

Article -94-

The statement of the person of anonymous lineage regarding patrilineal or matrilineal shall establish lineage if the person who is recognized believes him or a proof is raised in this respect whenever the difference of age bears this.

Article -95-

Acknowledging lineage in other than filiation, fatherhood, and motherhood shall not apply on other than the recognizer except by believing him or establishing proof.

Article -96-

Anathema shall only be before court and it shall be undertaken according to the rules legally decided.

1- Separation due to anathema shall be a perpetual separation.

Article -97-

1- The man shall have the right to deny the filial of the child by anathema within seven days from his knowledge of the birth. This is provided that he has not confessed his fatherhood expressly or implicitly. The anathema case shall be raised within thirty days from the knowledge with the date of birth.

2- If anathema is to deny filiation and the judged ruled it, then filiation is denied.

3- If the husband swears the anathema swear and the wife abstained from it, or did not attend or absented and it was impossible to notify her, the judge shall rule the denial of filiation

4- It shall be established the filiation of the child, who was denied with anathema following the judgement with denial, if the man proves that he lied.

5- The court shall seek the assistance of the scientific methods to deny filiation provided that it has not been established prior to this.

## **Book 2**

### **Matrimonial Separation**

#### **General Regulations**

Article -98-

1- The marriage contract shall be revoked if it contains a hindrance that is adversely to its requirements, or if it occurs on it what prevents its legal continuation.

2- The separation between the spouses shall occur with divorce, revocation, or death.

3- The court shall have to attempt, prior to imposing separation between the spouses, to reconcile them.

4- If the divorced woman marries another, consummation shall subvert the previous husband's divorces.

# Part 1

## Divorce

### Article -99-

- 1- The divorce is the revocation of the true marriage contract according to the sound text legally set forth for it.
- 2- The divorce occurs either verbally or in writing, and when incapacitated to effectuate either of them, it shall be with the understandable sign.

### Article -100-

The divorce shall occur either by the husband or his agent with a special proxy or by the wife if the husband lets her be her own master.

### Article -101-

- 1- It shall be a condition in the divorcee sanity and of free will.
- 2- The divorce of the insane shall be through an unmarriageable person selectively.

### Article -102-

Divorce shall not produce its effect on the wife unless she is in a true marriage and not in her Ida't period (period of waiting).

### Article -103-

- 1- The divorce shall not be effective if it is pending on undertaking something or leaving it unless it is meant by it the divorce.
- 2- The divorce shall not be effective by breaking the divorce oath or the proscribed, unless it is meant with it the divorce.
- 3- The repeated pronounced divorce or the one accompanied by the number verbally or in writing or with a sign shall only effectuate one divorce.
- 4- The executory divorce shall not be effected.

### Article -104-

There are two kinds of divorce: the revocable and the irrevocable

- 1- The revocable divorce shall not terminate the marriage contract except by the expiry of the Ida't period (the waiting period).
- 2- The irrevocable divorce shall terminate the marriage contract when occurring, and it is of two kinds

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a- The irrevocable divorce with a small separation: the divorcee shall be prohibited to her divorced husband except with a new contract and a new dowry.

b- The great irrevocable divorce with a great separation:-

The divorcee cannot be legitimate to her divorced husband except after the elapement of her Ida't (the waiting period) from another husband who actually consummated his marriage with her in a true marriage.

Article -105-

Every divorce that is effected is revocable except the divorce complementary to three, the divorce prior to consummation, and what is stipulated on its being as an irrevocable separation.

Article -106-

1- The divorce shall occur with an authorization from the husband and the judge shall authenticate it.

2- Every divorce that occurs in contradiction to the previous item shall be established before the court by proof or statement. The divorce shall be attributed to the date of the statement, unless it is proven to the court a previous date. It shall be referred to what is entailed by the divorce by referring to the legal rules.

Article -107-

The competent judge shall issued after the occurrence of the divorce upon the request of those concerned a writ determining the woman's alimony during her waiting time (Ida't) , the children's provision, who has the custody right, the visitation of the child under guardianship. This writ shall be self-executing summary writ by the force of the law. The harmed party shall contest this writ by the contest methods legally decided.

Article -108-

The husband can bring back his revocable divorcee so long as she is during her Ida't (waiting period). This right shall not waive by assigning it. If her waiting period (Ida't) terminates it shall be permissible for her to return back to him with a new contract without the authorization of her guardian if her refuses to remarry her back to him. This is provided that her first marriage with him was with the consent of the guardian or according to the injunction of the court.

Article -109-

1- The return of the wife shall occur verbally or in writing, and if incapacitated it shall be with the understandable sign, as it actually occurs with the intention.

2- The return shall be endorsed and the wife must be notified by it during the period of waiting (Ida't)

**Part 2**  
**Divorce of the Wife in Return**  
**for a Monetary Compensation**  
**Paid by Her to Him**  
**(Al Khal'e)**

Article -110-

1- This Al Khal'e Divorce, is a contract between the spouses in which they mutually

agree on the termination of the marriage contract against an indemnity that is paid by the wife or other to the husband.

2- It shall be correct in naming the compensation of the Divorce (Al Khal'e) what is correct to name in respect of the dowry. It shall not be sound to reach an agreement to drop the children's provision or their custody.

3- If the compensation in (Al Khal'e) is not sound, the divorce against a compensation shall take effect and the husband shall be entitled the dowry.

4- This divorce against compensation is a revocation.

5- In exception of the regulations of item 1, of this article, if the refusal on the part of the husband is due for his stubbornness, and it is feared that he shall not observe God's limits, the judge shall rule this divorce (Al Khal'e) against an appropriate compensation.

Article -111-

It shall be conditioned for the soundness of the compensation in this divorce against a compensation (Al Kahl'e) the capacity of the disburser of the compensation and the capacity of the husband to effect the divorce.

### **Part 3**

## **Separation According To The Judge's Ruling**

### **Chapter 1**

### **Separation For Voidness**

Article -112-

1- If one of the spouses finds an acute illness of the repugnant or harmful illnesses in the other, such as insanity, and leprosy, or which prevents sexual enjoyment such as impotency, ÞÑä and others, it shall be permissible for the spouse to request the invalidation of the marriage whether this illness existed prior to the contract or occurred thereafter.

2- The spouse's right shall drop in the annulment if he/she knew about the illness prior to the contract or expressly or implicitly accepted it thereafter.

3- However, the right of the wife in requesting annulment for the illness preventing from sexual enjoyment shall not waive.

4- The court shall view the annulment case for sexual illnesses behind doors.

Article -113-

In case these illnesses that are stipulated in article 112 of this law are incurable, the court shall annul the marriage immediately without delay.

In case they are possibly curable, the court shall postpone the case for an appropriate period that shall not exceed one year. If the illness does not disappear during it, and the party claiming annulment insisted, the court shall annul the marriage.

Article -114-

Each of the spouses shall have the right to request separation in the following cases

- 1- If one of the spouses lured the other even with the other spouse's knowledge which led to the conclusion of the marriage contract. The deliberate silence regarding a fact shall be considered luring, if it is proven that the party who was induced would not have concluded the marriage contract if he/she knew about this fact.
- 2- If it is proven by a medical report the impotency of the other after a marriage that lasted five years and following medical treatment, provided the non existence of children of the spouse claiming annulment, and that the spouse's age does not exceed forty years.
- 3- If it is passed a judgement of adultery or the likewise on the other.
- 4- If it is proven that the other is inflicted with a contagious illness from which it is feared death such as Aids, and the likewise. If it is feared its transfer to the other spouse or their descendents, the judge shall have to separate them.

Article -115-

- 1- It shall be sought the assistance of a competent medical committee to know the defects for which are requested separation.
- 2- The separation in this chapter shall be considered revocation.

## **Chapter Two**

### **Separation For Non Payment of The Immediate Dowry**

Article -116-

1- It shall be judged separation to the wife whose marriage is not consummated for the non-settlement of the husband to her immediate due dowry in the following two cases

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- a- If the husband has no apparent money from, which could be taken the dowry.
- b- If the husband is apparently insolvent or of unknown status, and the period decided by the judge expired for the settlement of her immediate dowry and he did not pay it.

2- It shall not be judged the separation for the wife for the non-settlement of her immediate dowry, and it will remain a debt on the husband.

## **Chapter 3**

### **Separation For Harm And Dissention**

Article -117-

- 1- Each of the spouses shall be entitled to request divorce for harm due to which it is

impossible to continue companionship with compassion and the right of each of them shall not be waived for this, unless it is proven their reconciliation.

2- The committee for family guidance shall undertake, according to article 16 of this law, to reconcile between the spouses. If it fails, the judge shall offer them reconciliation, and if it is impossible and harm is proven, divorce shall be judged.

Article -118-

1- If harm is not proven, discord continues between the spouses, and the committee for family guidance and the judge cannot reconcile them, the judge shall appoint by a judgement two arbitrators from their families if possible. This shall be after assigning both of the spouses to nominate an arbitrator from his/her family as possible in the following session at most - otherwise the arbitrator shall be from those the judge expects experience and ability for reconciliation. This is if one of the spouses fails to nominate his arbitrator, or failed to attend this session. This arbitrator shall be uncontestable.

2- The judgement for the appointment of two arbitrators shall include the date of starting the mission and terminating it provided that it shall not exceed the period of ninety days. It shall be permissible to extend it by an injunction from the court, The court shall declare the two arbitrators and the litigants in the judgement for the appointment of the arbitrators and in it the oath sworn by both arbitrators to undertake their mission with honesty and justice.

Article -119-

Both arbitrators shall have to investigate the reasons for discord and exert efforts to reconcile between the two spouses. It shall not affect the course of the two arbitrator's work, the abstention of one of the spouses from attending the arbitration session, when he is notified with the decided session or the following sessions if a cessation occurred between them.

Article -120-

If the two arbitrators fail to reconcile

1- If all the harm is on the part of the husband, and the wife is the separation claimant, or if each of them is claiming, the two arbitrators shall decide the separation with an irrevocable divorce without touching anything of the matrimonial rights entailed by marriage and divorce.

2- If all the harm is on the part of the wife they shall decide separation against an appropriate compensation, which is estimated that the wife shall pay it.

3- If the harm is combined, they shall decide to separate without compensation or a compensation that shall be appropriate to the proportion of harm.

4- If the status is unknown and it is not known who is the offender of them, if the husband is the claimant, the arbitrators shall suggest refusing his case. In case the wife is the claimant or each of them requests separation the arbitrators shall decide

separation between them without a compensation.

Article -121-

1- Both arbitrators shall submit to the judge their justified decisions including the extent of harm to each of the spouses or one of them on the other.

2- The judge shall rule according to the arbitrators' award if they agree. In case they differ the judge shall appoint others, or shall join to them a third arbitrator who shall give preponderance to one of the opinions. The court shall put the new arbitrator or the preponderant to oath, to swear that he shall undertake his mission with justice and honesty.

3- The Judge has to amend the two arbitrators' award as regards what conflicts with the regulations of this law.

Article -122-

In the case of divorce for infliction of harm, harm shall be proven through legal proof, and the judicial judgements issued against one of the spouses.

The testimony shall be accepted through hearing, if the witness interprets or it is understood from his words the renown harm in the life circle of the spouses according to the decision of the court.

It shall not be accepted the heard testimony for negating harm.

It shall be accepted the testimony of the witness whether a male or a female with the exception of the lineal ascendants or lineal descendants whenever the legal testimony conditions are met by the witness.

Article -123-

In case the wife requests divorce prior to consummation or the sound seclusion, and deposited what she received of dowry and gifts, what the husband spent for marriage and the husband refrained from this, and the judge failed to reconcile them, it shall be judged the separation by divorce against a compensation (Al Khal'e).

## **Chapter 4**

### **Separation For Non-Provision**

Article -124-

1- If the present husband abstains from supporting his wife, and has no apparent money on which it can be executed the due alimony during a near period, it shall be permissible for the wife to request separation.

2- If he insists that he is insolvent and does not prove his insolvency, the judge shall divorce him immediately. Also, if he does not claim that he is wealthy or insolvent or he claims that he is wealthy and insists on non-provision, even if it is proven his insolvency, the judge shall give him a span of not more than one month. If he does not provide the judge shall rule his divorce.

Article -125-

1- In case the husband is absent in a known place:-

If he has apparent money the judgement for alimony shall be executed on his money. If he does not have apparent money, the judge shall excuse him and shall give him a span of a period not exceeding one month added to it the dates of the decided space. If he does not provide and does not bring the alimony the judge shall divorce him after the elapsement of the period.

2- If he is absent in an unknown place, or it is difficult to reach him, or is missing, and it is also proven that he has no money from which alimony can be disbursed the judge shall rule his divorce.

Article -126-

The husband can avoid divorce by submitting what proves his solvency and capability to provide alimony. In this case the judge shall grant him a span which is the decided period in article 125 of this law.

Article -127-

The husband can take his wife back during the waiting period (Ida't) if it is proven his wealth, and he is ready to make provision by settling the customary alimony otherwise taking his wife back shall not be sound.

Article -128-

In case the law suit for non-provision is repeated for more than twice, and it is proven to the court each time the non-provision and the wife requests divorce for non-provision the judge shall divorce her irrevocably.

## **Chapter 5**

### **Separation For Absence And Missing**

Article -129-

The wife shall have the right to request divorce for the absence of her husband whose domicile or residence place is known even if he possesses money from which the alimony can be settled. She shall not receive this judgement except after notifying him with either: to live with his wife, or to transfer her to him or to divorce her. This is provided that he is given a span of a period that shall not exceed one year.

Article -130-

The wife of the missing person whose residence place is unknown shall have the right to request divorce. She shall not receive such judgement except after investigation, searching for him and the elapsement of one year as from the date of raising the case.



## **Chapter 6**

### **Separation For Imprisonment**

Article -131-

- 1- The wife of the imprisoned who is passed a decisive judgement with a custodial sentence for a period of three years and more shall have the right to request from the court after one year of his imprisonment, an irrevocable divorce from him even if he has money she can spend from it.
- 2- If the wife is imprisoned too, and she is released without him, it shall be permissible for her to request separation after the elapsement of one year as from her release according to the same conditions stipulated in item 1 of this article.
- 3- In both the previous cases it shall be conditioned to pass judgement for the wife that the husband is not released from prison during the viewing of the case or that it does not remain less than six months from the period of his imprisonment.

## **Chapter 7**

### **Separation For Desertion And Solemn Abjuration Likening Wife To Mother And Hence Regarding Her Equally And Thus Hence Preposterous Carnally (Zihar)**

Article -132-

The wife shall have the right to request divorce if her husband swears not to cohabit her for a period of four months and more, unless he returns prior to the elapsement of the four months, and the divorce shall be irrevocable.

Article -133-

The wife shall be entitled to request divorce for solemn abjuration likening wife to mother and hence regarding her equally and hence preposterous carnally (Zihar).

Article -134-

The judge shall warn the husband to atone from the solemn abjuration likening wife to mother and hence regarding her equally and hence preposterous carnally (Zihar). Within four months as from the date of the abjuration. If he abstains with no excuse, the judge shall rule the divorce with an irrevocable divorce.

Article -135-

The judge shall have the right, while viewing the divorce case, to decide what he considers necessary of temporary procedures to guarantee the wife's and children's alimony, and what relates to their custody and visitation upon the request of either of them.

**Part 4**  
**Separation Effects**  
**Chapter 1**  
**The Waiting Period (Al Ida't)**

Article -136-

The waiting period (Al Ida't) is a mandatory waylay period that the wife shall spend without marriage following separation.

Article -137-

- 1- The waiting period (Al Ida't) shall start as from the occurrence of separation.
- 2- The waiting period (Al Ida't) in case of copulation with suspicion shall start as from the occurrence of the last copulation.
- 3- The waiting period (Al Ida't) in respect of marriage shall start as from the date of separation or the separation of the judge or the death of the man.
- 4- The waiting period (Al Ida't) in case of the judgement of divorce or separation or revocation or the voidness of the contract or the judgement of the death of the missing, shall start as from when the judgement becomes decisive.

Article -138-

- 1- The woman whose husband in a true marriage died, even prior to consummation of marriage, shall have to complete the waiting period (Ida't) of four months and ten days unless she is pregnant.
- 2- The waiting period (Ida't) for the pregnant woman shall elapse by giving birth or aborting her baby.
- 3- The woman whose marriage is consummated under a corrupt contract or a copulation with suspicion and whose husband dies, shall spend the waiting period of divorce for the absolution of the womb.

Article -139-

- 1- There is no waiting period (Ida't) for the divorced woman prior to consummation and the true seclusion.
- 2- The waiting period (Ida't) of the divorced woman who is not pregnant:

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- a- three clean periods for those with menstruation, and they are authenticated by their termination during the possible period.
- b- Three months for the woman who has originally no menstruation or

reached the menopause and her menstruation ceased. If she sees her menses prior to the termination of the period she shall resume the waiting period for three clean periods.

c- Three months whose menstruation extends if she has not a known practice. If she has a practice that she remembers she will follow it in computing the waiting period (Ida't).

d- The least of the periods of three clean period or one year with no menstruation for the woman whose menses ceased prior to menopause.

#### Article -140-

If the husband divorces his wife with whom he consummated the marriage under a true marriage according to his sole will and without her requiring it, she shall be entitled for a compensation other than the (Ida't) waiting period's alimony according to the condition of the husband and which, shall not exceed the alimony of one year for her equivalent. It shall be permissible for the judge to have it paid on installments according the wealth or insolvency of the husband. It shall be taken into consideration when estimating it what was inflicted of harm on the woman.

#### Article -141-

1- If the husband dies and the woman is in the waiting period of the revocable divorce (Ida't), she will move to the death waiting period and it shall not be computed what was previously spent of time.

2- In case the husband dies and the woman is in the waiting time of the irrevocable divorce or revocation, she will complete it and she shall not be bound with the death's waiting period except if the divorce was during death sickness, she shall complete the longest waiting period.

## **Chapter 2**

### **Child Custody**

#### Article -142-

Custody is the safeguarding of the child, raising and taking care of him in a way that shall not contradict the right of the guardian in the personal guardianship.

#### Article -143-

It shall be conditioned in the child custodian:

1- Sanity

2- Reaching adulthood.

3- Honesty.

4- The capability of raising the child under custody, maintaining him and caring for him.

5- Safety from dangerous contagious diseases.

6- That he/she was not previously convicted in respect of a crime of the crimes

inflicted on honor.

Article -144-

It shall be conditioned in the child custodian in addition to the stated conditions in the previous article

1- If it is a woman

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a- That she is free from a husband who is a foreigner to the child in custody and who consummated marriage with her, except if the court decides otherwise for the interest of the child in custody.

b- She is united in religion with the child under her custody, together with taking into consideration article 145 of this law.

2- If he is a man

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a- That he has one of the women who is suitable for custody.

b- That he has a kinship forbidden to the child in custody if the child is female.

c- He is united in religion with the child in his custody.

Article -145-

If the female custodian is a mother and of another religion than that of the child in custody, her custodianship shall drop except if otherwise is considered by the judge for the interest of the child in custody. This is provided that her custodianship for the child shall not exceed his completion of five years if he is a male or a female.

Article -146-

1- The right of the child custody shall be established for the mother, then for those forbidden of women giving precedence to matrilineal over patrilineal, and who is considered the nearest from both sides with the exception of the father according to the following order. This is provided that the judge shall take into consideration when adjudging the interest of the child in custody

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a- The mother

b- The father

c- The mother's mother in line.

d- The father's mother in line.

e- The sisters, by giving precedence to the sister- german then the maternal sister then the paternal sister.

f- The sister's daughter.

g- The daughter of the maternal sister.

h- The maternal aunts according to the precedence order in respect of sisters.

i- The daughter of the paternal sister.

- j- The brother's daughters according to the aforementioned order for sisters.
- k- The paternal aunts according to the aforementioned order.
- l- The mother's maternal aunts according to the aforementioned order.
- m- The fathers maternal aunts according to the aforementioned order.
- n- The mother's paternal aunts according to the aforementioned order.
- o- The father's paternal aunts according to the aforementioned order.
- 2- If there exists no female custodian of these women or non of them has the capacity for custody , the right of custody moves to the agnation of men according to the order of entitlement in inheritance together with taking into consideration the precedence of the true grandfather over the brothers.
- 3- If there is no one of those, the right of custody moves to the men who are forbidden for the child other than the agnations as follows:-  
The mother's grandfather, then the mother's brother, the maternal brother's nephew, the paternal uncle of the mother, then the mother's brothers with the precedence to the mother's brother, then the maternal agnate brother then the maternal cognate brother.
- 4- If the custody is refused by who is entitled of the women or men the right shall move to the person who follows and the judge shall be informed by this. If he refuses or did not express his opinion within fifteen days the right moves to who follows him too.
- 5- In all cases, when sex differs, those who are not of the forbidden to the child whether the child is female or male shall not be entitled to custody.
- 6- The mother shall have the custody of the children when conflicting over custody unless otherwise is decided by the judge for the interest of the child in custody.
- 7- Each of the mother and father shall have the right to claim the custody of the children if there is a conflict between them and the mother left the conjugal home, even if matrimony is still existing between them. The judge shall rule the request taking into consideration the interest of the children.

Article -147-

If the parents are non existent, and the custody is not accepted by who is entitled it, the judge shall select the person he considers appropriate of the relatives of the child in custody or others or one of the qualified institutions for this purpose.

Article -148-

- 1- The father or others of the custodian of the children in custody shall have to view his affairs, to discipline him, to guide him and to teach him.
- 2- The person who is obliged the provision of the child in custody shall settle the rent of the female custody's residence unless she has a residence in which she stays or is allocated for her residence.
- 3- The female custodian is not entitled to custody fee except if she is the wife of the father of the child in custody or she is in a waiting period (Ida't) and is due alimony

from him during her waiting period.

Article -149-

It shall not be permissible for the custodian female to travel with the child in custody abroad except with the approval of the status guardian in writing. If the guardian abstains from this the matter shall be brought before the judge.

Article -150-

- 1- The mother immediately during the existence of matrimony or during the waiting time (Ida't) of the revocable divorce shall not have to travel with her child or to move him from the conjugal home except with his father's written permission.
- 2- It shall be permissible for the mother after separation to move to another country in the state if this transfer shall not breach the raising of the child and shall not be harmful to the father. Also it shall not entail him in transportation any unusual difficulties or expenses to view the condition of the child in custody.

Article -151-

- 1- In case the female custodian is not the mother, she shall have not be entitled to travel abroad with the child except with a written permission from the child's guardian.
- 2- The guardian whether he is the father or other shall not have the right to travel abroad with the child during the custody period except with a written permission from who has the custody.
- 3- It shall not be permissible to abate the custody of the custodian mother to the mere movement of the father to a country other than the country in which the custodian lives. This is unless the moving was for the purposes of settlement and caused no harm to the mother, and the distance between the two countries prevents seeing the child under custody and to return on the same day by the normal means of transportation.

Article -152-

The custodian's right shall be dropped in the following cases:

- 1- In case one of the conditions mentioned in article 143 and article 144 are violated.
- 2- In case the custodian settled in a country that will make it difficult for the guardian of the child under custody to undertake his duties.
- 3- In case the person who has the custody's right does not request it for a period of six months without excuse.
- 4- In case the new female custodian lives with the female whose custody was stripped for a reason other than physical disability.

Article -153-

The custody shall be returned the person from whom it was dropped when the reason for dropping it ceases to exist.

Article -154-

- 1- If the child under custody is in the custody of one of the parents, the other parent shall have the right to visit the child, to receive the child, and to accompany him according to whatever the judge decides provided that it shall be determined the place, the time and the responsible person for bringing the child under custody.
- 2- In case one of the parents of the child under custody is dead or absent, relatives of prohibited degree of marriage shall have the right to visit the child under custody according to what is decided by the judge.
- 3- In case the child under custody is not with one of the parents, the judge shall appoint the person who deserves the visit from the relatives of prohibited degree of marriage.
- 4- The Judgement shall be forcibly executed if the person who has the child under custody refuses to execute it.
- 5- The Minister of Justice and Islamic Affairs and Endowments shall issue the regulations that determine the procedures of seeing, delivering and visiting the child under custody provided that they shall not to be in police stations or prisons.

Article -155-

In case of multiplicity of those who have the custody right were and they are of the same degree, the judge shall choose the best for the child.

Article -156-

- 1- The women's custody ends when the male child reaches eleven years of age and the female child reaches thirteen years of age, This is unless the court believes that extending that age is for the benefit of the child under custody - this is until the male child reaches the puberty age and the female child marries.
- 2- The women's custody continues in case the child under custody is insane or is suffering from a handicapping illness unless the benefit of the child under custody shall necessitate otherwise.

Article -157-

- 1- Without prejudice to the provisions of article 149 herein, the guardian shall have the right to keep the passport of the child under custody except in case of traveling abroad it shall be delivered to the female custodian.
- 2- The Judge has the right to keep the passport with the female custodian in case he sees inflexibility from the guardian in delivering it to the female custodian in time of need.
- 3- The female custodian shall have the right to keep the original of the birth certificate, and any other evidential documents concerning the child under custody or certified copies of them. Also, she shall have the right keep the identification card of the child under custody.

Article -158-

Judgements that are issued concerning the custody of the child, keeping him and delivering him to a trustee as well as separating between spouses and the like which concerns the personal status shall be forcibly executed even if this execution led to using force and entering houses. The executing - deputy shall, in this case, follow the instructions given to him by the executing- judge of the court in whose circuit the place on which the execution is implemented. The judgement execution shall be repeated whenever this matter is necessary.

It shall not be permissible to execute the judgement issued against the wife by imperative prosecution.

**Book Three**  
**Capacity and Guardianship**  
**Part 1**  
**Capacity**  
**Chapter 1**  
**General Regulations**

Article -159-

Every person has the capacity to contract unless he was deprived of his capacity or it was limited according to the law.

Article -160-

The following shall be considered as minors:

- 1- The fetus
- 2- The insane, the mentally deficient, and the squanderer
- 3- The missing or the absent.

Article -161-

The following shall be considered to be incapacitated:-

- 1- The child who is unable of discretion.
- 2- The insane, and the mentally deficient.

Article -162-

The following shall be considered incapacitated:

- 1- The child who is capable of discretion.
- 2- The squanderer.



Article -163-

The minor's affairs shall be undertaken by who represents him. He shall be called according to cases a guardian or a curator (this shall include the selected curator and the curator appointed by the judge are included) or a custodian.

## **Chapter 2**

### **The Regulations Regarding the Child**

Article -164-

The child: he is either capable of discretion or incapable..

The child who is incapable of discretion according to the regulations of this law: is the child who has not completed seven years of age.

The child who is capable of discretion is the child who has completed seven years of age.

Article -165-

Without prejudice to the provisions of articles 30 and 31 hereof:

1- All the verbal acts who is incapable of discretion shall be void.

2- All the verbal financial act of the child who is capable of discretion shall be correct whenever they are absolutely beneficial to him; and void whenever they shall be harmful to him an absolute harm.

3- The financial verbal actions of the child who is capable of discretion, which are oscillating between benefit and harm depend on the approval.

Article -166-

1- The guardian shall have the right to permit the minor under custody who completed eighteen years of age to receive all or part of his money to manage it.

2- It shall be permissible to the court after hearing the curator sayings to permit the minor who completed eighteen years of age to receive all or part of his money to manage it.

Article -167-

The child who is permitted disposals that are under permission shall be likewise who reached adulthood age.

Article -168-

In case the child who is capable of discretion completes eighteen years of age and recognizes in himself the ability to good disposal and the curator refused to give him the permission to manage part of his money, he shall submit the matter to the judge.

Article -169-

The child who was given permission by the curator shall have to submit a periodical account of his disposals to the judge.

Article -170-

Both the judge and the curator shall have the right to strip or restrict the permission in case the child's interest necessitates this.

## **Chapter 3**

### **Adulthood**

Article -171-

Every person who reached the adulthood age, enjoys his mental power, and was not under guardianship shall be of full capacity to practice his rights stipulated herein.

Article -172-

The person shall reach adulthood age when he completes twenty-one lunar years.

Article -173-

The minor after reaching adulthood age shall have the right to call the curator to account on his actions during the curatorship period.

## **Chapter 4**

### **Capacity Impediments**

Article -174-

Capacity Impediment:-

- 1- **Insanity:** the insane is the person who loses his mind in a complete or frequent way and is inflicted with mental deficiency.
- 2- **The squanderer:** the squanderer is the person who spends his money on useless things.
- 3- **Death sickness:** death sickness is the sickness during which the person is unable to continue his usual works and death is usually its end. The person dies in this condition before one year elapsed. In case his illness takes one year or more than one year and he is in a condition without aggravation, his behaviors shall be the likewise those of the healthy person.
- 4- It shall be likewise death sickness conditions those surrounds the person in which there is a death risk. In them death overwhelms even if he is not sick.

Article -175-

- 1- The financial disposals of the insane in case of his awakening shall be considered valid, whereas they shall be considered void after putting him under legal custody.
- 2- It shall be applied on the squanderer actions that are issued after putting him under custody the regulations pertaining to the actions of the child who is capable of distinguishing.
- 3- All actions of the squanderer before being under legal custody shall be considered to be correct unless it was a result of exploitation or connivance.

Article -176-

It shall be referred as regards the regulations in respect of the actions of the sick person suffering from death sickness to the Islamic doctrines according to what article 2 hereof stipulates.

Article -177-

The person who is under custody shall have the right to raise a lawsuit by himself in order to lift custody on him.

## **Part 2**

### **Guardianship**

#### **Chapter 1**

#### **General regulations**

Article -178-

1- Guardianship is divided into guardianship of the person and guardianship of the money.

V

a- The guardianship of the person:

X

It involves taking care of all that is related to the person of the minor, supervising him, guarding him, raising him, educating him, directing his life and preparing him a good preparation, and involved in this is agreeing on his marriage

V

b- The guardianship of the money:

X

1- It involves all that is related to the minor's money, guarding it, managing it and investing it.

2- It shall enter into the guardianship: the curatorship, the trustee, and the judicial agency.

Article -179-

Taking into consideration the regulations pertaining to marrying the female, which are stipulated in article 39 hereof, the child shall be subject to guardianship of the person until he reaches the age of puberty as an adult. Also the insane or the mentally deficient adult shall be subject to the guardianship of the person.

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## **Chapter 2**

### **The Conditions for the Guardian**

Article -180-

1- It shall be conditioned that the guardian is of legal age, adult, sane, honest and capable of undertaking the guardianship requirements.

2- It shall be conditioned that the guardian of the person to is trustworthy of the minor's person, is able to manage his affairs as well as united with the minor in the same religion.

## **Chapter 3**

### **The Guardianship of the person**

Article -181-

1- The guardianship of the person shall be to the father, then the agnate (asseb) himself according to the inheritance order.

2- In case there is a multiplicity of those who are entitled guardianship on the same degree and of one kinship strength as well as being all on the same level of adulthood, guardianship shall go to the eldest. In case they are different in maturity, the court shall choose the best of them for guardianship.

3- In case there is no one qualified for the guardianship of the person, the court has the right to appoint one of the minor's relatives, if any one of them is qualified for the guardianship, otherwise from others.

## **Chapter 4**

### **Stripping the guardianship of the person**

Article -182-

Guardianship shall be imperatively stripped in the following cases:

1- In case some conditions of the guardianship which are stipulated upon herein are violated.

2- In case the guardian commits with the person who is under guardianship or with someone else the crime of rape or indecent assault or led the person who is under guardianship to prostitution or what is likewise.

3- In case there is a decisive final judgement against the guardian for a crime or a deliberate misdemeanor he committed himself or others on the person under guardianship or what is less than this.

4- In case the guardian is judged with a custodial sentence for a period that exceeds one year.

Article -183-

1- It shall be permissible to strip the guardianship of the guardian of the person totally or partially in a permanent or temporarily in the following cases:

V

a- In case the guardian is judged with a penalty of custodian sentence for a period of one year or less.

b- In case the person who is under guardianship is exposed to extreme danger in respect of his safety, health, honor, manners or education as a result of the mistreatment of the guardian or because of the bad example resulting from the renown bad reputation of the guardian or his addiction to alcohol or drugs or as a result of bad care.

It shall not be conditioned in this case to have a judgement issued against the guardian because of the aforementioned.

2- The court shall have the right instead of stripping the guardianship in the previous cases to put the minor in one of the specialized social institutions together with the continued guardianship of the guardian.

Article -184-

In the cases aforementioned in articles 182 and 183 hereof, the court has the right itself or upon a request from the investigations' authorities to give temporarily the minor to a trusted individual or to one of the specialized social institutions until the guardianship issue is decided.

Article -185-

In case the guardian is stripped from the guardianship of some that are under this guardianship, it is mandatory to strip the guardianship of the rest of them.

Article -186-

In case the court judged on the guardian of the person to strip, limit, or suspend his guardianship, the guardianship shall be transferred to who is next to him in order if the latter is qualified for it.

In case the latter is not qualified for guardianship, the court shall have the right to give the guardianship to whomever it sees qualified even if he is not a relative to the minor or to give this guardianship to one of the specialized social institutions.

Article -187-

In cases other than cases in which the guardianship is obligatorily stripped, the court has the right to give back to the guardian his guardianship of the person, if he is striped from it partially or totally upon his request. This is provided that six months elapsed after the cessation of the reason for its deprivation.

## **Chapter 5**

# **The Guardianship of Money**

Article -188-

The guardianship of money shall be to the father, then to his curator, if found, then to the true grandfather then to his curator, if found, then to the judge, It shall not be permissible to any one of them to abandon his guardianship without the court's permission.

Article -189-

It shall not enter under guardianship what is reverted to the minor of money through donation if the donor conditions this.

Article -190-

It shall not be permissible to lend or donate the minor's money or any of its interests. In case this disposal occurred it shall be void and obligating responsibility and guarantee.

Article -191-

The guardian shall not be entitled right to dispose of the minor's real estate, a disposal that transfers title or creates a right in rem without the court permission. This shall be for a necessity or for an apparent interest that shall be estimated by the court.

Article -192-

It shall not be permissible for the guardian to obtain loans for the minor's interest except with the court's permission and in a method that shall not violate the Islamic Shari'a regulations.

Article -193-

It shall not be permissible for the guardian without the court's permission to lease the real estate of the minor for a period extending till after the minor reaches adulthood age.

Article -194-

It shall not be permissible to the guardian to continue in a trade that was reverted to the minor without the court permission and within the limits of this permission.

Article -195-

It shall not be permissible to the guardian to accept a gift or a will burdened with obligations for the minor without the court's permission.

Article -196-

1- The guardian shall have to draft a list of the minor's money or is reverted to him and to deposit this list in the clerical department in whose circuit is his domicile, within a period of two months as from the start of his guardianship or from the reversion of this money to the minor.

2- The court has the right to consider the non- submission of this list or the delay in submitting it a subjection of the minor's money to danger.

Article -197-

The guardian shall have the right with the court permission to disburse from the minor's money on himself in case his provision was obligatory on him and to disburse on whom the provision was obliged on the minor.

## **Chapter 6**

### **Stripping the guardianship of the money**

Article -198-

In case the minor's money is in danger as a result of the bad disposal of the guardian or for any other reason, the court shall have to strip him of the guardianship or to limit it.

Article -199-

The court has the right to suspend the guardianship if the guardian is considered absent or is imprisoned to fulfill a custodial sentence for a period of one year or less.

Article -200-

The judgement of depriving the guardianship of the minor's person leads to the dropping or the suspension of the guardianship of money.

Article -201-

In case of stripping, limiting or suspending the guardianship it shall not be returned except with a court order after being ascertained that reasons, which led to strip, limit, or suspend the guardianship ceased to exist.

Article -202-

The application concerning the return back of the guardianship that was previously denied shall not be accepted before the elapsement of one-year as from the date of the decisive judgement of refusal.

## **Chapter 7**

### **The Acts of the Father and the Grandfather**

Article -203-

The guardianship of the father shall be on the money of his minor child for safekeeping, management and investment

Article -204-

The father's guardianship includes his minor grandchildren in case their father is under legal custody.

Article -205-

The father actions oblige him to pay specially in the following cases:

- 1- To contract in his child's name and to dispose of his money.
- 2- To trade on behalf of his child, and he is not permitted to continue in that without an apparent benefit.
- 3- To accept the legal donations on behalf of his child, it is free of harmful obligations.

4- To disburse from his child's money on those whom he is obliged to provide for.  
Article -206-

The father's actions shall depend on the court's permission in the following cases:

1- In case he buys the property of his minor child to himself, his wife or his other children.

2- In case he sells his property, his wife's or his other children's to his minor child.

3- In case he sells his minor's child property and invests the price for himself.

Article -207-

1- The father's actions shall be annulled in case his bad actions are proven and they are not in the benefit of the minor.

2- The father shall be responsible with his money for his the gross error that resulted in harming the minor child.

Article -208-

The father's guardianship shall be stripped or limited in case it was proven to the judge that the minor's money was endangered as a result of his father's behaviors.

Article -209-

The grandfather shall be governed by the regulations decided for the father in this part.

## **Chapter 8**

### **Guardianship Termination**

Article -210-

Guardianship shall terminate when the minor reaches adulthood. This is unless the court ruled the continuation of curatorship over him.

Article -211-

If the guardianship of a person is terminated, it shall not be resumed except if it arises in him a reason of the reasons of guardianship.

Article -212-

The guardian or his heir shall have to return the minor's monies to him on the termination of guardianship and this shall be through the court of competent jurisdiction.

## **Chapter 9**

### **The Curator**

Article -213-

1- It shall be permissible to the father to appoint a testamentary curator for his minor son or the established pregnancy, and for the minor's sons of his son under curatorship. This shall also be permissible for the donor, in the case stipulated upon in article 189, and the curatorship shall be brought before the court to establish it.

2- It shall be permissible for each of the father or the donor, at any time to retract this option.



3- It shall be conditioned that the selection or the retraction is established in an official or a customary document.

4- If there is no curator for the minor or the fetus's a testamentary curator or a true grandfather the court shall appoint a curator.

5- The curator shall not dispose of the fetus 's monies till the baby is born alive, and he shall have to deliver it to is legal curator.

Article -214-

The judge shall appoint a special or a temporary curator whenever it is necessary for the benefit of the minor.

Article -215-

It shall be a condition in the curator whether he is a testamentary curator or the judge's curator that he is just, capable, honest, of full capacity, united in religion with the person under curatorship, and capable of undertaking the curatorship requirements. It shall not especially be permissible to appoint a curator

1- The person who the father decided prior to his death to deprive him of the appointment when such a deprivation is built on strong reasons that the court considers after verifying them that they justify this. The deprivation shall be established in an official or customary document.

2- The person who has between himself and one of his ascendants or descendents or his wife and the minor a judicial litigation. Also , the person who has between himself and the minor or his family a hostility if it is feared for the benefit of the minor from all these.

3- The person convicted with a custodial sentence in a crime of the crimes that is violating ethics or touching honor, or honesty. However, if a period of more than five years elapsed over this, it shall be permissible on disadvantage to transcend this condition.

4- The person who has no legal means for living.

5- The person who was previously stripped of his curatorship or dismissed from the curatorship of another minor.

Article -216-

The curator shall be tied with the conditions and tasks assigned to him in the curatorship document, unless they are in violation of the law.

Article -217-

It shall be permissible that the curator be a male or a female, a natural or a juristic person, solely or several, independent or with a supervisor with him.

Article -218-

1- In case of multiplicity of curators, it shall not be permissible for one of them to act on his own, except if the legator specified a competency for each of them. If the curatorship is for several of the curators combined, it shall not be permissible for one of them to act except with the approval of the others. However it shall be permissible for the curators to undertake the necessary or expeditious procedures or those raised for the benefit of the minor or to dispose in what is feared to become damaged due to delay or to dispose in what there is no difference on it such as returning the fixed deposits to the minor.

2- In case of differences between the curators the matter shall be brought before the court.

Article -219-

It shall be mandatory to accept the curatorship expressly or implicitly. The curator shall not be entitled to abandon it if he expressly or explicitly accepts it except through the court of competent jurisdiction.

Article -220-

In case the father appoints a supervisor to control the curator's works, the supervisor shall have to undertake it in a way that shall materialize this according to what necessitates the minor's interest. He shall be responsible before the court.

Article -221-

It shall be conditioned in the supervisor what is conditioned in the curator.

Article -222-

1- It shall govern the supervisor, as regards his appointment, his dismissal, acceptance of his resignation, his fees for his works, and his responsibility for his nonfeasance, the regulations that governs the curator.

2- The court shall decide the termination of the supervision if its reasons cease to exist.

Article -223-

The curator shall have to manage the minor's monies, to safeguard them and to invest them, He shall have to exert towards this all the care exerted in the likewise.

Article -224-

The curator's acts shall abide to the court's control. He shall be obliged to submit periodical accounts to the court in respect of his disposition in the management of the minor's monies and the likewise.

Article -225-

It shall not be permissible to the curator to undertake the following works except with the court's permission

1- To dispose of the minor's monies in sale or purchase or barter, or association or mortgage or any other kind of the kinds that transfers ownership or which entails a right in rem.