry becomes a debt on the part of the husband.

Article 26: If, before the contract is concluded, a man engaged to a woman pays her some money as part of the dowry and then one of the two parties changes its mind about concluding the contract or died, the money paid shall be paid back if it still exists. Otherwise its equivalent or value has to be paid.

Article 27: If the two spouses disagree about the manner in which the dowry has be paid, then it is the wife who decides before *dhukool* and the husband who decides after *dhukool*, unless there is an evidence or agreement that states otherwise.

The evidence

Article 28: For the contract to be valid, two Muslim witnesses shall be present. They must be mature, of age, and must be men who are trustworthy. They must both be able to hear the conversation of the parties concluding the contract and they must be able to understand it.

Prohibitions

Article 29: It is a condition for the conclusion of marriage that the woman shall not be barred in marriage to the man, even if the ban is temporary.

Women permanently prohibited in marriage to a man:

Article 30: Because of blood relations, a person shall not marry from the following types:

1) From one's own lineage;

2. Descendants.

3. Descendants of either parent.

4. The first row of either grandfathers or grandmothers.

Article 31: Because of affinity (relationship by marriage), a person shall not marry from:

1. Persons who had been the spouses of one of his/her descendants or lineage.

2. The lineage of his/her spouse.

3. The descendants of the spouse.

Article 32: It is also prohibited to marry the descendants born out of adultery, or the daughter who is the product of *liaan*.

Article 33: Breast-feeding partners are prohibited from being married if the breast-feeding happens in the first two years from birth.

Article 34: A man is prohibited from marrying a woman against whom he has sworn condemnation of adultery (known in Islamic law as *liaan*).

A man is barred from marrying the following women on a temporary basis:

Article 35: (1) Even in *iddah*, a husband is barred from joining two women as wives where, if the assumption was made that one of them were a man, he would not be allowed to marry the other.

2. More than four wives, even if one of them is on *iddah*.

3. Another man's wife.

4. A woman completing the period of *iddah*.

5. A woman divorced three times by the same man. He cannot re-marry her until she has completed the *iddah* period after being married to another man who has actually approached her on grounds of legitimate marriage.

6. A woman who is travelling on *hajj* or *umra*.

7. A non-Muslim woman, if she is not *kitabiya* (an adherent of a revealed religion).

8. A Muslim woman marrying a non-Muslim.

Rights of the two spouses:

Article 36: Mutual rights and duties:

1. For each other's mutual gratification.

2. Fortifying each other and maintaining his/her confidentiality and privacy.

3. Sharia-based cohabitation.

4. Maintaining good company, exchanging respect and affection and safeguarding the good of the family.

5. Taking care of children and ensuring their proper upbringing.

6. Respecting each other's parents and their close relatives.

Article 37: The rights of a wife that are the husband's duties:

1. Receiving *nafaqa* (being provided a livelihood, or adequate support).

2. To be permitted to visit her parents and her close relatives (who are defined as *mahram*).

3. To retain her family's name.

4. The husband has no right to her private money. She is free to deal with it as she likes.

5. The husband cannot harm her financially (or materially) or morally.

6. The husband has to ensure a sense of equity and fairness between her and the other wives (if any).

Article 38: The rights of a husband (the wife's duties):

1. To receive the attention and obedience of the wife, as the parent of the family.

2. To be responsible for the home.

3. To look after his children from that wife.

Types of Marriage:

Article 39: Marriage is either valid or not valid. Invalid marriages include annulled ones.

Article 40: (a) A valid marriage is one whose basic tenets and conditions are fulfilled and where are prohibitory conditions are made void.

(b) A valid marriage takes effect as soon as its contract is concluded.

Article 41: A defective marriage is one whose basic pillars or elements thereof are invalidated.

(b) A defective marriage does not take any effect before *dhukool*.

Article 42: Once dukhool takes place, defective marriage shall observe the following:

(a) Acceptance of the least of the two, the nominated dowry and a dowry offered to a similar woman.

(b) Blood relations and prohibition of marriage because of existing marital ties.

(c) *Iddah*

(d) *Nafaqa* as long as the woman ignores the invalidity of the marriage contract.

Article 43: The consequences of marriage:

Nafaqa: General Provisions:

Article 44: *Nafaqa* (maintenance) covers the provision of food, clothing, shelter, medical care, and everything that supports human life according to convention.

Article 45: When estimating *nafaqa* the financial situation of the one on whom it is imposed and his economic circumstances should be taken into account.

Article 46: (a) It is possible to increase or decrease the *nafaqa* (maintenance/support for one's livelihood) according to changes in the circumstances of the one on whom it is imposed.

(b) No claim for increase or decrease shall be entertained before

the lapse of one year since the imposition of *nafaqa* (maintenance), barring in exceptional cases.

(c) The increase or decrease of *nafaqa* (maintenance) is calculated from the date the claim is made.

Article 47: Providing continuous *nafaqa* (maintenance) takes priority over all other debts.

Article 48: A destitute person shall be supported by any one of his relatives, otherwise Bait al Mal (Money Chamber) or any organisation set up for the same cause shall play this role.

A wife's *nafaqa* (livelihood):

Article 49: It is the duty of the husband as soon as a valid contract is concluded to ensure his wife's *nafaqa* even if she might be rich.

Article 50: The wife shall not be entitled to more than one year's *nafaqa* from the time judicial claim is filed, unless the two spouses agree otherwise.

Article 51: The judge has the right, according to the request of the wife, to prescribe a temporary *nafaqa* on her behalf, and his decision shall be promptly executed by the force of the law.

Article 52: The husband shall pay the *nafaqa* of a woman under his *iddah*, unless otherwise agreed.

Article 53: A woman completing *iddah* after the death of her husband shall not be entitled for *nafaqa*, but she deserves to stay in the matrimonial domicile during the period of *iddah*.

Article 54: The wife is not entitled to *nafaqa* in the following cases:

1. If she prevents her husband from approaching her or refuses to move to the matrimonial domicile without a valid, sharia-based reason.

2. If she leaves the matrimonial domicile without a valid sharia-based reason.

3. If she prevents the husband from entering the matrimonial domicile without a valid reason.

4. If she refrains from travelling with her husband without a valid reason.

Atricle 55: Commitment to pay the *nafaqa* ceases with;

1. Payment. 2. Release. 3. The death of either spouse.

Article 56: The spouse shall provide for his wife a decent home.

Article 57: The wife shall live with her husband in the domicile he provides for her. She shall move from it when he does the same, unless she cites a condition in the contract to the contrary, or he means to harm her by making her move from the domicile.

Article 58: (a) The husband has the right to make his parents and his other children from another wife live with his wife in the matrimonial domicile, as long as he is supposed to support them, provided that she would not be harmed by such actions.

(b) The wife has no right to provide shelter in the matrimonial domicile for her children of another man, except where they have no guardian other than her or that they will come to harm if they live away from her, or if her husband has accepted their presence in his domicile, and he has the right to change his mind if their presence is detrimental.

Article 59: The husband shall not bring a second wife to live in the same domicile with his wife unless she agrees, and she has the right to change her mind if she deems the second wife's presence detrimental to her interests.

***Nafaqa* of consanguinity:**

Article 60: (a) The *nafaqa* of a small child is imposed on his father till such time that the female child gets married and the male one is able to earn his own livelihood, except where he is a pupil who is progressing well in his studies.

(b) The grown-up child's *nafaqa*, who is unable to earn his living because of a disability or other factor, is imposed on the father if this child has no money to spend for his own living.

(c) The female's *nafaqa* is imposed on her father or those concerned if she is divorced or has lost her husband, except where she has enough money.

(d) If the child's money is insufficient for his livelihood, the father is obliged to pay the differential according to his circumstances.

Article 61: The father is obliged to bear the costs of his child's breast-feeding if the mother is unable to breast-feed him/her. This is deemed a type of *nafaqa*

Article 62: In case there is no guardian who is capable of bearing *nafaqa*, the child's *nafaqa* is imposed on a rich mother if the child happens to lose his/her father and if he/she has no money.

Article 63: (a) A rich child, male or female, young or old, shall provide *nafaqa* for his parents if they have no money to spend for their livelihood.

(b) If the parent's money does not suffice, the rich children shall provide the rest.

Article 64: (a) The *nafaqa* of the parents is to be divided between the children according to the financial status of each.

(b) If any of the children voluntarily spends *nafaqa* on his parents, he shall not claim the same from his brothers or sisters.

(c) If spending *nafaqa* stems from a judicial decision, he may claim proportional reimbursement from them according to the judgment.

Article 65: If a child's earnings are no more than what he and the family (wife and children) need, he is made to add his parents, if entitled to *nafaqa*, to his family.

Article 66: *Nafaqa* is imposed on those who inherit the status of the provider of *nafaqa* according to one's financial status, the strength of their relationship and their shares of the inheritance.

Article 67: If those entitled to *nafaqa* are a group of people and that the one(s) obliged to provide *nafaqa* is unable to provide for all of them, priority is given to the *nafaqa* of the wife, children, parents, and relatives, in that order.

Article 68: Sanguinity *nafaqa* is imposed with effect from the date of the judicial claim. The judge may take a decision compelling the father to pay *nafaqa* for a period prior to the date of judicial claim not exceeding six months.

Nafaqa of a parentless child (whose parents are unknown):

Article 69: The *nafaqa* of a parentless child whose parents are unknown is to be taken from its money, if any. If the child has no money and no one donates to pay his *nafaqa*, its *nafaqa* shall be borne by the Bait al Mal (money chamber) or any alternative organisation.

Affinity:

Article 70: Affinity is proven by the marriage relationship or by admitting the same or by evidence.

Article 71: (a) A child is deemed to be a product of marriage if the period following the valid marriage contract is less than the period of conception and it was not proven that the two spouses may not have had intercourse.

(b) The newborn's affinity is proven in the defective contract if born within a time less than the period of conception from the date of the sexual act. The same applies to doubtful sexual intercourse.

Article 72: The minimum period of conception is six months and the maximum is one year.

Article 73: Admitting fatherhood/motherhood, even on the death bed, proves affinity under the following conditions:

1. That the child referred to is of unknown affinity.

2. The person making the admission is an adult and mentally sound.

3. The age difference justifies the allegation of admitting affinity.

4. That the person for whom affinity is admitted, when he or she attains adulthood and maturity, shall believe the person admitting the relationship.

Article 74: If the person making the admission is a married woman or one passing *iddah*, the child's affinity if not to be proven to her husband unless he believes her or in case evidence furnished.

Article 75: A person admitting to being a father or mother is to be deemed so if the person to whom affinity is referred believes or if evidence is shown where the age difference justifies the allegation.

Article 76: Admitting affinity other than fatherhood and motherhood shall not have validity unless the person to whom it is attributed believes it or unless evidence is shown.

Article 77: The claim of the heirs to deny the affinity after a valid admission is made shall not be entertained.

Denying affinity by Oath of Condemnation:

Article 78: *Liaan* or Oath of Condemnation (sworn allegation of adultery committed by either husband or wife) is the act of the man swearing four times that he is truthful in condemning his wife for adultery and the fifth time that God's curse be upon him if he is a liar. Likewise the woman swears four times that he is a liar and the fifth time that God's anger be upon her if he speaks the truth.

Article 79: (a) A man can deny a child's affinity by *liaan* within one month from the child's date of birth or knowledge of the same, provided he has not admitted fatherhood of the child. The claim for *liaan* is submitted within two months from that date.

(b) *Liaan* results in refuting the child's affinity to the man. The child's affinity is to be deemed proper, even after judgment refuting the same, if the man does not believe it himself.

Separation of husband and wife:

Article 80: Separation of husband and wife occurs in the following cases:

1 *Talaq* (Divorce)

2 *Khull'a* (divorce at the instance of a wife who must pay compensation.

3 By the judgment of the court deciding *talaq* or *faskh* (abolition)

4 Death

Article 81: (a) *Talaq* (divorce) is the dissolution of the marriage contract according to the stipulated procedure.

2. *Talaq* is made orally or in writing or, in case of inability to do either, by a comprehensible gesture.

Article 82: *Talaq* is made by the husband or a person he grants a special authorisation. *Talaq* is also made by the wife if the husband has made her responsible for herself.

Article 83: (a) It is a condition that the person making the divorce shall be mentally sound and one who does it of his own free will.

(b) *Talaq* is deemed invalid where it is made by an insane or mentally handicapped person, or under duress, or in a state of drunkenness, anger or otherwise where he is not in a coherent state of mind. A husband's account is taken into account with regard to his state of coherence at the material time.

Article 84: *Talaq* cannot be imposed on a wife unless she is under a proper marriage contract that she is not passing the period of *iddah*.

Article 85: Suspended divorce is deemed to the execution of an act or renunciation of the same.

Article 86: a) *Talaq* does not occur in the event of breaking one's oath.

b) *Talaq* connected with a number in speech or writing or gesture occurs as only one instance of *talaq*.

Article 87: *Talaq* is two types: revocable and irrevocable. 1) Revocable *(raj'ee)* *talaq* does not terminate the marriage contract, except at the end of the period of *iddah*.

2) Irrevocable *(ba'in) talaq* terminates the marriage contract the moment it (*talaq*) occurs. There are two types of this *ba'in talaq:* (a) Junior, after which the divorced wife would not be *halal* for the husband till such time that a new contract and a new dowry are made. (b) Major, after which the divorced wife would not be *halal* for a husband till such a time that her *iddah* from another husband ends, bearing in mind that the second husband shall have married her in the proper sense of the word.

Article 88: Every *talaq* is deemed revocable, except the one completing three, and the one occurring before husband and wife perform *dukhool* and the one on *badal*, (mutual consent) and the one that a provision has been made to prove its finality.

Article 89: a) Divorce taking place outside the court is proven by evidence or admission thereof.

b) Divorce occurs if the husband states so before the judge.

c) Before the statement of *talaq*, the judge must try to reconcile the two parties.

Article 90: The judge concerned, after the occurrence of *talaq* and on the request of those concerned, shall issue an order to specify the *nafaqa* of the woman during her *iddah*, and the *nafaqa* of the children, as well as the right to undertake nursing of children and the one that has the right to visit them. This latter part is backed by the force of law. The party objecting to this may appeal.

Article 91: The divorced woman deserves compensation (*mut'aa*) according to the financial capacity of the husband.

Article 92: The husband may seek the return of a wife he has divorced on a revocable basis as long as she is under *iddah*.

Article 93: a) Return of a wife after *talaq* occurs orally or in writing or when either are impossible, by some comprehensible gesture, bearing in mind the provisions of Article 28 of this law.

b) The act of seeking the wife's return shall be documented and announced to the wife immediately.

Article 94: (a) The two spouses can agree to end the marriage contract on the basis of *khull'a*, which is divorce at the instance of the wife, who must pay compensation.

(b) *Khull'a* imposes compensation on the wife.

(c) *Khull'a* is deemed as irrevocable divorce.

Article 95: *Khull'a* can take place only if the wife has the ability to pay compensation and the husband the aptitude to perform divorce.

Article 96: If the alternative for *khull'a* is abandonment of the nursing of children or any of their rights, this term remains invalid and *khull'a* becomes divorce.

Article 97: If the alternative is named in the event of *khull'a*, the named part takes effect. If no alternative is mentioned in the *khull'a*, the terms of talaq are implemented.

Divorce for ailments:

Article 98: a) Either of the two

spouses may ask for *talaq* because of a serious deficiency in the other spouse that makes it difficult to continue with matrimonial life, and which is not curable or if the cure is possible after more than one year. An ailment might be mental or physical and it might have occurred before or after the marriage contract.

b) If the ailment is curable before the end of one year, the court shall grant the person with the ailment a year before the *talaq*.

Article 99: Experts should be consulted to determine the nature of an ailment.

Divorce for non-payment of dowry:

Article 100: a) A judgment is passed for divorcing a wife who has not undergone *dukhool*, if the husband concerned, who has not paid the dowry, fall in the following two categories.

1. If the husband does not have a tangible amount of money from which dowry can be taken.

2. If the husband is clearly destitute or if his status is unknown by the time the period specified for payment of dowry has elapsed.

b). No judgment shall be passed for allowing the divorcing of a wife after the instance of *dukhool* because of non-payment of dowry. The dowry then becomes a debt on the part of the husband.

Divorce for suffering or serious disagreement:

Article 101: a) The two spouses may ask for divorce where the suffering makes it impossible to continue living a normal matrimonial life.

b) The judge shall make every possible effort to reconcile the two parties.

c) If the judge fails to reconcile the parties, and in the event that harm has been proven, the judge shall pass judgment for divorce, bearing in mind the provisions of Article 107 of this law.

Article 102: If no harm is proven, but disagreement continues between the two spouses, and reconciliation fails, the judge shall appoint two (referees) from the two families if possible. Otherwise, he might appoint people he finds capable of bringing about reconciliation.

Article 103: a) The two (referees) shall study the reasons of conflict and make efforts to reconcile the spouses. b) They should submit to the judge a report about their efforts and their recommendations, including a statement about the extent to which one or both spouses have offended each other.

Article 104: The judge may approve the report of the two (referees) or appoint two others to follow up the case anew, according to the procedures mentioned in the preceding two articles.

Article 105: If the two (referees) disagree, the judge shall appoint two others or add a third one to them.

Article 106: If reconciliation becomes impossible and disagreement continues between the two spouses, the judge shall pass judgment for *talaq* on the basis of the report of the two (referees).

Article 107: If the judge passes judgment for divorce of the woman who was engaged in *dukhool* because of harm or disagreement, the deferred dowry shall cease to be the woman's right and must be returned to the husband the portion she is obliged to return, if all or most of the blame (leading to the termination of marriage) is hers. If all or most of the blame is the husband's, the dowry remains the woman's property.

Article 108: If the wife asks for *talaq* before *dukhool* or seclusion in privacy with the husband and has returned the dowry she has received together with the amount the husband has spent on the marriage, and in case the husband refuses to grant *talaq* and the judge fails to reconcile them, the judge shall pass judgment of *talaq* wherever he deems it fit under sharia.

Article 109: (a) A wife may ask for *talaq* if the husband refuses to provide a livelihood for her or if it has become impossible to collect *nafaqa* from him and he has no tangible resources and his poverty cannot be proven. The wife in this case shall not be divorced till the husband has been granted a period (to settle the matter) specified by the judge.

(b) A wife shall not be divorced because of her husband's poverty if she had knowledge about his poverty before marriage and accepted it.

(c) No rich wife shall be granted *talaq* from a poor husband.

Article 110: A wife has the right to ask for *talaq* because of the long absence of the husband whose place of residence is known even if she has money from which *nafaqa* can be taken. A wife, in this case, shall not be given judgment for *talaq* till her husband is notified either to live with his wife or to move her to live with him or divorce her. He shall be granted no less than four months and no more than one year.

Article 111: A wife whose husband is missing or whose place of residence is not known may ask for divorce on grounds that she is harmed. No judgment for *talaq* shall be passed in favour of the wife till it is confirmed that a period not more than one year from the date of his absence or disappearance has elapsed.

Article 112: The wife of a man irrevocably sentenced to jail for no less than three years may ask for *talaq*. No judgment for *talaq* shall be passed in favour of the wife in this case unless one year has passed while he is in prison.

Article 113: A wife is granted *talaq* if her husband swears/vows not to approach her and then does not actually approach her for at least four months.

Article 114: A wife is divorced by repudiation unless the husband makes redemption before the lapse of four months. (This form of *talaq* is called *dhihar* (a pre-Islamic practice consisting of the words addressed to the wife — *anti alayyia ka'dhari ommi* — *'you are to me like my mother's back'*.)

Article 115: Divorce by means of Articles 98, 100, 107, 108, 109, 110, 111, 112, 113, and 114 is deemed irrevocable (*ba'in*).

Article 116: While studying the *talaq* claim, the judge shall decide whatever temporary procedures he might deem necessary to guarantee the *nafaqa* of the wife and the children and anything related to their care and visits.

Article 117: Marriage shall not be concluded if one of its pillars is contaminated or weakened by a *haram*.

Abolition (*Faskh*):

Article 118: (a) The marriage contract is cancelled if it includes a prohibition that contradicts its purposes, or there is a new development preventing its valid continuation on the basis of sharia.

(b) Separation by *liaan* is deemed *faskh* (abolition).

Iddah:

Article 119: a) *Iddah* is a period of waiting during which a woman shall not marry after being widowed of divorced.

b) *Iddah* starts from the date of separation, and in case of doubt, from the last act of sexual intercourse.

***Iddah* of a Widow:**

Article 120: a) A widow involved in a valid marriage shall undergo an *iddah* of four months and ten days, if she is not pregnant.

b) The *iddah* period of a pregnant widow ends by the time she delivers or miscarries a baby of recognisable form and features

c) If widowed, a woman shall pass the normal *iddah* period if she undergoes *dukhool* by means of an invalid contract.

***Iddah* of a woman who has not lost her husband due to death:**

Article 121: a) No *Iddah* shall be imposed on a woman before *dukhool*.

b) A pregnant woman's *iddah* is the period she spends awaiting delivery or miscarriage of a baby of a clear form and features.

c) *Iddah* of non-pregnant woman: (i) Three periods of menses for those in the nature of having menses.

(ii) Three months in the case of the one who has never experienced menses, or attained the *age of despair* or ceased to have menses. (iii) Three months for the one who keeps releasing blood if she does not have a known menstrual habit. If she has a specific menstrual habit, she must follow it in calculating *iddah* period. (iv) One year for the one whose menses ceased before the *age of despair*.

Article 122: In all circumstances, the period of *Iddah* shall not exceed one year.

The intrusion of *iddah* on another *iddah*:

Article 123: If the husband dies and the wife is undergoing *iddah* of a revocable (*raj'ee*) divorce, this *iddah* shall change into a widow's *iddah*, without calculating the past period.

Article 124: If the husband dies and the woman is undergoing *iddah* of an irrevocable *talaq*, she completes this *iddah* and shall not be made to pass a widow's *iddah*, unless this *talaq* happens during the illness causing the death, and as a result of this she shall pass a widow's *iddah*.

☐ TO BE CONTINUED

THIS is the continuation of the unofficial translation of Royal Decree No 32/97 promulgating the Personal Statute. The Decree came into effect on 4 June 1997:

Nursing of children:

Article 125: Nursing is to provide sustenance to a child, bringing it up, and looking after it without prejudice to the rights of the guardian.

Article 126: The nursing person shall fulfill the following conditions: (a) Maturity (b) Puberty (c) Honesty (d) Ability to bring up the child in question, looking after it well, and safeguarding its interests (e) He/she is free from contagious diseases.

Article 127: In addition to the conditions mentioned in the above article, the nursing person shall meet the following requirements.

a) If the person is a woman, she shall not have a husband who is alien to the nursed child, unless the court decides otherwise, in favour of the child.

b) If the nursing person is a man, (i) he shall have a wife capable of nursing, and (ii) He shall be unmarriageable to the nursed person if the latter is a female (unmarriageable being in the sense of the degree of consanguinity precluding marriage).

Article 128: If the nursing woman is not of the same religion as that of the father of the nursed person, her period of nursing ends by the time the nursed (male) child turns seven, unless the judge decides otherwise in the interest of the nursed child.

Article 129: Nursing of a male child continues till he attains the age of seven. Nursing of a female child continues till she attains puberty, unless the judge decides otherwise in the interest of the nursed child.

Article 130: Nursing is the duty of both parents together as long as they remain in a state of matrimony. If they are separated, nursing is the right of (in the following order) the mother, the father, the mother's mother, and then the relatives of the nursed child (also according to the following order): the child's aunt, his father's grandmother, great grandmother, etc., his sister, his mother's aunt (on the mother's side), his mother's aunt (on the father's side), his aunt (father's side), his father's aunt (father's side), his father's aunt (mother's side), his brother's daughter, and his sister's daughter.

Article 131: If the parents are not alive and the person entitled for nursing refuses nursing, the judge selects whoever he considers suitable from among his or her relatives or others, or an establishment qualified for this purpose.

Article 132: If the mother leaves the matrimonial residence because of a dispute or any other reason, she is entitled to nurse the children, unless the judge decides otherwise. If the nursed person is too young and cannot do without its mother, the mother then is obliged to nurse the child concerned.

Article 133: The father or other relatives of the person to be nursed shall look after the child and bring him/her up properly. The child shall not spend the night anywhere other than the female nurse's house, unless the judge decides otherwise.

Article 134: The nurse is not authorised to travel abroad with the nursed child without the approval of his guardian. If the guardian refuses, the matter should be submitted to a judge for resolution.

Article 135: The nursing person's right is cancelled in the following conditions:

1 If any of the conditions quoted in Articles 126 and 127 is violated.

2 If the nurse stays in a country where it is difficult for the guardian of the nursed child to do his duties.

3 If the person entitled to be nursed waives his right for one year without a valid excuse.

Articles 136: The right to be nursed is retained by the person losing it whenever the cause of the cancellation is removed.

Article 137: a) If the nursed person is under the care of either parent, the other has the right to visit the child and accompany it in whatever way the judge might consider proper.

b) If one of the parents of the nursed child is dead or absent, the relatives have the right to visit the nursed child.

c) If the child nursed is with a person other than his/her parents, the judge appoints the person who is entitled to visit him from amongst his/her relatives.

APTITUDE:

General provisions:

Article 138: A person is deemed apt to practise his civil rights unless otherwise stipulated by law.

Article 139: The legal age of a person to be *rashid* (sound or legally a major) is 18 year.

Article 140: *Qasir*: A legal minor is defined as: (i) an embryo (ii) an insane or mentally handicapped person, or one who can easily be tricked in financial matters, or a squanderer (iii) a person gone missing or absent.

Article 141: (a) The person lacking aptitude is deemed as:
1 A child too young to distinguish things.
2 A mad person
(b)A person with incomplete aptitude is considered to be:
1 A child who can distinguish things.
2 A mentally handicapped person and the foolish person.

Article 142: A legal guardian takes care of the affairs of a *qasir* and represents him. The term *executor* refers to a legal guardian, a selected guardian, and the guardian appointed by a judge or a custodian.

A young person and his/her status:

Article 143: A young person is one who has not attained puberty. He or she can either distinguish things or is unable to distinguish things.

(a) the young person who is unable to distinguish things — according to the law — is the one who has not completed seven years of age.

(b) A young person who is able to distinguish things is one who has completed seven years of age.

Article 144: a) The acts of a young person who is unable to distinguish things are invalid.

(b) The financial acts of a young person who is able to distinguish things are proper whenever they serve his interests and invalid whenever causing him/her harm.

(c) The financial acts of a young person who is able to distinguish — acts varying between right and wrong — are deemed to be defined as invalid in the interest of the young person. It is possible for the young person to affirm the invalidity of these acts if he/she admits as corrects these acts after attaining puberty, or in the event of the young person's guardian or the judge deems the same as valid according to the law.

Article 145: a) A parent can conditionally or unconditionally permit a young child who can rationalise to manage if the child attains the age of 15 and the parent feels that the child is capable of behaving properly.

b) A parent can revoke permission whenever he thinks that it is in the interest of the child.

Article 146: A guardian/custodian, after the approval of the judge, may permit the young person who can rationalise to manage his property if the child completes fifteen years of age and the guardian feels that he/she is capable of behaving properly.

Article 147: If the child completes fifteen years of age and feels he/she has the capacity to behave well, and the guardian refuses him the freedom to manage his property, or part of the same, the matter shall be submitted to the judge.

Article 148: A young person obtaining due permission is deemed fully apt to do what he is permitted to do.

Article 149: A person permitted by the judge or guardian shall submit to the judge a periodical statement of his conduct.

Article 150: The judge and the guardian may revoke or restrict their permission in the interest of the young person concerned.

Rationality and rationalisation:

Article 151: To be deemed *rashid* (rational or sensible or a major) he/she has to have completed fifteen years of age, unless deterred by a condition for aptitude.

Article 152: The judge may 'rationalise' (deem rational) the *qasir* (legal minor) if he/she has completed fifteen years and is proven to be sensible.

Article 153: In the event of a lack of legal grounds, the minor's claim against the guardian on matters related to his/her guardianship shall not be entertained if a period of five years has ended since the minor has attained 'the age of reason' (puberty). However, if the guardianship has been terminated by dismissal or resignation or death, the said period shall only start from the date of submission of the final statement related to the duties of the guardian.

Article 154: a) After attaining the status of *rashid* (reasoning) or being empowered to attain it, the *qasir* has the right to claim compensation for the harmful acts of his/her guardian that have happened earlier, even if the *qasir* happened to have released the guardian.

b) This right is forfeited one year after the *qasir* has taken over his functions by virtue of his attaining the status of *rashid* or having been empowered to attain the same.

Article 155: Conditions for inaptitude are madness, mental disability, negligence and stupidity.

a) A mad person is one who loses his/her mind continuously or frequently.

b) A mentally handicapped person is one who does not understand much, who confuses speech and who is incapable of doing things properly.

c)A negligent person is one who is easily cheated (in financial matters).

d) A foolish person here is one who squanders his property.

Article 156: a) A mad person's financial acts when sane and before he/she is declared legally incompetent are deemed valid, but otherwise invalid.

b) Judgments issued in the case of a young person who can rationalise also apply to the mentally incapable person, the foolish person, and the negligent person after they have been declared legally incompetent.

c) The acts of the mentally handicapped person are deemed valid, if the deficiency was not common at the time of the contract and in the event that the other party was not aware of the same.

d) The acts of the negligent person are deemed valid before the issuance of a legal declaration of incompetence, unless these acts have proven to be the result of abuse or connivance.

Article 157: A person legally declared incompetent has the right to file a claim to cancel this declaration.

Guardianship:

Article 158: Guardianship applies to the individual self and property.

a) Guardianship of the individual means taking care of everything that has to do with the self of the *qasir* (legal minor).

b) Guardianship of property is taking care of all that is related to the property of the *qasir*.

Article 159: Guardianship of the individual is a right of the father, then of the agnate, according to the order of inheritance.

Article 160: Guardianship of property is the right of the father only.

Article 161: The guardian must be someone who has attained puberty. He/she must be a sensible, honest person who is capable of bearing the duties of guardianship.

Article 162: No guardianship shall be granted to a non-Muslim.

Article 163: Guardianship is withdrawn if one of the conditions mentioned in the above two articles is not fulfilled.

Father as guardian:

Article 164: A father has guardianship over the property of his minor son in the sense that the father preserves the property and invests it.

Article 165: The guardianship of the father covers that of his children's children who are minor, if their father is proclaimed legally incompetent.

Article 166: A father's conduct is deemed reasonable in the following cases:

1. Signing contracts in the name of his child for investing his/her property.
2. Trading in the interest of his child provided he shall not continue to do so unless there are tangible benefits for the child justifying his action.
3. Accept legally approved donations for his child, if these donations are free of unreasonable encumbrances.
4. Paying *nafaqa* from the child's property if it is the child's obligation.

Article 167: A father's actions are deemed not to be reasonable in the following cases, unless it is proven that the actions were in the child's interest.

1. If the father bought the child's property for himself.
2. If he sold his own property to the child.
3. If he sold his child's property to invest the proceeds for himself.

Article 168: a) A father's actions are cancelled whenever it is proven he mismanaged his child's affairs and it is found that his actions were not directed to serve the interest of his child (who is minor).

b) A father is deemed responsible to make up for any blunder he commits with regard to his child's property causing the child harm.

Article 169: A father's guardianship is withdrawn whenever it is proven to the judge that the property of the minor has been endangered by the father's mismanagement.

The Executor:

Article 170: a) The father may appoint an *executor* to run the affairs of his child who is *qasir* (below-age) or his expected child or to look after the *qasir* children of his child who is proclaimed legally incompetent. In this respect, the father may give up the role of *executor*, even if he pledged not to give it up.

b) If a child who is below age (minor) does not have an executor, the judge appoints an executor to run the affairs of the child, bearing in mind the interests of the child.

Article 171: The judge must appoint a special or temporary executor whenever the interest of the child so dictates.

Article 172: An executor must meet the following conditions:

1. Be a Muslim if the person concerned is a Muslim.
2. Be fully apt/competent.
3. Be honest
4. Be capable of carrying out the duties of guardianship.
5. Not to have been convicted of theft, dishonesty, fraud, counterfeiting, or a crime violating public norms or honour.
6. Not to have been declared bankrupt.
7. No to have been dismissed from the role of guardianship.
8. Not be a party involved in a judicial dispute with the minor. Not be in dispute or in enmity with the minor, nor in any family dispute that might endanger the interests of the minor.

Article 173: The executor must adhere to the terms and duties entrusted to him by means of the guardianship document, unless these contradict the law.

Article 174: a) The executor may be a male, a female, a natural person or a juristic person, an individual or a number (of people), an independent person or one having a supervisor.

b) If there is more than one executor, the judge may restrict guardianship to one of them as long as this would serve the interests of the person under guardianship.

Article 175: a) Implementation of guardianship depends on the acceptance of the *executor*. b) The fact that the executor has assumed responsibilities is deemed acceptance of the guardianship.

Article 176: An executor is granted the right to give up guardianship if he/she accepted it explicitly or implicitly, except when legal grounds exists and is accepted by the judge.

The Supervisor:

Article 177: If the father appoints a supervisor to oversee the work of the guardian, the supervisor must carry out whatever might achieve the best interests of the *qasir*.

Article 178: Conditions binding the executor also apply to the supervisor.

Duties and Responsibilities of the executor:

Article 179: The executor must manage the property of the minor, take complete care of them, taking as much effort in that as he would in managing the property of his/her own children.

Article 180: The conduct of the executor is subject to the supervision of the concerned authority.

Article 181: The executor is obliged to present periodical statements of accounts, showing his/her actions in running the property of the minor.

Article 182: The executor is not permitted to do the following except with the approval of the concerned authority:

1. Selling or buying or exchanging or entering into partnership or mortgaging or any type of acts that cause the transfer of ownership or affecting a specific right.
2. Acting unrestrained with bonds and shares or parts of the same, as well as the significant movable assets, unless its value is insignificant.
3. Transferring the debts of the minor or accepting such transfers from others.
4. Investing the property of the minor into his/her account.
5. Giving as loan the property of the minor or receiving as loan the same.
6. Leasing the real estate of the minor.
7. Accepting conditional donations or rejecting the same.
8. Paying *nafaqa* from the property of the minor for the persons the executor is obliged to pay *nafaqa*.
9. Filfilment of the obligation imposed on the bequest or the minor.
10. Admitting a right against the minor.
11. Reconciliation and arbitration.
12. Filing a claim if delaying the same would not harm the minor.
13. Abandoning a claim or failure to appeal.
14. Renting the minor's property to himself/herself.

Article 183: The person in charge of the affairs of the minor person(s) is prohibited from buying or renting their property to oneself, one's spouse, or offspring or descendants of the person(s) in charge. The person(s) in charge of the property of the minor are not permitted to sell to the minor their own property or that of their offspring or their descendants.

Article 184: The executor is entitled to ask for payment for his/her efforts. The payment is calculated from the date of the claim.

□ TO BE CONTINUED

THIS is the concluding part of Royal Decree No 32/97 promulgating the Personal Statute which came into effect on 4 June 1997.

Termination of the Guardianship:

Article 185: The mission of the executor ends in the following instances:

1. Death or loss of aptitude or incompleteness of aptitude.
2. Proof that the executor is missing or absent.
3. Acceptance of his/her claim for abandoning guardian ship.
4. Failure to carry out the duties of guardianship.
5. In the event the minor attains the age of capability or announced capable.
6. In the event of cancelling a proclamation of incompetence against the person earlier proclaimed incompetent.
7. Termination of the state of being missing or absent.
8. The father of the minor retaining aptitude.
9. Death of the minor.

Article 186: If the minor is mad or mentally handicapped or incapable of being trusted with his/her property, the executor must request the court to consider continuing guardianship after the age of *rushd* (where the minor is supposed to have attained capability.

Article 187: The executor is dismissed in the following instances:

1. If he/she does not fulfil any of the conditions stated in Article 172 of this law.
2. If he/she mismanaged the affairs of the minor or his presence posed some danger to the minor.

Article 188: An executor must, by the end of his/her mission, hand over the property of the minor and all relevant materials, including accounts and documents, to the person who is in charge of him and under the supervision of the concerned authority, within 30 days of the date the mission has ended.

Article 189: If the executor dies, his/her heirs, or those in charge of his/her estate, must immediately inform the concerned authority in order that measures are taken to protect the rights of the minor.

The state of being absent or missing:

Article 190: (a) The absent person is the person whose country or place or residence is not known. (b) The missing person is one who is not known to be alive or dead.

Article 191: If the absent or missing person has not authorised representative, the judge shall appoint a legal representative to run his affairs.

Article 192: The property of the missing or absent person in counted from the moment a legally appointed person is given charge and the property shall be run in the same manner the property of the minor is managed.

Article 193: Absence or the state of being announced missing ends if:

1. It is proven that the absent or missing person is confirmed to be alive or dead.
2. If a judgment is passed ruling the absent or missing person dead.

Article 194: a) The judge must pass judgment on the death of the absent or missing person if proof is given thereof.

b) The judge must issue judgment on the death of an absent or missing person if four years have elapsed since the absence of the person of his state of having gone missing.

Article 195: In all circumstances, the judge must search for the missing or absent person and by all means try to determine if this person is alive or dead before he issues a ruling that the person concerned is dead.

Article 196: The day on which judgment is issued about the death of the absent or missing person is considered the date of death.

Article 197: If a ruling is made that the absent or missing person is dead and then the same person appears to be alive.

a) His estate should be returned to him, except where a part has been used.

b) His wife must come under his patronage unless she has married another.

Article 198: The bequest shall be given as a donation.

Article 199: a) The bequest is either unlimited or restricted by a condition.

b) If the bequest is attached with a condition contradictory to the sharia-legal objectives, the condition is deemed null and void.

Article 200: The bequest must be executed within the limit of the third of the testator's heritage, after payment of dues. It is possible to be more than one third within the limits of the heir(s) who approve provided that the heir(s) are of age.

Article 201: Any action happening at the death bed/illness with the intention of donation or winning the affection of some party shall be deemed subject to the provisions of the bequest, no matter what name it is given.

Article 202: Tenets of the bequest are: The expression, the testator, the legatee, and the bequest.

The expression:

Article 203: The bequest is achieved by oral speech or the written word, and if the testator is unable to do in either of the above manners, it is acceptable by some comprehensible gesture.

Article 204: No claim over the enforcement of a bequest or withdrawal of it is possible except by evidence.

The testator:

Article 205: a) The bequest is acceptable from a person having the aptitude to donate, even if it is issued during a disease leading to death.

b) The testator may amend the bequest or give it up, wholly or partly.

c) The testator selling or donating or in anyway giving away the specified property that he/she has bequeathed is deemed a return from

the promised bequest.

Article 206: The bequest is presentable to the person entitled to own the willed matter, regardless of the difference in religion or nationality.

Article 207: No heir shall offer his/her bequest unless it is approved by the other heirs who are of age. It is executed according to the share of those who approve it.

Article 208: a) The bequest is made to a specific person, who exists or is expected to exist.

b) The bequest is made to a limited or unlimited group.

c) The bequest is made to charitable individual or charitable establishments or scientific establishments or any other establishments provided they exist at the time the bequest is made.

Article 209: a) The bequest, when offered to a specific person, can be accepted after the death of the testator or during his/her life and the beneficiary may continue to accept the bequest after his/her death.

b) If the legatee is an embryo or minor or one legally declared incompetent, the person assuming guardianship over his/her property may accept or reject the bequest after the permission of the judge.

c) A bequest to an unspecified person neither needs to be accepted nor rejected by anyone.

d) The process of organisations and establishments accepting or rejecting bequests is made by their legal representatives, and if the organisations or establishments have no legal representatives, the bequest is due.

Article 210: (a) It is not a condition that guardianship must be accepted immediately upon the testator's death. (b) If the guardian raises no objection to his assuming responsibility of guardianship for 30 days, it is deemed as accepting the responsibility.

Article 211: The fully apt legatee can reject the bequest wholly or partly.

Article 212: If the legatee dies after the death of the testator without showing acceptance or rejection, that right is transferred to his/her heirs.

Article 213: a) The specified legatee owns the bequest matter after the death of the testator.

b) The legatee who dies is represented by his/her heir if the legatee dies before the division of shares.

c) The live twin owns the entire bequest in case the bequest is intended for the person to be born if the mother delivers one of the twins dead.

d) The heirs of the testator shall benefit from the estate till such a time that the person entitled is found.

Article 214: a) The bequest includes an unlimited category, those who exist the day the testator dies and those yet to exist.

b) The number of the unlimited category ends in the event of the death of all their parents or in despair that any of them might be born alive.

c) If it is deemed that none of the legatees is likely to exist, the bequest becomes heritage.

Article 215: Before their number is limited, those existing from the unlimited, but countable group, may benefit from the bequest matter and the shares change whenever there is a death among them or a new birth.

Article 216: The proceeds of the bequest addressed to an unspecified, uncountable category of people are divided between the existing ones.

Article 217: The rules applying to the specified legatee also apply to the unspecified legatee, if countable, if joined in one bequest.

Article 218: The bequest is sold to the unspecified if feared to be lost entirely or part of the value. The proceeds are to be used to buy whatever might benefit the legatees.

Article 219: The bequest can be made to charitable entities or organisations or scientific establishments for utilisation as desired unless stipulated otherwise.

The Bequeathed:

Article 220: The bequeathed must be owned by the testator.

Article 221: a) The bequeathed can be general or specific. b) The general bequeathed matter covers all existing or yet-to-be existing property of the testator.

Article 222: a) The specific bequeathed is to be property or a movable asset or a utility.

b) If a testator issues a bequest to one person and then issues the same bequest to the other, the bequeathed becomes the right of the other person.

Article 223: The bequeathed may be a utility or a beneficiary of a property or movable asset for a specific or unspecified period.

Article 224: a) If the value of the property bequeathed is less than a third of the estate, the specified bequest is given to the legatee to benefit from it (according to the terms of the testator).

b) If the value of the specified property is known, the heirs are given a choice either to approve the bequest or to give the legatee the equivalent of the third of the estate.

Article 225: The person entitled to benefit from a certain form of property may use it or invest it, even contrary to the term indicated in the bequest provided that the property is not adversely affected.

***(Tanzeel)* bequeathal by enlaying**

Article 226: *Tanzeel* (enlaying) is a type of bequest whereby a non-heir is introduced into the estate of a testator with a specific share.

Article 227: Whether male or female, a person introduced by 'enlaying' is entitled to a right in the same proportion as similar members in the bequest within the limit of one third, unless otherwise an additional portion is approved by the rest of the heirs who are of age, and in this case the difference is settled in their share.

Cancellation of the bequest:

Article 228: The bequest is deemed null and void in the following cases:

1 The testator giving up the bequest.

2 Death of the legatee during the lifetime of the testator.

3 The legatee obtaining the status of heir to the testator

4 The legatee rejecting the bequest.

5 The legatee killing the testator, whether the legatee is the actual killer or an associate of the same, regarding whether the killing is deliberate or by mistake, provided that the legatee, while committing the deed, is sane and has attained puberty.

6 The matter of the bequest expiring or becomes due as dues for others.

7 The testator of legatee converting from Islam, unless he/she re-embraces the faith.

Article 229: a) The bequest is a right of the close relatives.

b) If the will is not addressed to the relatives, it can belong to others as a means of donation, provided the two-thirds are returned to the relatives.

Article 230: The provisions of the mandatory bequest are subject to the provisions of this law.

Overlapping of bequests:

Article 231: If the one-third falls short of the settlement of shares of similar degree, and in the event that the adult heirs do not approve the

part additional to the third, it is distributed on the basis of proportion or against pro rata division.

The inheritance:

General Provisions:

Article 232: The *tarika* (estate) is whatever property and rights the deceased leaves behind.

Article 233: Attached to the *tarika* are the rights of which ones take priority over the others according to the following order:

1 Costs of preparing a decent burial for the deceased.

2 Paying the debts of the deceased.

3 Carrying out the will/bequest.

4 Giving the rest of the *tarika* to the heirs.

Article 234: *Irth* (estate) is a definitive transfer of the property and rights, on the death of the owner, to those who are entitled.

Article 235: Tenets of the *irth*:

1 The testator

2 The heir

3 The *miruth* (the estate/property to be inherited).

Article 236: The causes of *irth*: Matrimony and blood relations.

Article 237: Conditions for maturity of the *irth*: the death of the inherited person in reality or by judgment and the life of the heir during the lifetime of the inherited person in reality or by estimation, and knowledge of the party of the *irth*.

Article 238: A heir killing the person he/she is entitled to inherit from shall be deprived of the *irth*, whether the heir in this case is the actual killer or an associate or causing deliberate or unintentional murder, provided the said heir is the sane adult when committing the crime.

Article 239: No inheritance is recognised where religion differs.

Article 240: If two people or more die and there is an estate involved between them and it is not known who of the two died first, neither of them is entitled to the *tarika* of the other.

Types of heirs and their rights:

Article 241: *Irth* (estate) is distributed in the order of statutory portions, agnation, or both or kinship.

Persons entitled to statutory portions:

Article 242: a) Statutory Portion: A specific share for the heir in the *tarika*.

b) Statutory portions are the half, the quarter, the eighth, the two-thirds, the third, the sixth and one-third of the rest.

c) Persons entitled to the statutory portions are the parents, the spouses, the grandfather on the father's side (and so forth upwards), the grandmother who gives birth to an heir, the daughters, daughters of the son (and so forth downwards), sisters and the brother of the mother.

Article 243: Those entitled to the half are:

1 The husband, provided the wife has no descendants entitled to inherit.

2 The daughter, provided she has no brother or sister.

3 Daughter of the son, and so forth downwards, provided she has no brother or a brother's son who is equal in degree to her or higher than her.

4 The direct sister (from the same mother), if there is no other brother or sister or a descendant entitled, nor father or mother.

5 The father's sister if she exists alone and there is no brother to the father nor brother, nor sister, nor a heir entitled to inherit, nor a father nor grandfather.

Article 244: Persons entitled to the quarter: 1) The husband as an entitled descendant of the wife.

2) The wife/wives, if the husband has no descendant who is entitled.

Article 245: The person entitled to the eighth: The wife/wives, if the husband has an entitled descendant.

Article 246: Persons entitled to the two thirds: 1) The two daughters or more if there is no dead brother.

2) The two daughters or more of a son, if the deceased has no son or a son of the son in their degree (of relationship), nor a son's son who is of higher degree.

3) The sisters or more sisters if there is no brother or an entitled descendant nor father nor grandfather of the father.

4) The two or more sisters of a father if he has no brother nor direct brother nor direct sister nor an entitled descendant nor father nor father's grandfather.

Article 247: Persons entitled to the third:

1 The mother, if the deceased has no inheriting descendant and no brothers and sisters numbering two or more, and unless the mother is with one of the spouses and the father. In the case comprising all these conditions, the mother may inherit the third.

2 Two or more of the mother's children, in the event that the deceased has no inheriting descendant of the deceased, nor father nor grandfather of the father, are entitled to the third, which is to be equally divided between them in the manner that a male gets the same share as a female.

Article 248: Persons entitled to the sixth:

1 The father

2 The father together with a descendant entitled to inherit.

3 The grandfather of a father, if there is an inheriting descendant of the deceased.

4 The grandmother who gives birth to an heir, regardless of the number of the grandmothers, provided the mother is not alive or a child of hers nor the existence of a 'permanent' grandmother who is closer to the deceased than her.

5 One or more daughters of the deceased in the event that one daughter of the deceased exists, or when there is one daughter of a son who is of a higher degree in the absence of a son or a son's son.

6 One or more sisters of a father in the event that one sister of the demised exists if there is no inheriting descendant of the deceased, nor father nor grandfather of a father nor direct brother nor brother of the father.

7 One of the brothers or sisters of a mother in the event that there is no inheriting descendant of the deceased, nor father nor grandfather of the father, bearing in mind the provisions of Article 261 of this law.

Article 249: The persons entitled to the last third are the mother together with one of the spouses and the father, if there is no inheriting descendant of the deceased nor two or more of the brothers and sisters.

***Asaba* (Paternal relations/the agnates):**

Article 250: a) Agnation is an unlimited entitlement to the *tarika*. (b) There are three types of *asaba* (paternal relations): (i) By onself (ii) Through others (iii) with others.

Article 251: *Asaba* by oneself covers parties some of whom take priority over others according to the following order:

1. Filiation/sonship: This covers one's children, the children of one's son (and so forth).

2. Paternity: This covers the father, the grandfather of a father (and so forth).

3. Fraternity: This covers direct brothers, or the brothers from same father and their children (and so forth).

4. Uncleship: This covers the uncles of the deceased from either both parents or one parent, the uncles of the father and the uncles

of the grandfather of the father, and the sons of uncles.

Article 252: The person obtaining paternal relationship (*asaba*) by onself is entitled to the estate (*tarika*), if there is no one else entitled to a statutory portion and so deserves the rest of the *tarika*, if any.

Article 253: a) Priority in *taasseeb* (agnation) is given to the person(s) who come first in the order mentioned in Article 251 of this law, followed by the ones closer in degree to the deceased when the parties belong to the same root, and then the ones having the strongest relationship when the degree is equally the same.

(b) People linked by paternal relations (*asaba*) share a portion of the estate when united by the same root and equal in degree and strength in relationship.

Article 254: a) Obtaining paternal right/relationship through others are:

1. The daughter(s), where exists a son(s).

2. Daughter(s) of the son (and so on and so forth), where exists the son(s) of a son, be they of the same degree as she or less. If the son of a son is of a higher degree than her, he will block/bar her from this right.

3. The direct sister, where exists the direct brother(s).

4. The sister of the father, where exists the brother(s) of the father.

b) *Irth* (right to the estate) in these cases is on the basis that the male gets a share equivalent to that gained by two females.

Article 255: Paternal right with others is enjoyed by:

The direct sister(s) or from the father's side only, where exists a daughter or the daughter(s) of the son.

Heirs vide statutory share or agnation:

Article 256: Heirs vide statutory share and agnation are:

1. The father, or the grandfather of a father, where exists a daughter or the daughter of a son.

2. The husband, who receives a statutory share, in case he is the son of the uncle of the deceased, and receives an agnation share by means of uncleship.

3. The brother(s) of the mother, who receives a statutory share, if he is the son of the uncle of the deceased, and receives an agnation share by means of uncleship.

Blockage, restoration and sustenance:

Article 257: a) *Al Hajb* (blockage/bar) bars an heir from inheriting all or part of the inherited estate because of the existence of another heir who is more entitled.

b) There are two types of blockage (*hajb*): Deprival blockage and reduction blockage.

c) The one blocked from *irth* may block others.

Article 258: A person deprived of *irth* cannot block or bar another person.

Article 259: Restoration (*Al-Radd*): It is an increase in the shares of people entitled to the statutory portion, if the principal case of their share increases.

Article 260: *Auul* (sustenance) is a reduction or decrease in the shares of people entitled *vide* statutory portion, if the principal case of their shares decreases.

Joint private cases:

Article 261: A direct brother inherits by agnation, except where exists a *Mushtarika* (a participant) who is a husband, a mother or a grandmother and a number of brothers/sisters of the mother or a direct brother(s): Division is made so that the husband gets half, the mother or grandmother gets a sixth, and a third is divided between the brothers of the mother and the direct brothers, on the principle that the male gets the same share as that of the female.

Maternal relatives:

Article 262: There are four types of maternal relatives, some of whom get priority over the others in heriting the estate, according to the following order:

The first category: Sons of the daughters and the sons of the daughters of a son.

The second category: (i) The sons of the brothers of the mother and their sons, and so on.

(ii) The sons of the sisters.

(III) Daughters of the brothers and their sons.

(iv) Daughters of sons of brothers and their sons.

The third category: Maternal grandfathers and maternal grandmothers.

The fourth category: This comprises six groups, some of which take priority over the others in inheritance according to the following order.

1. Uncles of the deceased from the mother's side, aunts of the deceased from the father's side, uncles of the deceased from the mother's side and from the mother's side.

2. Sons of the persons mentioned in the above clause, and daughters of the uncles (father's side) of the deceased and daughters of their sons and sons of the females mentioned.

3. Uncles of the deceased from the mother's side, aunts (father's side) and uncles (mother's side) and aunts (mother's side) of the mother of the deceased.

4. Sons of the persons mentioned in the above clause, daughters of the uncles (father's side) of the father of the deceased and daughters of their sons and sons of those mentioned.

5. Uncles of the father of the father of the deceased on the mother's side, uncles of his father's mother, aunts (father's side) of his father's parents and their uncles (both side).

6. Sons of the persons mentioned in the above clause and the daughters of the uncles (father's side) of the father of the father of the deceased, and the daughters of their sons and the sons of those mentioned.

***Mirath* of maternal relationships:**

Article 263: a) In the first category of maternal relationships, the ones who are more entitled to the estate are those closer in degree to the deceased.

b) If the above are equal in degree, the sons of the person entitled to the statutory share is more entitled than the son of a maternal relation.

c) If all are the sons of the person holding a statutory share, or none of them is the son of the statutory share-holder, they must all share the estate.

Article 264: a) The closest in degree to the deceased, from among the second category of maternal relationships, are more entitled to the estate.

b) If they are equal in degree, and some of them happen to be the sons of an heir and some the sons of a maternal relationship, the former takes priority over the latter. Otherwise, the ones having a stronger relationship with the deceased get precedence. Division is made on the principle that the ones originating from two parents are more entitled than the ones from one parent, and the ones originating from a father take priority over the ones originating from a mother. If all share the same degree and strength of relationship, they share the estate.

Article 265: a) Of the third category of paternal relations, the most entitled to the estate are the ones closest in degree to the deceased.

b) If they happen to be equal in degree, and there is no one who can give birth to a holder of a statutory share, or all can give birth to a holder of a statutory share, they

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share the estate if all of them originate from the father's side or mother's side. If the sides differ, then two-thirds are given to the ones on the father's side and a third to the ones on the mother's side.

Article 266: If, in the first group of the fourth category specified in Article 262 of this law, the father's relations are singled out, the ones belonging to two parents are more entitled than the ones belonging to one parent, and the ones originating from the father are entitled than the ones originating from the mother. If all are equal in strength of relations, they share the estate, with two-thirds going to the relation/s of the father and one-third to the mother's relation/s.

Article 267: The provisions of the above Article are to be implemented in the case of the third and fourth groups.

Article 268: In the second group, the ones closest in degree take priority. When they are equal in the relationship, the ones having the stronger relationship take priority, if all are the sons of an agnate or sons of a maternal relation. If they are different, the sons of the agnate take priority over the sons of a maternal relation. When there is a difference as to the party or relation, two-thirds go to the father's relation and a third to the mother's relation.

Article 269: The provisions of the above article are to be implemented in the case of the fourth and sixth groups.

Article 270: There is no significance to the difference in the number of heirs from amongst the maternal relations, except when the side from which they originate is different.

Article 271: Male and female are equal in inheritance to maternal relationship.

Various cases:

Article 272: Both the absent and the missing persons get their share from the estate (*tarika*) they inherit, provided they are alive.

Article 273: If a judgment is issued on the death of the absent or missing person, the estate (*tarika*) of each is divided unto their heirs. If these two appear to be alive, the provisions of the first clause of Article 197 of this law apply.

Article 274: An embryo gets the largest of the two shares in principle that it is a male.

Article 275: a) If the share held for an embryo happens to be less than due, the difference is settled from the heirs whose share receive an increase.

b) If the share held for an embryo is increased, the increase is restored to the heirs entitled to it.

Article 276: a) If the deceased (when alive) admits any affinity to himself, his/her admission shall not affect the heirs, unless it has fulfilled the validity conditions.

b) If the deceased admits any affinity to others, the person to whom the affinity is admitted is entitled to the estate, unless there is an heir.

c) If some of the heirs admit to others affinity to the inherited person and the affinity could not be confirmed by this admission, the admitting party and the one to whom the admission has been made shall jointly share the entitlement to the estate.

Article 277: A natural son inherits from his mother and her relations, and his mother and her relations inherit him. The same applies to the son of *liaan* (oath of condemnation).

Article 278: A hermaphrodite receives the half of both shares, considering the condition of masculinity and feminity.

Article 279: a) *Takharuj* (mutual withdrawal/disassociation) is the instance of some of the heirs abandoning their share of the estate to others against a specific arrangement.

b) If some of the heirs disassociate from each others, the recipient is entitled to the other party's share and takes his/her place in the *tarika* (estate).

c) If one of the heirs is disassociated from the rest (in the sense *takharuj*), and the alternative paid to him/her is from the *tarika*, the share of the one who is disassociated is subtracted from the principle and the portions of the others remain as they are. If the payment (in return for *takharuj* or disassociation) is made from their own property, and it was not stated in the *takharuj* contract how the share of the disassociating person is portioned, it is divided between them according to the proportion each has paid. If it is not known how much each of them has paid, the disassociating person's share is equally divided between them.

Final provisions:

Article 280: The lunar system is to be used in calculating the periods mentioned in this law.

Article 281: a) The provisions of this law have to be implemented in all cases they apply to, literally or in content.

b) If the husband stipulates firm conditions for preventing the separation of the two spouses or demands the adoption of specific procedures not stated in this law, the judge must consider those terms and conditions.

c) In case the provisions differ as to the right of inheritance of a daughter, the grandfather and maternal relations *in the system of the legator*, on the one hand, and *in the Articles mentioned in this law*, on the other hand, the judge must implement the most preponderant view in the legator's statement, unless the heirs unanimously demand implementation of the provisions of the law.

d) If there is no provision in this law, judgment is made as per the rules of the Islamic religion that are most suitable to the provisions of this law.

Article 282: Non-Muslims are governed by the provisions of their own statutes, unless they demand implementation of the provisions of this law.

(The Personal Statute reproduced in these columns was based on an unofficial translation)

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